

---

In the Matter of the Arbitration

-between-

COMMUNICATION WORKERS OF AMERICA,  
AFL-CIO

-and-

VERIZON

Re: Improper Layoff

---

CWA Case No.  
1-10-020

Verizon Case No.  
A-09-240

**OPINION  
AND  
AWARD**

BEFORE: JACK D. TILLEM, Arbitrator

APPEARANCES: For the Union:  
WEISSMAN & MINTZ LLC  
By: DAVID A. MINTZ, Of counsel

For the Company:  
SEYFARTH SHAW LLP  
By: ARTHUR G. TELEGEN, Of counsel

Pursuant to the procedure for arbitration contained in the agreement between COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO and VERIZON, the undersigned was appointed to hear and decide the grievance involved herein. Hearings were held on April 11, May 3, July 6 and July 7, 2011 in New York City. After hearing the witnesses, submission of exhibits and arguments of the parties, decision was reserved. Post hearing briefs were submitted.

ISSUE: Did the Company violate the 2008 Verizon Business Settlement Agreement as incorporated in the 2008 New York Plant Contract when it laid off 16 Verizon Business Technicians on September 14, 2009?

### **Background**

In 2006, Verizon acquired MCI for several billion dollars, an acquisition allowing it to expand its telecommunication services with large enterprises and government customers which MCI had; Verizon had some of that business already but it wanted to increase its presence in that space. Upon the acquisition, MCI, which operated throughout the United States and in foreign countries, became Verizon Business, a new name for a business which continued largely unchanged. Yet because MCI had served many of the same customers, a number of grievances were filed by Verizon's unions claiming that the non-unionized MCI workers were doing their work.

George Nicolau, appointed as the arbitrator in one such case, held several hearings. Before an award was issued, however, the parties entered into a Settlement Agreement simultaneously with the 2008 settlement of their negotiations for successor agreements to those expiring that year. The Settlement Agreement was attached to each of the Verizon-CWA agreements for the separate bargaining units in the thirteen state/DC area – the territorial footprint of the former Bell Atlantic unionized businesses (“Telco”) which Verizon had taken over years before and where now Verizon Business would operate as well.

In that Settlement Agreement, our focus in this arbitration, Verizon agreed to transfer approximately 590 former MCI employees – 445 outside technicians and 145 inside technicians – into the existing CWA and IBEW Plant bargaining units as well as the equivalent work of another 200 full time positions into existing CWA commercial bargaining units.\* Although the Settlement Agreement provided that the new union members would be covered by the CBAs in effect in each geographic area where the former MCI employees worked, the parties agreed to create new provisions which would also cover these new employees. These provisions or “carve-outs” were set forth in Schedule B of the Settlement Agreement and incorporated in the New York Plant Agreement and each of the other plant agreements throughout the thirteen state/DC area.

Among the carve-outs in Schedule B was a separate pool for layoffs, the provision triggering this dispute.

#### **G. LAYOFFS**

- In the event of the layoff of any employee occupying a Service Company job title(s) and/or job classification(s) created in accordance with the Settlement Agreement, employees occupying the Service Company job title(s) and/or job classification(s) created in accordance with the Settlement Agreement:

---

\*The IBEW agreement mirrored the CWA agreement except that it didn't include commercial work.

- shall be considered a separate seniority pool for layoff purposes;
  - shall not be subject to being displaced or bumped by any employee;
  - shall not be permitted to displace or bump any employee in another job title and/or occupational classification.
- Any force adjustment plan or similar or related provisions of the Labor Agreements shall not apply to persons occupying Service Company job title(s) and/or job classification(s) created in accordance with the Settlement Agreement.
  - When Service Company determines, in its discretion, to declare one or more job title(s) and/or job classification(s) created in accordance with the Settlement Agreement surplus in a work group or location, the following will apply:
    - Service Company will give CWA 15 days advance notice of a surplus which could lead to a layoff.
    - Following the 15-day notification period, the Service Company will solicit employees in the job title(s) and/or job classification(s) created in accordance with the Settlement Agreement, by seniority order, to volunteer to leave the business with the layoff allowance specified in the Labor Agreement. Employees will have 14 calendar days to decide whether to take the volunteer offer to leave the business. The Company will determine the off-payroll date for those employees who volunteer to leave the business.
    - To the extent there are insufficient volunteers to relieve the surplus, Service Company shall lay off

employees in the job title(s) and/or job classification(s) created in accordance with the Settlement Agreement by inverse order of seniority. Those employees who are laid off will receive the layoff allowance specified in the Labor Agreement.

