

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TELUS COMMUNICATIONS COMPANY

AND:

TELECOMMUNICATIONS WORKERS UNION
UNITED STEELWORKERS, LOCAL 1944

(Grievance #2014-028 Williams et al; and #2013.352 Sekora et al)

ARBITRATOR:

Christopher Sullivan

COUNSEL:

Donald L. Richards and Alexander D. Mitchell
for Employer

Richard L. Edgar and Natasha L. Edgar
for Union

HEARING:

May 10, 11 and 24, 2016; and
March 20, 21, and 24,
April 19, 20, 22 and 23;
May 9 and 10; August 3 and 4; and
September 25, 26, 27 and 28, 2017
at Vancouver B.C.

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I was appointed by the parties to hear two group grievances: #2014-028 (Williams et al) filed in Alberta; and #2013.352 (Sekora et al) filed in British Columbia. Both grievances relate to the same basic factual circumstances and involve the same claim by the Union, relating to the classification of call centre employees who work in what is known as the “Concierge” queue. The Employer determined these call centre agents to be classified as Client Care Representative IV (“CCR IV”) in Attachment A-6, Wage Group D; the grievances seek the position be classified as Loyalty and Retention Representative (“L&R Rep”) in Attachment A-7, Wage Group E.

There have been a number of applications and orders since the commencement of the arbitration hearing and also two awards issued on May 11, 2016 and April 21, 2017, regarding preliminary matters of bifurcation and jurisdiction, respectively. This present award concerns the substance of the grievances and also an application by the Union for costs.

The Williams et al group grievance was filed by the Union on July 27, 2013, and its specific allegations are contained in the “Nature of Grievance” section of the grievance form, as follows:

Company violated Collective Agreement by downgrading Concierge positions to Wage Group D and did not follow the terms and conditions of the Collective Agreement as stated in the above article violations.

Original work was done by Wage Group E (Loyalty and Retention Reps) which was negotiated in the June 9, 2011 Collective Agreement (because of the complex training and tools needed to address retention issues). Company then added and trained Wage Group D (Client Care Reps) to the Concierge team, however never paid them the Wage Group E. The blended team was advised in approximately June 2013 that the whole group will be reassigned to Wage Group D and anyone that wishes to stay on the team that is a Wage Group E will be downgraded to Wage Group D. The job and training and complex retention issue never changed.

The Sekora et al group grievance was filed by the Union on August 30, 2015, and it contains the following outline of the Union's position:

Unilateral change to a "Clerical Quasi-Job", resulting in the position being devalued, and ancillary breaches which have occurred in the creation of the position and in the pilot project related to it. Alternatively, a failure to follow the job evaluation process.

The Union's grievances are primarily based on Article 1.02, which provides as follows:

1.02 When the Company establishes a new job title within the bargaining unit, it shall be placed within the appropriate Appendix and Wage Schedule based on a commonality of duties and location of the employees performing the new job.

The reference in Article 1.02 to "location" of employee means the eastern or western part of Canada and has no bearing on the present case.

The grievances essentially claim Concierge agents warrant classification as L&R Reps based on the duties performed. The Union asserts Concierge agent is a new job covered by Article 1.02, and a proper assessment of the job based on "a commonality of duties" indicates it is an L&R Rep job in Wage Group E, which in 2011 collective bargaining was negotiated out of the Job Evaluation Management System ("JEMS") job evaluation process provided for in the Collective Agreement. The "clerical quasi job" referred to in the Sekora grievance is a clerical job title negotiated by the parties to be excluded from job evaluation process.

The Employer essentially takes the position Article 1.02 does not apply because a "new job title" (nor a new job) was not established, and it properly exercised its management rights under Article 8.01 of the Collective Agreement in determining the Concierge queue agent was appropriately classified at the existing CCR IV job title,

adding Article 8.04 provides there are to be no “watertight compartments” between job classifications. These provisions state:

- 8.01 Unless otherwise explicitly agreed to in this Agreement, management retains the exclusive right to manage its operations in all respects including the direction of the working forces. The Company agrees that any exercise of these rights shall not contravene the provisions of this Agreement....
- 8.04 While managers will attempt as far as possible to assign an employee to work for which the employee has been trained, no part of this Agreement shall be construed as meaning that an employee shall do only the work of the classification for which they are employed, nor shall any part of this Agreement be construed as meaning that certain work shall be performed by only certain classified employees....

The evidence discloses six employees working in the Concierge queue in Alberta initially sought to have their positions reviewed pursuant to the Collective Agreement JEMS job evaluation process contained in Articles A21.04 – A21.09. Due to the nature of the classification request, the Employer sought a single request, which was never provided. Suffice to observe during a Step 3 grievance meeting in 2014 the Employer informed the Union why it rejected the individual employees’ separate applications for review, and the Union indicated why it was pursuing a grievance rather than a JEMS review. A JEMS job evaluation was therefore never conducted in relation to the Concierge agent.

Articles A21.04 to A21.09 of the Collective Agreement set out rights and obligations regarding the matter of evaluating jobs. These provision state:

A21.04 The job evaluation plan applies to jobs listed in Attachment A-6. The Company will provide training on the application of the plan to four (4) Union designated representatives on the TWU’s Clerical Job Evaluation Committee once every 36 months. Any changes to the job

evaluation plan document will be discussed prior to implementation, provided such does not impede the Company's right to make the change.

A21.05 The Company will provide the Union with copies of the job profile and the wage group to which it has been assigned within 30 days of finalizing a new job title.

A21.06 The Company will review an existing job at the written request of an employee only where it determines there is a fundamental change to the job with respect to the composite of the requirements for skill, effort, responsibility and working conditions. The Company will advise the employee in writing, with a copy to the Union, of the results of the review. If a review of an existing job results in an upgrade from one wage group to another the provisions of section A2.07 will apply retroactive to the date of the written request of the review.

A21.07 In addition to the information provided to the Union in accordance with sections A21.05 and A21.06 above, the Company will provide the TWU's Clerical Job Evaluation Committee with the evaluation record for any new job title or existing job title reviewed in accordance with those sections. Any evaluation record so provided is done so on a without prejudice basis solely for the information of that Committee and is not to be shared or distributed further.

A21.08 In the event that a review results in the downgrade of a job, the incumbents will be treated in accordance with the provisions of subsection A2.08(a). The one year period shall commence on the date the results of the review were communicated to the incumbents and the Union.