- Laid off employees shall be recalled in the inverse order in which such laid-off employees were laid off to a vacancy in the job title and/or classification from which the layoff occurred, or to a vacancy in a lower job title or classification for which the employee is qualified, within two years of the layoff.

### **The Layoffs**

On August 6, 2009, Verizon's Executive Director Labor Relations Patrick J. Prindeville sent the following letter to CWA Area Director Elisa Riordan:

Dear Ms. Riordan:

This letter is to notify you that, effective today, Verizon Services Corp. ("VSC" or "the Service Company") is declaring a surplus of twenty (20) employees which could lead to a layoff. The job titles with the corresponding number of employees declared surplus in each title listed below is set forth below.

- Apprentice Technician Business/Government (1)
- Technician Business/Government (14) and
- Senior Technician Business/Government (5)

These employees are located in the Operations Support Center work group at 1 Whitehall Street, New York, New York within the Verizon Partner Solutions - Global Maintenance organization under Maureen Davis - Vice President.

Following the 15-day advance notice period, in this case August 22, 2009, the Service Company will solicit employees in the above work group and job titles, by seniority order, to volunteer to leave the business with the layoff allowance specified in Article 14.02(6) of the New York Plant bargaining agreement. Employees will have 14 calendar days to decide whether to take the voluntary offer to leave the business. Accordingly, all volunteers will need to submit their voluntary offer applications no later than September 4, 2009. The off-payroll date for employees who accept the volunteer offer will be September 12, 2009.

To the extent there are insufficient volunteers to relieve the surplus, the Service Company will lay off employees in the job titles in the work group referenced above by inverse order of seniority. Those employees who are laid off will receive the layoff allowance specified in the New York Plant bargaining agreement.

Should you have any questions please call me on 212-321-8600.

Very truly yours,  
s/Patrick J. Prindeville

In accordance with the terms of the letter the technicians designated at Whitehall Street were solicited to leave the payroll with layoff allowances specified in the Plant Agreement. On August 29, before any layoffs occurred, the parties met to discuss Whitehall Street and other surpluses. Allowing that the Company had the right to decide where the work goes and what work group performs the work, the Union took the position at the meeting that “the offers to leave the payroll must be made to the whole bargaining unit,” a reference to the entire 590 employees in the separate pool. The Company

disagreed; it said the offer and layoffs were restricted to the Whitehall Street “work group.” That’s where it was left. Four of the designated group volunteered to take the offer and leave. Sixteen were laid off. The Whitehall Street location was closed, and the remaining eleven employees there were transferred to other locations in Manhattan.

That, simply put, is the essence of this dispute: the Company says the layoff provision in Schedule B, the carve-outs in the Settlement Agreement, confines the volunteers and layoffs to a “work group or location.” The Union says that though the Company has the prerogative to determine the surplus in a specific work group or location, the Settlement Agreement requires the Company to seek volunteers necessary to alleviate the surplus from the entire thirteen state/DC area and layoff by inverse order of seniority from the same area.

### **The Union’s Case**

The Union insists that it did not agree to permit Verizon to layoff newly admitted members of the bargaining unit from a work group or location of any size that could be created at the discretion of the Company and end up laying off senior employees – as, it said, occurred in this case – while their junior co-workers in the same titles and doing identical work remained on the payroll. The Union relies on the testimony of its attorney Steven Weissman who headed up its negotiations team. It was clearly the Union’s intention, he said, that the layoffs of the new Verizon Business employees, comprised of a separate pool, would take place by inverse order of seniority of the entire pool. It may well

be that the Company representatives didn't understand what the Union was proposing, but as testified to by Weissman, a history of the bargaining as well as the structure of Schedule B confirms that that is what the parties agreed to.

The Union points out that the Schedule B carve outs and the applicable plant agreements provide the terms and conditions of employment for the new technicians. At the outset, the Union notes, Schedule B states that the work it describes in Paragraph 1 is the work of both the outside and inside technicians – and all the employees engaged in that work are to be placed in the same three titles: senior technician, technician and apprentice technician. These jobs are repeatedly designated – *twenty-eight times!* – throughout the carve outs as “the job title and/or job classification created in accordance with the Settlement Agreement.” No basis exists, the Union asserts, for distinguishing between inside and outside technicians, all part of the one seniority pool from which the layoffs must be drawn.

The Union relies on the fact that in November 2008, shortly after the Settlement Agreement was executed, the Company provided the Union with a list of the 240 Verizon Business technicians to be transferred into the New York Plant bargaining unit. It was a single list showing the employees' new titles: senior technician, technician and apprentice technician. It did not distinguish between inside and outside technician, and there were no “work group” designations. And in July 2009 just prior to the August surplus declaration, the Company provided the Union with a list of *all* employees covered by the



Settlement Agreement. They were all listed in seniority order and worked for the same organization – a single comprehensive list including both CWA and IBEW members. There was no reason for the Union to believe this was not the layoff list, with the last and least senior employee on the list to be the first employee laid off should layoffs take place. Layoff by work groups was never contemplated by the parties, the Union says, until the Company declared its first surplus in August 2009.

Bargaining history supports its contention of a thirteen state/DC layoff universe, the Union says. Both Weissman and Larry Marcus, the chief negotiator for the Company, testified that the layoff proposals were exchanged via e-mail with no discussions over the meaning of the proposals or how they would be applied. They also testified that the layoff proposals of the Video Hub Technician Agreement,\* a separate agreement which also brought non-union employees into the bargaining unit, were exchanged at the same time by the same people. That agreement similarly created carve outs in the existing CBA's and is structured in the same way as the Verizon Business Settlement Agreement. It is impossible, the Union contends, to interpret the Verizon Business Settlement Agreement in isolation from the Video Hub Technician Agreement – both were negotiated in tandem, shared identical provisions, informed the other of its meaning and, the Union reasons, demand a common interpretation.

---

\*Also known as the Video Hub Offices (VHO) agreement.

The Union places the two layoff provisions side by side and makes the following observations: In the VHO agreement the lead paragraph states “When the Company determines, in its discretion, to declare a surplus of VHTs within a VHO, the following will apply. . .”<sup>\*</sup> In the Verizon Business Settlement Agreement the lead paragraph refers to a “surplus in a work group or location.” Both then go on to sub-bullets. The point underscored by the Union is that the VHO Agreement requires the Company to solicit volunteers within the VHO; in the Verizon Business Settlement Agreement there is no such equivalent restriction to “work group or location.” Thus, the Union concludes, volunteers must be sought from the entire thirteen state/DC area.

In the next sub-bullet, the VHO contract provides that if there are insufficient volunteers to cover the surplus, layoffs shall occur by “inverse order of seniority” with no mention of limitation to the VHO which has the surplus. So here, the Union says, it jibes with the Settlement Agreement which utilizes the entire universe of 590 technicians by stating “*the Company shall lay off employees in the job titles and/or job classifications created in accordance with the Settlement Agreement*” . . .

Summing up the comparison, the Union says the parties must be taken at their exact words: in the first step both contracts define the surplus as limited to one specific location. In the second step however, the call for volunteers, the VHO Agreement

---

<sup>\*</sup>VHOs are located in New York, Pennsylvania, Maryland and Virginia.

expressly solicits within that VHO while the Settlement Agreement expressly solicits from the job titles and classifications without limiting it to the surplus “work place or location;” and in the third step, the two contracts converge: layoffs from the entire universe of covered employees.

Assuming there is any ambiguity in the Settlement Agreement – which it hastens to add there is decidedly not – the union says it must be construed against the Company which inserted the phrase “in a work or location” to define the surplus location, but failed to place it in the solicitation and layoff sub-paragraphs. It won’t do, the Union says, to accept the Company’s explanation that it’s a “meaningless admission,” that the phrase should be implied to carry down to the sub-paragraphs. Yet the Company did not assume or apply this key term in the simultaneously negotiated VHO layoff provision. The Company well knew what it was doing; when it wanted the layoff provision limited to the location, it said so in no uncertain terms and when it didn’t, it didn’t.

Furthermore, the Union points out that under the Company’s interpretation of the disputed provision, the recall clause is rendered a nullity. The Company closed the Whitehall Street office which means that the laid off technicians would have recall rights to a location that doesn’t exist anymore. An absurdity, the Union says, if openings for a maintenance technician in other offices in New York City or elsewhere occur, the laid off workers would have no rights and the Company could hire off the street to fill the vacancies.