A21.09 Within thirty (30) days of receipt of the information referred to in sections A21.05 or A21.06, where the Union disagrees with the assigned wage group for a new or existing job, it may file a policy grievance pursuant to Article 11. If the grievance is not resolved, it may be referred to arbitration as per Article 12. In the case of a re-evaluation, the arbitrator will have the authority to determine the correct wage group consistent with an appropriate application of the established job evaluation plan. In the case of a new job classification the arbitrator will also have the jurisdiction to determine whether the new job can be properly evaluated under the job evaluation plan.

The filing and processing of a grievance will in no way delay or hinder the Company's right to fill new job vacancies.

The circumstances surrounding the grievances may be summarized as follows. The Employer operates call centres comprised of queues and support teams to provide services to its Future Friendly Home (“FFH”) residential customers who call into the Employer’s call centres. The Employer operates or has operated: a Client Care (“Care”) queue to provide general customer service; an L&R queue to provide services related to the loyalty and retention of customers; an Appointment Notification Team (“ANT”) that organizes appointments; an Order Resolution Team (“ORT”) that provides assistance to employees in connection with orders that have fallen out or other system problems; the Channel Live Order Support Team (“CLOS”) which provides general customer service to channel partners; a Pure Fibre team that provides customer service to customers who have fibre in their home (“Pure Fibre”); a Privacy team which handles inquiries from customers about privacy concerns and alleged breaches; a Client Account Management team (“CAM”) that provides supports for client accounts; an Escalation Management Team (“EMT”) which deals with escalations; and a Help Desk team which provides support to employees on customer service issues.

Certain of the Company’s queues and teams are assigned their own job titles and others share a job title. For example, the Care queue is staffed with CCR IVs and this job title also covers those employees in CAM, ORT, CLOS, Pure Fibre, Privacy and Help Desk. The L&R queue and EMT are staffed with L&R Reps at Wage Group E; ANT is staffed with Deployment and Completion Clerk IIs at Wage Group B.

The Care queue is the Employer’s general customer service queue through which agents classified as CCR IVs take inbound calls from the Employer’s customers and provide general customer service related to: the provisioning of the Employer’s products and services; sales; billing and account inquiries; resolution of customer complaints, concerns and issues; promotions; campaigns; and other matters. CCR IVs in the Care queue communicate with other departments within the organization such as the Help Desk, ORT, the CAM team, and the L&R team as necessary to attempt to resolve customer questions, issues or complaints.

CCR IVs in Care, ORT, CLOS, Pure Fibre, Privacy and the Help Desk perform different duties, use different tools and systems, and follow different work practices, but the core purpose of their respective jobs is to provide general service to the Employer's customers consistent with the JEMS Job Profile for the CCR IV job title, which includes the following:

Key Purpose

To provide customer service and sales support related to the provisioning and billing of telecom products and services (for residential home-based business clients) and provide related account maintenance.

Main Responsibilities

CUSTOMER SERVICE

- attend to client needs regarding the provisioning and billing of telecom product and services and handle queries and/or complaints related to client accounts (features and billing issues), programs, promotions and related matters.

SALES SUPPORT

- promote and complete the sale of telecom products and services within established parameters
- identify and refer sales leads and related matters to the appropriate area(s)

SERVICE ORDER PROCESSING

- identify requirements; process and/or update service orders and related forms; liaise with others to ensure processing

COMMUNICATION

- liaise between different departments related to client questions, concerns, issues, etc.; act as a focal point in resolving such matters

I pause to note that up until April 2011, CCR IVs on the Care queue were responsible for processing customer move orders. In April 2011 this function was transitioned to L&R Reps on the L&R queue and evidence was led that some later time, subsequent to at least the first grievance, it was transitioned back to CCR IVs. The Union disputes the appropriateness of this most recent transfer of work, adding the duty of performing work related to moves belongs to L&R Reps as reflected by practice and documentation at about the time the L&R Rep was moved to a quasi job in collective bargaining in 2011.

The key purpose of the L&R queue is to lower the potential churn risk of customers and to save customers from ceasing their services. It is a specialized retention queue and not a general customer service queue. Calls to the L&R queue are either transferred from Care or other queues, such as technical support, or they are routed directly to the L&R queue through the Employer's interactive voice recognition system.

Other than performing the function of processing customer move orders between April 2011 and October 2014, and the rare occasion where a call is directed in error to the L&R queue, L&R Reps generally service inbound calls representing a potential churn risk. Dealing with potential churn risks constitutes the majority of the work of an L&R Rep. Evidence led indicates 60% to 70% or more of the calls serviced on a daily basis on the L&R queue were from customers calling to cancel or potentially cancel their services with the Employer. L&R Reps use soft skills, negotiation, discounts and other tools to persuade customers to remain with the Employer. It is common for L&R Reps to service calls from customers who are abusive, difficult, unhappy, or adversarial. Key skills for L&R Reps working on the L&R queue include the ability to remain calm, resolve conflict, and engage in negotiations; strong personal resiliency and stress management.

About 10% of the duties performed by L&R Reps on the L&R queue is outbound cold calling of customers using an automatic dialer in support of various Employer campaigns.

As noted, call centre agents in the Escalations Management Team (EMT) are also classified as L&R Reps. An escalation is where a customer is extremely unhappy and asks to speak to a manager. CCR IVs on the Care queue transfer escalations to an EMT member who attempts to calm the customer and perform any work arising from the escalation.

The job profile for L&R Rep job title provides as follows:

Key Purpose

To provide customer service related to the loyalty and retention of clients through special campaigns and offering balanced solutions related to products, services or options in accordance with procedures, standards and practices.

Main Responsibilities

CLIENT LOYALTY AND RETENTION

- resolve client concerns, issues, analyze, optimize clients current account and secure contracts via inbound and outbound queues; assist clients with technical issues and resolve or refer to others
- promote telecom products and services to build relationships and loyalty to reduce churn; update and maintain client accounts
- participate in special campaigns designed to retain existing clients and regain previous clients; provide feedback to others

COMMUNICATION

- liaise between different department related to client questions, concerns and other issues, etc.

The evidence indicates that prior to collective bargaining for the 2011-2015 Collective Agreement, the Employer employed L&R Rep IVs at Wage Group D, and it determined these employees were performing a more challenging and more important role and deserved to be compensated at a higher level: Wage Group E. Accordingly, the Employer proposed to move all of the L&R Rep IVs into the new L&R Rep job title, which would be placed on the list of “quasi job titles” in Attachment 7, which the parties agreed to pull out of the JEMS job evaluation process and for which they have negotiated separate wage schedules. The Job Profile for the new quasi job – “L&R Rep” – remains same as when it was L&R Rep IV in Wage Group D.

Evidence was led to the effect that only those employees performing the full scope of the L&R Rep IV job on a day in and day out basis were moved into the new L&R Rep job title at Wage Group E. There was some conflicting evidence as to whether any CCR IVs were moved to the new L&R Rep role at this time; if there were any it was only a handful. The evidence also indicates the parties have since bargained out specific functions from the L&R Rep job title.

In 2012 the Employer established two parallel queues – High Value and Concierge – that evolved from its FFH Segmentation Program focused on the concept of providing service in accordance with customer segmentation based on customer revenue spend.

The High Value queue, which was introduced first, was an inbound call based service model comprised of a team of agents devoted to answering incoming calls from segment 1 and 2 customers. High Value agents handled calls relating to billing, provisioning and changes to services, and they also serviced potential churn, cancellation and move calls from high value customers. The High Value service delivery model sought to deliver a premium customer experience for customers in these segments by eliminating a potential transfer and little or no wait times. As a result, this queue was

overstaffed to ensure peak call volumes were addressed. Being overstaffed allowed the High Value agents to service L&R queue overflow calls and a significant part of the High Value agents' duties included doing so.

The High Value queue was established within the L&R department and High Value queue agents were classified as L&R Reps. This queue commenced operation on October 1, 2012 with a plan to be staffed up to 145 L&R Reps in Burnaby and Calgary by December 2012.

The Concierge service delivery model was introduced as a pilot project in Calgary in the summer of 2012 and it represented a new and unique way of doing business. Like High Value agents, Concierge agents handled calls relating to billing, provisioning and changes to services, and they also serviced potential churn, cancellation and move calls from high value customers.

The Concierge model differs from the other service delivery models in that after receiving the initial incoming customer call to address a matter, Concierge agents, if the matter warrants such, become responsible for the end-to-end case management of resolving the matter, including making outbound calls to the customer at formalized "milestones" to ensure satisfaction: before installation of services, after installs to confirm satisfaction, and after the first bill. These milestones serve to look after customers before they complain. The increased customer contact prevents churn and also provides opportunities to upsell customer or re-contract.

Prior to the introduction of the Concierge service delivery model, a customer phoning back into a queue with a follow up or related inquiry would be routed to the next available call taker agent, not the particular agent they initially spoke with. There was no requirement for agents to make outbound calls at pre-established milestones.

Evidence was led to show the Concierge model is more costly than other models due primarily to increased service levels that require the Employer to increase its staffing, but that the objective is to reduce these costs over time through the improved customer service. It was felt that more time upfront with the customer to ensure a proactive and quality service experience would reduce repeat calls, call transfers, credits, escalations, and rework and fallout for downstream partners.

The Concierge customer service delivery model was first tested and assessed through a live pilot project that commenced operation in Calgary in August 2012. The pilot was staffed with approximately 30 Concierge Agents. It was determined that if the Concierge pilot was unsuccessful, the pilot team could be relatively easily disbanded, and the Employer could continue to pursue its High Value service model. In the event the Concierge pilot was approved for expansion, the work on that queue, as performed by the pilot agents, would be assessed to determine the appropriate job title to be assigned to that queue.

The Concierge work stream engaged the Labour Relations Department to provide advice in connection with the staffing plan for the pilot in early/mid 2012, and it was determined to open up the pilot to both CCR IVs and L&R Reps. SIP adjustments applied to compensation. It was felt at the time that the information from the pilot could be used in determining the classification of the Concierge agents.

The Concierge pilot was a resounding success and it received outstanding feedback from customers and Concierge Agents, alike. The Employer's customer experience results disclosed significant improvements and dramatic positive results. On January 22, 2013 the FFH Case Management (Concierge) project was selected winner as the Best Business Process Management Project by the Process Excellence Network.

The Concierge project team communicated its positive pilot results to the Steering Committee in January 2013, and, the Concierge Model became permanent in March 2013, with expansion into British Columbia in the summer of 2013.

Once the Concierge business group obtained the Steering Committee's approval to expand the Concierge Model in January 2013 it again retained Labour Relations to vet the appropriate job title to be assigned to the expanding Concierge queue. The Concierge business group continued to express its desire that agents on this queue be classified as L&R Reps, and the Employer's Labour Relations and Classifications Consultants determined it to be covered by the CCR IV job title. It was ultimately decided to classify the Concierge Agent position as CCR IV, paid at a CCR IV rate with a modified SIP.

Contemporaneous with the decision to expand the Concierge service model, the Steering Committee made the consequential decision to turn down the High Value queue, and this latter queue completely ceased operations as of February 1, 2014. They served the same customer segment and both were not needed.

In approximately June 2013 the Employer met with all of the existing British Columbia and Alberta L&R Reps on the Concierge queue to provide them with the option to re-title to CCR IV or return to the regular L&R queue. The vast majority of these L&R Reps elected to stay on the Concierge queue and retitle to CCR IV.

Regarding the L&R Reps on the High Value queue, the Employer met with each of them and gave them the option to voluntarily move over to the Concierge queue, in which case they would move down to CCR IV or they could continue working on the High Value team as L&R Reps until the closure of that queue in February 2014.

Affected employees were treated in accordance with Article A2.08 of the Collective Agreement, which provides:

- (a) An employee who is permanently assigned to a lower paying position will maintain their wage rate for a period of one (1) year. At the end of the one year period the employee will receive the wage rate for the lower paying position that is closest to but less than their current rate of pay. The employee will then progress on the wage schedule of the lower paying position.
- (b) An employee who successfully bids to a lower paying position will receive the wage rate for the lower paying position that is closest to but less than their current rate of pay. The employee will then progress on the wage schedule of the lower paying position.

Evidence was led regarding the nature and substance of the duties performed by Concierge agents and agents in other call centres, as well as other matters such as the training they each received.