A contractual provision, the Union submits, should not be interpreted to render it useless when another interpretation gives it substantive meaning.

Nor, the Union says, is there any basis for distinguishing between outside and inside technicians as the Company would have it. They hold the same job title – senior technician, technician and apprentice technician; nothing in the Settlement Agreement splits them into two separate segments of the pool for layoff purposes. To the contrary, the Union underscores the first paragraph in the layoff provision which provides that all job titles or classifications shall be considered “a separate pool for layoff purposes.”

Yet even under the Company’s interpretation of the agreement, the Union asserts the Company misidentified the work group and laid off the wrong employees. The sixteen maintenance technicians laid off at Whitehall Street were, the Union contends, part of a work group of eighty-eight maintenance technicians located in Pottstown, Pennsylvania, Munsey, New York and Whitehall Street. They all worked for group manager Jeffrey Burk. The evidence shows that Burk was listed as the group manager and that all eighty-eight technicians in Burk’s work group performed identical work. They were assigned trouble tickets by a single automatic ticket distributor that treated them as a single group. The operation, 24/7, had a single published, fully integrated work schedule for all eighty-eight employees.

The Union highlights Burk’s testimony that before the surplus was declared, the Company compared the technicians at Pottstown, Monsey and Whitehall

Street and “felt that the skill set of individuals in Whitehall weren’t up to the same level as the skill set was in Monsey and Pottstown.” As the Union sees it, the Company laid off the sixteen maintenance technicians as though one of its first proposals in the negotiations had been adopted, a proposal summarily rejected by the Union:

In implementing a layoff, Service Company shall consider the employees’ performance, demonstrated skills, abilities, knowledge, education, training, experience and competencies.

The Union asserts that not one of the sixteen maintenance technicians who were laid off at Whitehall Street in September 2009 was the least senior technician in Burk’s work group. In each of the three job titles in his group, there were technicians with less service who were not laid off. Moreover, the Union says, the Company cannot even claim that the maintenance technicians at Whitehall Street constituted a *location* under the Settlement Agreement. The actual location was 1 Whitehall Street, third floor and there were seventy technicians employed at that site – many of whom had less seniority than the sixteen technicians who were laid off. So, the Union reasons, even under the Company’s interpretation – layoff by work group or location – the wrong employees were let go.

In sum, the Union argues the Company violated the Settlement Agreement by failing to declare a surplus within a proper work group; that it failed to solicit volunteers to leave the payroll from among the 529 Verizon Business technicians on the payroll in August 2009; and it failed to lay off by inverse order of seniority within the thirteen state/DC area. The Union seeks an award affirming its interpretation of the

Settlement Agreement layoff provision and returning the laid off sixteen maintenance technicians to the payroll with full back pay and benefits from the date of the layoff to the date of their return.

### **The Company's Case**

The Company contends the Union's thirteen state layoff grouping is without merit. It points out that the agreement provides:

When Service Company determines, in its discretion, to declare one or more job title(s) and/or job classification(s) created in accordance with the Settlement Agreement surplus in a work group or location, the following will apply. . .

That's the rule, the Company says, followed by a number of sub-rules. To be sure, the phrase "in a work group or location" is not repeated in the sub-rules, the Company allows, underscoring, however, those sub-rules are attached to the concluding phrase in the master rule: *the following will apply*. The Company maintains that nothing in the Settlement Agreement or the negotiations would support the conclusion that despite that phrase, the parties intended to incorporate a thirteen state scope into the sub-rules. Additionally, the Company says, the parties could not have meant to include the "inside" and the "hands and feet" technicians in the same layoff group. They are separately identified in the Settlement Agreement – 445 of the former and 145 of the latter – and there is a ratio

threshold that applies to inside technicians but not to hands and feet technicians – a threshold which the Company says makes no sense if they are all in the same layoff group.

The Company eschews the Union’s attempts to renege on its promise in the VHO Agreement which states:

The parties agree that this agreement is without precedent and that neither party may refer to this agreement in any other grievance, arbitration, or other proceeding, except as necessary to enforce the terms of the agreement itself.