The evidence indicates training for Concierge employees included learning about the functions performed by agents in L&R, CAM, ANT, ORT, and CLOS, and also some Concierge specific tasks. The L&R portion of the training related to addressing situations involving moves, saves and escalations, and included time spent on the soft skills of negotiation, the L&R save grid, and how to make a better offer.

Union witness Marton Szabo testified when he moved from the Care queue to the High Value queue he received nine days of training on skills, which were also applicable to Concierge. When he moved from High Value to Concierge he received an additional three or four days of training that focused on case management, workflow, milestones, ANT and CAM. Employees transferring from the L&R queue to the High Value queue did not require any additional training. Employer witness Lesley Noble testified she received CAM, ANT, ORT, and EMT training when she went to the Concierge queue from the High Value queue.

Call centre agents working in the Concierge queue received the following new tools to assist with their duties and responsibilities:

- Concierge tab of Workflow available only to Concierge agents;
- the “Q” tool to pull orders back and correct mistakes; and
- email addresses, direct phone numbers, voicemail and, at one point, Blackberries, so customers could contact them directly.

Evidence was also led regarding the duties performed by agents on the Concierge and other queues. The evidence primarily involved viva voce testimony from employees and managers directly connected with the various queues, and also statistical information that showed the nature of the codes used by the agents on the queues.

The witnesses were generally consistent in their respective accounts of the duties and responsibilities of agents in the various queues. All of the witnesses noted that the majority of calls taken on the L&R queue were potential churn calls, involving more upset and/or angry customers than in the other queues, including the Concierge queue. The witnesses differed somewhat regarding the amount of L&R queue overflow work that High Value agents dealt with, but all witnesses agreed it was a significant amount.

The witnesses generally agreed with the assessments made by Concierge Team Lead, Alexia Riches in her February 1, 2013 updated “Job Survey”, that provided:

JOB PURPOSE

The responsibility of the role is to assist our customers with any concerns they may have. This can be related to anything from billing requests to retaining customers including proactive communications. The agents will provide the customers with various offers to retain their services with TELUS.

The team is responsible for ensuring every customer request is solved within the team, they do not transfer to any department other than Assure for technical support.

The Job Survey included a summary of main responsibilities with percentages for the time spent on them as follows:

1. **Case management and pro-actively communicating with our customers (outbound calls):** Keeping the customers informed on every step of their request ensuring that we are reinforcing their positive experience and loyalty. As part of case management, the team review a customer's account on customer requested or pre-determined milestones and contact the client. They may be contacting the clients to see how their most recent experience was with TELUS, following up on installation, and advising on changes made to the account. This reduces possible churn risks, call backs, transfers, and customer dissatisfaction.... % of Job 30%
2. **Provisioning orders for our customers....** % of Job – 25%
3. **Customers calling that are a potential churn risk....** % of Job – 20%
4. **Answering customers questions regarding their bill....** % of Job – 15%
5. **Continuous Improvement....** % of Job – 5%
6. **Escalations....** % of Job – 5%

The statistics for certain some of the more complex matters addressed by agents on the various queues indicate the following proportions in terms of codes used:

Moves/Ceases

L&R queue:	24.3 – 24.6%
High Value queue:	approx. 31.1%
Concierge queue:	18.5 – 26.4%
Care queue:	0.16%

Saves

L&R queue:	55%
High Value queue:	40%
Concierge queue:	37%
Care queue:	2.66%

These statistics, for the period of time from 2013 to 2016 (except High Value queue which was 2013-2014), represent the various functions as a percentage of the work of agents in the queues.

As noted out above, the Employer took the position that the matter of processing customer move orders has historically been a shared responsibility between Care and L&R. In this regard, CCR IVs on the Care queue were responsible for processing customer move orders up until April 2011, when the function was transitioned to L&R Reps around the time that job title was moved in collective bargaining to the clerical quasi list. The Employer states in October 2014 move orders were transitioned back to CCR IVs and this was not grieved at that time. The Union states the function was moved back into Care in 2016 and, in any event, it has always taken the position it was not properly moved back to Care, and this is one of the matters the Union seeks a decision on in this case.

The statistics in relation to the use of discount codes used by employees in the various queues from 2013 to 2016 show the following:

Percentage of L&R Codes

L&R queue:	57.24%
High Value queue (2013-2014):	39.62%
Concierge queue:	37%
Care queue:	2.66%

Percentage of Loyalty Codes

L&R queue:	1.59%
High Value queue (2013-2014):	3.69%
Concierge queue:	3.31%
Care queue:	21.51%

Evidence was led in relation to the Employer's decision-making process around the job titles to be assigned to agents working in the High Value (L&R Rep) and Concierge (CCR IV) queues. Formal job evaluations were never conducted for agents in either of these queues.

Regarding the classification of the Concierge agents, the evidence indicates that after the successful pilot and the Steering Committee's approval to expand the Concierge service delivery model in January 2013, the Employer's Labour Relations and Classification department was called to vet the appropriate job title to be assigned to the agents in that queue. Classification Consultant Sharon Paquette was tasked with conducting the appropriate review and her decision to use the existing CCR IV job title for Concierge agents was agreed upon by all of those from the Labour Relations and Classification department who were involved in the matter.

Ms. Paquette was assigned to work with Concierge team lead, Alexia Riches, to complete the standard JEMS job survey that is used to assess a job's main responsibilities and decision making. Ms. Riches had been the direct manager of the agents working on the Concierge pilot.

Ms. Riches completed the Job Survey in consultation with two bargaining unit members, Janine Bennett and Tiffany Skoda, who worked as agents during the Concierge pilot from the outset and were high performing employees. These employees reviewed and validated the information Ms. Riches inputted into the Job Survey and they provided their own feedback on the main responsibilities of the job and a breakdown of the percentage of their day spent on them.

Ms. Riches emailed Ms. Paquette her initial version of the Job Survey on January 30, 2013. There was some follow up questions and responses between the two, with Ms.

Riches sending Ms. Paquette an updated Job Survey on February 1, which is quoted above.

After receiving Ms. Riches' updated Job Survey, Ms. Paquette received a summary of the client and loyalty retention function with the Employer that fellow Senior Classifications Consultant, Corinne Chichak, emailed to her on February 1, 2013. On February 3, Ms. Paquette sent the completed Job Survey to Ms. Chichak for her feedback and Ms. Chichak indicated she was not sure this was an L&R role. Ms. Chichak followed up in an email to Ms. Paquette on February 11, 2013 where she compared the L&R Rep job profile with the Job Survey, concluding in part as follows:

In the job survey it states that one of their responsibilities is "Customers calling that are a potential churn risk". This is 20% of their role and to me would be the only responsibility that would somewhat be a loyalty and retention function. They have a little more leeway with what they can offer than what a Client Care Representative IV would....

Based on the additional information you have provided and what she has in the survey it is my opinion this group's responsibilities are centred around customer service excellence "customer first" to a select client group.

Ms. Paquette drafted a one-page memo on February 14, 2013 in preparation for a meeting with the Concierge project team management (Program Office Manager Dale Lawrence, Senior Project Manager Reshma Mehta and Ms. Riches) and Labour Relations (then Director Todd Langley, Senior Consultant Kate Nemeth and herself) that indicates she will be sharing "the results of reviewing the job information document" the next day in a meeting regarding "FFH Cell Pilot job classification review". Ms. Paquette's memo does not outline how she arrived at the conclusion the job fits within the CCR IV job profile, although she outlined how an analysis is performed and conclusions are reached, as follows:

...After we receive the job back, we review it to determine if further clarification is needed and, if so, we include our questions and send it back

to the manager for completion. We then review all the job information to see where it best fits. While we do recognize that some functions may be common in other classifications, there are different degrees at which they are performed. Job classifications are based on skill, effort, responsibilities and working conditions. Based on the nature and purpose of the job and functions of the role, it fits within the client Care Representative IV job profile.

In anticipation of a “potential question” about “Why isn’t it an L&R job?”, Ms. Pacquette’s memo states:

The L&R’s primary role is to look at retaining customers through issue/concern resolution and “special offers/promotions” (could be escalated or transferred) and regaining previous customers. They are also proactive in contacting customers with regard to promotions, to optimize their accounts and/or contract renewals, thus reducing churn.

This role doesn’t do out-bound calling to optimize or up-sell customers or to discuss contract renewals.

Ms. Paquette’s indicates her review did not at all take into account any assessment in relation to the High Value queue agents who were classified as L&R Reps, stating:

If they (the Concierge business group who desired L&R Reps) start referring to Erin Atcheson’s area (High Value queue) we have said that we aren’t comparing to her situation and just looking at Alexia’s team (Concierge queue).

Mr. Langley gave evidence to the effect that he supported Ms. Paquette’s assessment that the Concierge agent is a CCR IV. He testified:

...we weren’t dismissive of the fact that there were some functions in the role that were also performed by L&R, but kept to the fact of what the key purpose was, what the job was most like, looked at six responsibilities, typical interactions with customers, types of issues they dealt with, it was clear it best matched up with CCR IV and that made sense to me.

Evidence was also led regarding the classification of the High Value queue agent job. As noted above, this queue did not have a pilot. The High Value queue was announced on July 13, 2012, with its employees being classified as L&R Reps. Documents indicate the matter of classifying the job was discussed in meetings involving the High Value business group and Labour Relations representatives including ones that occurred on June 20 and July 10, 2012 leading up to the announcement.

The Employer's notes indicate the June 20, 2012 meeting was attended by High Value business group representative, Bernard Constantineau, Labour Relations' Ms. Nemeth and Classification Consultant Ms. Green. The notes of Ms. Nemeth, incorporated into a summary document Ms. Paquette drafted, indicate the following:

Proposal for FFH High Value Q, skill set L&R/Care, 90% Care and 10% L&R (moves, cancels, saves, special offers, one stop shop for HV clients). Overflow of Q to L&R or Care (TBD) 145 agents in total, 100 agents in Burnaby and remainder in Calgary, separate Ops manager. Canvas/Posting to Care/L&R and will not replace Care agents.

Ms. Paquette's notes from the July 10 meeting she attended, with Ms. Nemeth and also the business group's Mr. Constantineau, L&R Director, Erin Atcheson and Karen De Vito, indicate the business group sought their agents to be classified as L&R Reps and Labour Relations viewed it as being captured by the CCR IV job title. There was discussion about the history of the L&R role being moved to the list of clerical quasi job titles during bargaining in 2011, and also the anticipated call make up for the High Value queue. Ms. Paquette's notes show Ms. Atcheson indicated "calls would be 90% care and 10% L&R". The note also provided:

It was mentioned this queue would take L&R over flow calls, about 15-20%. They also said the reps will be trained. (I think this may be [the]

piece that they [the business group] determined to support posting an L&R job).

Evidence was led to show that Ms. Nemeth called Mr. Langley after this meeting and subsequently Mr. Langley spoke with Company Vice-President Client Experience, Wade Domfries, who, Mr. Langley testified, committed that the majority of work for High Value agents would be overflow from the L&R queue. Mr. Langley testified Mr. Domfries conveyed the High Value agents would be servicing a significant number of calls from the regular L&R queue, one after the other; for long stretches over periods of days agents on the High Value queue would be indistinguishable from those on the L&R queue. Mr. Langley testified his response to hearing this from Mr. Domfries was as follows:

I was uneasy, but given he was talking about a future state, and he could make that future state happen, I felt more comfortable that would be a proper use of the L&R title.... (If there was no L&R overflow) I would have advocated for the CCR IV title as we had before....

On July 13, 2012 the High Value queue was announced with its agents classified as L&R Reps.

SUMMARY OF ARGUMENTS

The Union argues the position in question constitutes a “new job” under the Collective Agreement and pursuant to Articles 1.02 and A21.07, the Employer was obligated to conduct a review of the position and classify it in accordance with “commonality of duties”. The Employer breached this obligation and has sought to avoid conducting a proper review because it would result in classification as L&R Rep at Wage Group E.

The Union asserts it is fundamentally unfair to pay the Concierge Agents less than the employees who work in jobs that are paid the L&R Rep rate. The Union states the

Employer's position is contrary to the principle of equal pay for work of equal value, citing section 11(2) of the *Canadian Human Rights Act*, which provides:

In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.

The Union states the Employer recognized its approach is unfair and that is why it raised the overall pay package for these employees by modifying SIP to bring their wages close to what they would have earned if paid the L&R Rep rate.