Nonetheless, it says, the Union’s reliance on the repetition of the phrase “within a VHO” in the voluntary solicitation sub-rule of that agreement, but omitted from this one, is of little moment. Comparing the two agreements is a stretch, the Company says, the VHO agreement, for example, doesn’t provide for a separate pool and perhaps most telling is that it would be absurd to construe the VHO Agreement to declare a surplus in one office, seek volunteers from that office, but then lay off from eight offices. At any rate, the Company submits, the sub-rule designating the specific VHO for soliciting volunteers has little relevance, let alone any dispositive value, in resolving the issue in this case.

The Company portrays the Union’s claim that Whitehall Street is part of a work group consisting of two other locations, Monsey and Pottstown, as a belated Hail Mary, a theory never raised at the meeting between the Company and the Union before the layoffs occurred. Nor was it broached by the Union at the grievance meetings. Not until the arbitration, the Company notes, did the Union express the position that Pottstown and Monsey should be included in the layoff. Hence, the Company argues, the claim should not

even be considered arbitrable. That said, the Company notes, the agreement states that the employees “will be placed in work groups as determined by (the) Company.” It is the Company’s prerogative, not the Union’s and not the arbitrator’s, to define a work group, and the Company exercised that prerogative by defining the applicable work group for purposes of the surplus as the maintenance technicians at the Whitehall Street facility. Besides, the Company says, it has treated the technicians at the Whitehall Street, Monsey and Pottstown locations as separate work groups for administrative purposes.

The Company submits it has exercised the right that the Settlement Agreement reserved to it: to conduct layoffs that suited its needs as long as it respected seniority within the work groups it identified for reduction. Rejecting the Union’s contention that layoffs should instead be conducted across the entire thirteen state/DC area embracing multiple bargaining units, disparate functions and two different unions or, as the union would have it, in the alternative across two states in three different locations, the Company finds no basis in the Settlement Agreement nor any support in the history of the negotiations for either result. Accordingly, the Company urges that the grievance should be denied in its entirety.

\*

\*

\*



## Opinion

At the outset, the Union's argument that the layoff provision brooks ambiguity poses a difficult proposition for me. Granted, it may not have the precision of an atomic clock but it clearly conveys its intent: the business of laying off employees is limited to a "work group or location." Words do have a limited range of meaning, and no interpretation that goes beyond that range is permissible. To conclude otherwise means that the words *the following will apply*, in tandem with that phrase, is meant to wipe it out. Put another way, if the Union is right, the phrase "work group or location" serves no real purpose.

With or without it, let us agree the Company has the prerogative of declaring a surplus and implementing layoffs anywhere it chooses. Why bother contractually designating a specific work group or location if the process mandates volunteers and layoffs from the entire thirteen states/DC area? No need. The Company could designate, say, Richmond, Virginia, or wherever, and, according to the union, throw the entire thirteen state/DC area into play for volunteers and layoffs. Yet it must be presumed the parties were not shoveling smoke when they bargained the phrase into the lead paragraph; it was intended to serve a purpose: the limitation of the surplus and the layoff process to a "work group or location."

There are disputes involving the interpretation of contractual language which present a quandary: the plain meaning of the provision conflicts with one's

common understanding or in the jargon of today's culture – one's life experience. This, however, is not such a case. The plain meaning jibes precisely with one's life experience, the way things are generally understood. On the restaurant menu under the heading APPETIZERS, a selection of dishes appear. None of them have the word *Appetizer* appended. Yet there is no need to ask if they are appetizers. Nor need you inquire as to whether an entree can be gotten for the appetizer price. The heading tells it all. So too here.

And then there is another type of quandary: sometimes it happens that the clear meaning of a provision is at odds with the backdrop of the parties' relationship; what one would assume they would seek to obtain in negotiations. Again, this is not such a case. The restriction of the layoff procedure to a work group or location comports precisely with that backdrop. In fact, the Union's interpretation presents an anomaly, a disavowal of what the parties sought to achieve in their negotiations for the Settlement Agreement.