The Union argues the simple fact of assigning quasi duties to Concierge Agents entitles them to the L&R pay rate, without more. It adds, however, there is more to justify the conclusion this is a new job warranting the L&R Rep rate. The Union points to the statistics representing codes used by employees in the various queues, and asserts the duties performed by the Concierge agent are virtually indistinguishable from those performed by the High Value agent, and closely align with duties performed by L&R Reps on the L&R queue, in relation to complex functions that separate this group of employees from CCR IVs.

Counsel argues an adverse inference should be drawn against the Employer for not calling as a witness its Classification Consultant, Ms. Paquette, who made an assessment of the Concierge agent job and determined it was covered by the CCR IV classification. Only Ms. Paquette could explain, for example, matters such as how she came to her conclusion, and why she did not consider similar call centre agent positions such as the High Value agent. To the extent the Employer seeks to rely on her work that is not evident on the face of the documents she produced, it should have called her as a witness. The fact the Employer did not call her as a witness indicates it felt that her evidence, if called, would have been injurious to, or at least not supportive of, its case.

The Union draws attention to its requests for disclosure of relevant documents, necessitating a number of orders from this board to obtain documents and records it legitimately sought in pursuing its grievances. Counsel points out senior Labour Relations representative Mr. Langley acknowledged he did not have a satisfactory explanation for not producing documents directly relevant to the case, including notes from classification meetings and the data bases on thumb drives. The Union adds it is incredulous there is not a single note from any participant from any of the key meetings where the matter of classifying the Concierge and the High Value agent jobs was discussed. There were many meetings and many individuals involved yet not a single note was produced despite requests and orders for such.

By way of remedy the Union seeks a declaration that the Employer is obligated to negotiate both proposed changes to quasi clerical positions and wage rates for such positions; a declaration that the Employer has breached the Collective Agreement by failing to pay the L&R wage rate to employees working in the Concierge queue; a declaration that the Concierge employees are and were entitled to be paid the L&R rate; and an order for all employees who worked in Concierge to be fully compensated for any and all losses.

As noted at the outset of this award the Union also seeks an order for costs due to expenses incurred as a result of a particular adjournment that was granted. The Union raised its objects to the adjournment at the time and I reserved judgement on this matter.

In support of its arguments the Union cites the following authorities: *Telus Communications Company v. Telecommunications Workers Union*, February 11, 2008 (McPhillips); *Simon Fraser University v. Association of University and College Employees, Local 6, Teaching Support Staff Union*, [1983] B.C.L.R.B.D. No. 169; *Telus Communications Inc. v. Telecommunications Workers Union*, [2010] C.L.A.D. No. 427 (Hall); *West Fraser Mills Ltd and United Steelworkers, Local 1-425*, August 29, 2016

(McPhillips); *Consolidated-Bathurst v. Mutual Boiler*, [1980] S.C.R. 888; *Canadian Labour Arbitration*, Brown & Beatty (para. 8:1100); *Canada Human Rights Act*, R.S.C., 1985, c. H-6; *Sunworthy Wallcoverings v. Communication, Energy and Paperworkers Union of Canada, Local 304*, (1993) 33 C.L.A.S. 498 (Brandt); *Quality Meat Group Ltd. v. Teamsters, Local 419*, [2005] O.L.A.A. No. 448 (Luborsky); *Westcoast Energy Inc. v. Energy & Chemical Workers' Union, Local 862*, [1994] B.C.C.A.A.A. No. 305 (Coleman); *Shell Canada Products v. Communication, Energy and Paperworkers Union of Canada, Local 848*, [2006] O.L.A.A. No. 301 (H.D. Brown); *Lanxess Inc. v. Communication, Energy and Paperworkers Union of Canada, Local 914*, [2009] CarswellOnt 7693 (Brandt); *Re Steele*, [2001] B.C.L.R.B.D. No. 77; and *Shoppers Meat Markets Ltd. v. United Food and Commercial Workers International Union, Local 633*, [1984] O.L.A.A. No. 84 (Solomatenko).

The Employer argues Article 1.02 is not operative because a new job title was not established and the call centre agent in the Concierge queue is captured by the existing CCR IV job title. The Union's arguments regarding Article 1.02 are a red herring to subvert the JEMS process when the Employer has legitimately changed the composition of an existing job within its express management rights under Articles 8.01 and 8.04. Article 8.01 is clear management has the sole right to manage its operations in all respects subject to express restrictions that do not exist in the present case. Article 8.04 confirms no part of the Collective Agreement shall be construed as meaning an employee shall do only work of the classification for which they are employed, nor shall any part of the Collective Agreement be interpreted as meaning certain work shall be performed by only employees of a certain classification.

The Employer asserts the Collective Agreement does not restrict in any way the assignment of an existing job title to new business operations such as the Concierge queue. The main issue raised in the grievances is whether it has exercised its discretion consistent with the express management rights provisions in the Collective Agreement.

Counsel states that in the absence of any express process in the Collective Agreement stipulating how existing job titles are to be assigned within the Employer's operations it followed a methodical, thorough, objective and fair assessment of the work of the Concierge queue based on the information available to it at the relevant time and in light of the CCR IV and L&R Rep job titles. The Employer's decision making should be assessed in the context of its practice of assigning the CCR IV job title to other queues and teams within the call centres, i.e. ORT, CLOS, Pure Fibre, Privacy, and the Help Desk. While the "bundle of duties" discharged by these CCR IVs vary, they all share the commonality of discharging core customer service functions for the Employer.

The Employer says its decision to assign the CCR IV job title to employees on the Concierge queue was not arbitrary, discriminatory, in bad faith, or otherwise unreasonable. The proper means by which to evaluate the work being performed in the Concierge queue is through the JEMS process contained in Articles A21.04 to A21.09 of the Collective Agreement, which is specifically designed to deal with these matters, a point recognized in the May 11, 2016 preliminary bifurcation award that stated:

The evidence as to what the employees were doing and are doing and what they were and are expected to do is at the heart of a job evaluation/classification review that invariably also incorporates an assessment of the overall context of the work in question within the existing scheme of jobs and benchmarks applicable to employees covered by the Collective Agreement.

The Employer points out the job evaluation provision in the Collective Agreement contains a specific and unique dispute resolution process when agreement is not reached. An arbitrator hearing a policy grievance filed under Article A21.09 would have the benefit of evidence relating to the evaluation process – a key component that is lacking in the present case.

The Employer notes it has been held that the parties' Collective Agreement does not provide for equal pay for equal work: *Telus v. Telecommunications Workers Union*, October 23, 2008 (Power).

The Employer states that when the L&R Rep IV job title was moved to the list of quasi clerical job titles (and became L&R Rep), only employees performing the full scope of L&R work on a day-to-day basis were moved to the new job title. High Value agents were classified as L&R Reps because there was a commitment that this group of employees would be performing a significant amount of L&R queue overflow work, which is not performed by Concierge agents, who receive overflow from the Care queue. Mr. Dumfries, the Company Vice-President who could make this happen stated as much to Mr. Langley and it was only upon this basis that the job was classified as L&R Rep. This is a key distinguishing feature between Concierge agents and those in the L&R and High Value queues that warrants different classification.

The Employer points out the manner Concierge agents perform their jobs, involving a significant amount of both inbound and outbound calls, differs substantially from the L&R and High Value queues, as do the tools used by Concierge agents to provide customer service. Further, the outbound calls at pre-established milestones done by Concierge agents is qualitatively different than the cold-calling performed by L&R Reps, that constitutes about 10% of their work.

The Employer asserts the evidence of the witnesses called by the Union indicate the work in question is not L&R Rep work as claimed, a matter underscored by the fact that most if not all made conscious choices to remain in the Concierge queue at a lower rate of pay than choosing to accept alternate L&R Rep jobs with a higher rate. All employees agreed that working as an L&R Rep is more stressful than working as a Concierge agent.

Regarding the Union's claim that an adverse inference be drawn against the Employer for not having called Ms. Paquette as a witness, the Employer notes it called eight witnesses to explain the classification process and ultimately Mr. Langley owned the decision. Ms. Paquette has not been with the Employer for a number of years and there is no property in a witness. The Union has the onus of establishing bad faith and it could have called her as a witness if it so chose to.

In support of its arguments the Employer cites the following authorities:

American Standard Products (Canada) Ltd. v. United Steelworkers, Local 2000, [1973] O.L.A.A. No. 55 (H.D. Brown); *Long Packaging v. Energy and Chemical Workers Union, Local 620*, [2000] O.L.A.A. No. 12 (Marszewski); *MacMillan Bloedel Ltd. (Powell River Division) v. Communication, Energy and Paperworkers Union of Canada, Local 76*, [1995] B.C.C.A.A.A. No. 13 (Munroe); *Health Employers Association of British Columbia v. Hospital Employees' Union*, [1995] B.C.C.A.A.A. No. 666 (Hope); *Auto Haulaway Inc. and Teamsters Union, Local 927*, [1995] C.L.A.D. No. 1219 (Outhouse); *MTE Logistix (Pacific) Inc. v. Teamsters Local Union No. 31*, [1998] B.C.C.A.A.A. No. 585 (Thornicroft); *Brookfield Management Services Ltd. v. Canadian Union of Operating Engineers and General Workers*, [1999] O.L.A.A. No. 481 (Davie); *Canadian Union of Public Employees, Local 408 v. Chinook Health Region*, [1999] A.G.A.A. No. 52 (Smith); *Siemens Canada Ltd. v. National Automobile, Aerospace, Transportation and General Workers Union of Canada*, [2000] O.L.A.A. No. 669 (Levinson); *Placer Dome (CLA) Ltd. v. United Steelworkers of America, Local 7580*, [2001] O.L.A.A. No. 769 (Hinnegan); *Canadian Union of Public Employees, Local 4000 v. Ottawa Hospital*, [2004] O.L.A.A. No. 838 (Devlin); *Cariboo Pulp and Paper Co. v. Communications, Energy and Paperworkers Union, Local 1115*, [2006] B.C.C.A.A.A. No. 191 (Kinzie); *Telus Communications Company v. Telecommunications Workers Union*, February 11, 2008 (McPhillips); *Telus v. Telecommunications Workers Union*, October 23, 2008 (Power); *NAV Canada v. International Brotherhood of Electrical Workers, Local 2228*, [2014] C.L.A.D. No. 19 (Swan); and *Health Employers*

Association of British Columbia v. Health Sciences Association, [2017] B.C.C.A.A.A. No. 79 (Lanyon).

DECISION

The grievances raise a number of issues, the first being in relation to the application of Article 1.02 and whether the Concierge agent is a new job such that it was incumbent on the Employer to conduct a review based on commonality of duties. If so, does such a review indicate the Concierge agent was not properly classified as CCR IV in Wage Group D but rather should be classified as L&R Rep in Wage Group E.

It is well established that the matter of whether a new job has been created is a question of fact involving an objective analysis focused on the existence of a substantive, qualitative change in duties and responsibilities beyond a current job, or job description if there is one. A mere change in emphasis or a different mix of the same duties will not generally entail a new job.

The evidence in the present case overwhelmingly supports a determination that the call centre agent position in Concierge constitutes a new job under Article 1.02 that should have triggered a review under Article A21.07 and placement “within the appropriate Appendix and Wage Schedule based on a commonality of duties”. The Concierge agent job comprises of duties never before held by a single employee with this Employer; it performs work otherwise done by employees in six different jobs, including the Care queue, L&R queue, EMT, and ANT. The bundle of duties the agents in Concierge performed, and the way they performed them, was brand new. In addition, these employees also performed duties – outbound calls at pre-set milestones – that no employee had ever performed.

The evidence indicates the Employer recognized the Concierge agent was a new and distinct job at the time it was implemented after the pilot, and this is supported by its efforts to properly compensate the job after making its announcement on February 13,

2013 that the CCR IV job title would apply. The Employer's discussions, with the benefit of having experienced the pilot, regarding how it arrived at its conclusion to pay the Concierge agent at CCR IV plus a modified SIP that amounted to close to the pay rate of the L&R Rep, indicates the job was viewed as unique.

At these proceedings the Employer expressed the position the Concierge work stream had to address the morale and related issues it felt would most certainly arise upon the agents learning that Concierge agents would be assigned the CCR IV job title, and it took legitimate steps consistent with the purpose and functions of Concierge to ameliorate the assignment of the CCR IV job title through the development of a unique PPO and SIP for these agents. Suffice it to observe, this position is not apparent in the documentation that suggests the uniquely modified SIP for the Concierge agent was recognition that such position performed higher level work than agents with the CCR IV job title.