The first part of that agreement was for the Union's benefit: it obtained almost six hundred new bargaining unit technicians – employees who had been non-union with MCI and who, had they remained non-union as Verizon Business employees, could have been laid off anytime regardless of seniority. While the Union may disagree with that assessment of the first part, describing the second part of the settlement agreement, Schedule B, as *carve outs*, which the parties have done from the very beginning of their negotiations, makes no sense unless it's understood as the quid pro quo granted by the Union to the Company for the first part: concessions to curtail benefits and loosen up some of the

work rules and limitations on company discretion permeating the plant CBAs. Hence, the title of Schedule B: **Exceptions to CBAs**. And hence the purpose of the layoff provision: to afford the Company flexibility in declaring surpluses and layoffs by placing Verizon Business technicians in a “separate seniority pool for layoff purposes.”

Yet if the Union is correct its interpretation of the layoff provision makes layoffs more onerous and less flexible for the Company than the Plant Agreements. Take the Force Adjustment Plan, Article 55 in the Verizon New York Plant Agreement, a plan limiting force adjustments to six areas of New York State; and the “job security letter,” essentially a no layoff provision in the CBA. Think about it. The declaration of surplus in the Whitehall Street workgroup, absent the carve out in Schedule B, would have been governed by Article 55's FAP and limited to six areas in New York State.

Yet, as the Union would have it, by virtue of the Settlement Agreement's carve out, the employee pool has been expanded to extract employees, voluntarily or by layoff, from all the bargaining units across a thirteen state footprint. Why would the Company agree to such an anomalous provision? Why would it encumber its layoff rights more for the new employees than for its bargaining unit employees covered by the plant agreements? After all, none of the carve outs in Schedule B broadened contractual rights; they all serve the purpose of curtailing such rights. Why is this the only one swimming against the tide?

Still another question nags: how can it be that the negotiating teams on both sides, veteran labor relations professionals led by expert labor attorneys with more than a century of experience among them, could have allowed their clients to have signed off on a layoff provision involving such massive dislocations and yes, complications – think two unions CWA and IBEW – without negotiating the terms and methodology every time a layoff occurred in a single work group or location. Nobody bothering to ask how this will work in real time, they untethered their respective clients, left them out there on their own to muddle through every time that happened; for example, the layoff of a junior employee in Maine because of a surplus in West Virginia. I can't buy it.

The Union argues that since it was the Company which drafted the layoff provision, any doubts arising from ambiguity should be resolved against it. The canon of contractual interpretation *contra proferentem* upon which the Union relies is not, to my mind, applicable to this dispute. To be sure, canons of interpretation can help shed light on otherwise ambiguous or perplexing words or phrases. But as noted earlier, I frankly fail to see any ambiguity justifying resort to interpretive aids.

Nonetheless, assume for the moment some ambiguity is to be gleaned in the provision. These are parties of equal knowledge, experience and expertise coming to agreement after engaging in protractive negotiations in which they offer, counteroffer, reject, amend, and massage every aspect of the deal – a process in which I fail to discern any significance as to which one or the other drafted the provision or made the

proposal on which they signed off. What difference does it make in this milieu who is the last man standing?

In a different context it does make a difference: the small print on the back of the bill of sale when you buy a car; the print on the back of the caterer's contract when you sign for your daughter's wedding. There is good reason for the canon in those situations. But not here. And considering that the phrase "work group or location" is joined at the hip to "the following will apply," perhaps the more appropriate canon is *noscitur a sociis* which means, literally, "it is known by its companions."

At any rate, the evidence shows that compared to their negotiations on other aspects of the agreement, fairly short shrift was made of the layoff issue which involved the exchange of a few e-mails. Prior to its acquisition by Verizon, MCI had gone through layoffs in small administrative units and not by seniority. Against this backdrop of unfettered discretion, the Company proposed layoffs based on merit with seniority as a tie breaker when all other qualifications are substantially equal. The Union, intent on obtaining a layoff by seniority provision, but conceding the inapplicability of the FAP provision in the Plant CBAs and the *no layoff job security* letter, then exchanged e-mails resulting in the final language agreed to: a fifteen day notice of surplus; solicitation of volunteers; layoff by inverse order of seniority. The sequence of e-mails shows that the Company was willing to accept layoff by seniority but insisted upon layoff by work group or location. The Union accepted this change and the layoff segment of the negotiations was concluded.

The Union's heavy emphasis on contrasting the layoff sub-rule limiting solicitation of volunteers to the VHO in the VHO Hub Technicians' Agreement with the lack of the phrase "work group or location" in the Settlement Agreement sub-rules is problematic. First of all, as noted earlier, but worth repeating at this point, the VHO Agreement states:

The parties agree that this agreement is without precedent and that *neither party may refer to this agreement in any other grievance, arbitration, or other proceeding, except as necessary to enforce the terms of the agreement itself.* (emphasis added)

That language could hardly state its intent clearer unless it added the sentence, "*We really mean it!*" Yet the Union says it's limited to the substantive issue; in other words, it cannot be cited as a precedent for a claim that other non-union work should or should not be brought into the bargaining unit. It was never intended, the Union says, to preclude either party from explaining in a different arbitration how provisions of that agreement were negotiated in tandem with the second agreement and how the parties understood the difference between the two. It's a seductive argument. But it doesn't say that; it doesn't say you can use it in certain contexts and not in others.

Let us not argue, however. Contrasting the two agreements, the juice is not worth the squeeze. The Union relies on the fact that the VHO agreement repeats the phrase *within the VHO* in the voluntary solicitation sub-rule. However, the phrase is not repeated in the layoff sub-rule. Thus, the Union reasons, the surplus is declared within a

VHO; volunteers are solicited within that VHO office; and since the phrase *within the VHO* is not included in the layoff sub-rule, layoffs would occur according to inverse order of seniority across the eight hub offices throughout the Bell Atlantic footprint. The only difference in the Verizon Business Agreement is that the sub-rule concerning the solicitation of volunteers does not include the limiting phrase “work group or location.” So here, the Union reasons, the surplus is declared in a work group or location, the volunteers are solicited across the thirteen state region with layoffs by inverse order of seniority across that same region.

Apart from the comparison smacking of apples and oranges, let’s see how the Union’s interpretation of the layoff provisions would be implemented. For the VHO: declare a surplus and obtain volunteers from a New York VHO, and then layoff junior employees perhaps in Virginia. For the Verizon Business Agreement: declare a surplus in New York, obtain volunteers and then lay off the most junior employees across the thirteen state footprint. It would require one to have an idiosyncratic relationship with common sense to accept the proposition that the Company agreed to such a “carve out.”

Turning its attention to the phrase “work group or locations,” the Union says the Company got it wrong here too: Whitehall Street, the Union asserts, is not a work group and it cannot be defined as such for purposes of a surplus. The thirty-one employees at Whitehall Street of which twenty were declared surplus were, the Union says, part of a work group of eighty-eight technicians located at Pottstown, Monsey and Whitehall

Street. They all worked in the operations support center under Group Manager Jeffrey Burk; all three locations handled troubled tickets from around the country through an automatic ticket distributor; and they were integrated on a 24/7 schedule. Thus, the Union concludes, the surplus should have been declared for the three locations as one work group.

Yet the evidence shows the three locations were treated as separate groups for administrative purposes. They all had local managers who were responsible for the day to day scheduling and vacations and holidays. While Burk distributed a consolidated schedule for the three locations, his role was limited to compiling the information generated by the local managers. Moreover, Burk's group manager title was assigned to him upon his transfer from MCI because there was no matching Verizon title.

But first and foremost, the settlement agreement states:

Employees in the new job title(s) and/or classification(s) will be placed in work groups *as determined by service company*.  
(emphasis added)

Besides, I have real trouble accepting the idea that the parties signed off on an understanding that a work group for layoff purposes could cross state lines and cover separate bargaining units. How would the layoff be implemented? And how does it square with both parties' objective in the carve outs to simplify layoffs? Take this exact case: the layoffs would occur in Pottstown where the junior employees are concentrated meaning the Company would compel Whitehall Street technicians to pick up, leave New York and transfer to a different bargaining unit in Pennsylvania. Though some perhaps might



be inclined to commute thirty-five miles from Manhattan to Monsey, it is doubtful that any would be enthralled about the commute for several hours into Pennsylvania. And if they didn't accept the involuntary transfer, would the Company have to discharge them?

The Union argues that the Company cut the layoff slice too thin. It was a global settlement, the Union says, reasoning that the layoffs by inverse order of seniority should have been among all technicians covered by the agreement and that means everyone: the 445 employees doing outside plant work in the thirteen state/DC area and 145 employees doing the inside plant work in the same area. Eschewing the slice, the Union says the layoff should have been from the whole pie.

The Union's argument is less than compelling. A quick recap of what the technicians do: the outside employees, the "hands and feet" technicians, install central office and remote telephone equipment in the field. The 145 inside technicians work at computer monitors, remotely surveying and manipulating existing circuits. The technicians do entirely different jobs and are separately identified in the Settlement Agreement.

(a) effective as of December 28, 2008, the work of the Thirteen-State/DC Area Apprentice Technicians, Technicians, Advanced Technicians, and Senior Technicians currently employed by MCS, including the performance of wiring, the making of physical connections, the installation and testing of equipment and circuits, in the central offices, outside plant, and on customer premises, required for purposes of filling customer orders, the repair or maintenance of malfunctioning circuits, and connecting customer premises to the network. Service Company shall be the sole contractor for this work and shall perform this

work exclusively. *Currently there are approximately 445 MCS employees in such positions in the Thirteen-State/DC Area, but that number may fluctuate based upon business needs;* (emphasis added)

(b) effective as of December 28, 2008, the work of the Thirteen-State/DC Area Apprentice Technicians, Technicians, Advanced Technicians, and Senior Technicians currently employed by MCS in its Operation Support Centers, including the performance of remote on-net local metro private line circuit activation, LD DS-3 remote connections in SONET and DXC platforms, LD switch IMT and FG-D activations, repair of LD switch and DS-3 level circuits, escalation and coordination of LEC DS-3 repair, statusing customers regarding installation or repair activity, and field force coordination as required for the above described activities. Service Company shall be the sole contractor for this work and shall perform this work exclusively. *Currently there are approximately 145 MCS employees in such positions in the Thirteen-State/DC Area, but that number may fluctuate based upon business needs.* (emphasis added)

With all due respect to the Union's assertion that it should have and could have been done that way, consider the bewildering complexity of its implementation: a surplus of twenty inside technicians at Whitehall Street is declared; the declaration triggers a labor relations tremor of Richter scale magnitude across thirteen states putting in play for separation and layoff over five hundred employees encompassing a wide spectrum of job skills and specific titles. Granted it's not impossible; it can be done. What *is* impossible is to construe it as a carve out.

All of this is not to say that the grievance is not understandable from the Union's point of view. But that does not make it sustainable. It is always a

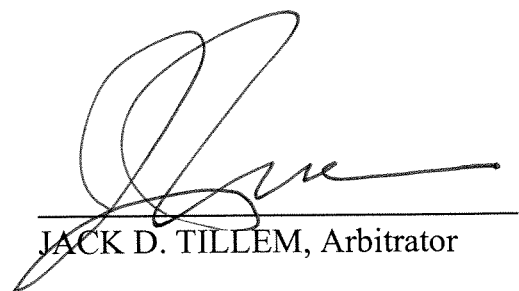
legitimate concern of a union when senior employees are laid off while those junior to them remain on the payroll. And it is true, as the Union notes, that if Whitehall Street which is shut down is held to be the work group, the right of return for those laid off is an empty promise. Yet it cannot be gainsaid that the Company has the right to transfer work and to shut down facilities. Parties bargain over the terms of their collective bargaining agreement but they do not repeal the law of unintended consequences. Life outstrips its molds and when during the term of a CBA, unforeseen things happen which may be anathema to one side or the other, the process is not static; they can bargain over it again next time. But an arbitrator is not a Chancellor of Equity to measure out fairness as he perceives it – certainly not in a case such as this in which the provision cannot bear the interpretation laid on it by the Union.

The answer to the issue posed is no and the grievance denied.

AWARD

The grievance is denied.

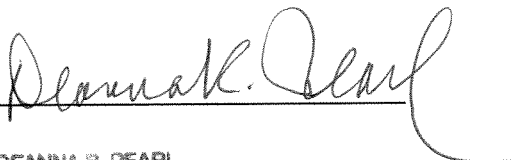
Dated: December 6, 2011



JACK D. TILLEM, Arbitrator

STATE OF NEW YORK )  
COUNTY OF NASSAU ) SS:

On the 6<sup>th</sup> day of December, 2011, before me personally came and appeared JACK D. TILLEM, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that the same was executed by him.

  
\_\_\_\_\_  
DEANNA R PEARL  
Notary Public, State of New York  
No. 01PE4823999  
Qualified in Nassau County  
Commission Expires Nov 30 2014