The Concierge queue business group's March 18, 2013 power point slide deck document outlining discussions with Labour Relations regarding "Concierge Program Expansion" – drafted with the benefit of having had a trial period – specifically addresses the uniqueness of the Concierge agent role and strongly suggests it is something other than a CCR IV job. At that time the business group sought to apply the L&R Rep job title to the job and Labour Relations determined the role was more closely aligned to CCR IV. The slide deck document drafted by the business group outlines the following "Challenge" regarding Labour Relations' assessment:

This assessment (for the Concierge agent to be classified as CCR IV) does not fully capture the unique nature and complexity of the Concierge agent role, including the cross-functional skill set (e.g., across EMT, L&R, ANT, Care) and end-to-end ownership of the customer experience.

That document also outlined the following "Options" to address the challenge:

- Apply Loyalty & Retention Representative role (similar to HV Team)
- Create a new, higher wage group for the Client Care IV
- Create a new role for FFH Concierge Agent

In its power point slide deck document for the Employer's March 20, 2013 Client Experience Leadership Team (CE LT) meeting regarding "FFH Concierge Service Expansion", the pay scale option of "Modify SIP for Care" replaced an option from the March 18 meeting: "Create a new, higher wage group for the Client Care IV". An email sent on April 25, 2013 by Concierge Senior Project Manager, Reshma Mehta, who attended both the March 18 and March 20, 2013 meetings, mentions the three options presented to the senior management CE LT group in the March 20 meeting:

were based on discussions with leadership in LR and HR, and the guidance they provided to CE LT was that a modified SIP presents the most flexibility and least risk of the available options. There was alignment that the Concierge Model is different than thus, needs to be treated uniquely.

In an email dated May 16, 2016, Ms. Mehta writes that "there is alignment from CE Leadership to move forward with the proposed PPOs and Incentive Program for Concierge". Other factors are taken into account, for example, she notes that, "Revised weighting" is to "reflect increased focus of the Concierge agent role on service and customer retention/loyalty" and that "a revised Incentive scheme is needed to reflect the additional complexity of the Concierge agent role". The comparisons made in this document in relation to the option of modifying the SIP for Concierge are to L&R Rep wages in Wage Group E. There is no mention that this effective pay package is created to address anything other than valuation based on "additional complexities of the Concierge agent role".

Viewed objectively, this is not a case where Concierge agents are performing CCR IV work in a different way, but rather it is a case where this group of employees is doing all the work that would have previously been performed by six different employees in three different job classifications, one of which being a quasi job classification. I determine Concierge agent is a new job for the purposes of Article 1.02.

As the Concierge agent job was a “new” one, it was incumbent on the Employer to have conducted an assessment in accordance with Articles 1.02 and A21.07. While these provisions mention “job titles”, the clear intention on the face of the Collective Agreement language read as a whole is that they apply to “jobs” as well. It cannot matter that the Employer chose not to give the Concierge job a new title and thus avoid its obligation to fairly assess such. I do not accept Article 1.02 effectively allows the Employer to avoid having to evaluate a new “job” and fit it into the negotiated pay scale because it chose simply not to give it a new “job title”.

The reference in Articles 1.02, A21.05 and A21.07 to “job title” must be interpreted to include the term “job” and also “classification” as these terms are used interchangeably in the Collective Agreement. Article 1.02 itself uses “new job title” and “new job” interchangeably in the context of placing “employees performing the new job” “within the appropriate Appendix and Wage Schedule”. The job evaluation provisions in Articles A21.04 to A21.09 also use both of those terms interchangeably in the context of conducting appropriate evaluations. The definition section in Article 2.13 states “the terms ‘classification’ and ‘job title’ have the same meaning”.

The Concierge Agent job in the present case constitutes a substantive and qualitative change to the duties and responsibilities of any existing job which, under Article 1.02, calls for an objective assessment based on “commonality of duties” to determine where it “shall be placed within the appropriate Appendix and Wage Schedule”.

The evidence supports a conclusion that the Concierge agent job did not undergo an appropriate and fulsome evaluation consistent with that generally performed by this Employer to ensure employees are being classified properly in accordance with the negotiated wage grid. The Employer did not provide the Union with any evaluation record for the new job, as per Articles A21.05 and A21.07. The evidence of the Employer's own classification expert, Sarah-Jane Green, was that the job evaluation performed on the Concierge agent job by Ms. Paquette was not consistent with the Employer's own internal process that includes speaking with agents; conducting site visits; and providing information disclosing consideration of the skill, knowledge, effort and working conditions, and basically how the classification conclusion is reached.

It is unclear as to whether Ms. Paquette's review looked at other jobs, as she has since retired from her employment with the Employer and was not called as a witness, although she apparently resides in the general vicinity of the arbitration hearing location. There is no indication the Concierge agent job was assessed based on "commonality of duties" in relation to other jobs that performed the same or similar functions. In fact, Ms. Paquette's memo dated February 14, 2013 indicates L&R Reps on the High Value queue would not be used as a comparator, although it seems to be an obvious one, given the clear overlap in relation to the duties performed and also the training received to perform their respective work. Ms. Paquette's memo states High Value agents would not be used as a comparator and no reason is contained as to why not. Her notes for the meeting simply state: "If they start referring to Erin Atcheson's area (High Value queue) we have said that we aren't comparing to her situation and just looking at Alexia's team (Concierge queue)."

Ms. Paquette's review appears to have primarily involved the review of a completed Job Survey form from the Concierge work stream lead, Ms. Riches, and there is no indication she engaged in any assessment of commonality of duties.

Ms. Paquette involved the assistance of another classification consultant, Ms. Chichak, who provided some information to Ms. Paquette regarding the L&R Rep classification, and also looked at the completed Job Survey and indicated it appeared the Concierge agent job was captured by the CCR IV job title. Ms. Chichak also did not testify but it was clear from her written response to Ms. Paquette at the time that she did not review specific job duties, and she also did not include in her cursory assessment the performance of some functions by Concierge agents that were generally associated with the L&R Rep job title, such as escalations. Also, no consideration appears to have been given by Ms. Chichak to the fact there are some duties in relation to the provisioning of orders that are associated with the L&R Rep role, which Concierge agents also performed.

The information from the Job Survey was not clear in terms of actual duties performed in relation to all the categories on the form, but the document suggests a majority of the Concierge agent job is either L&R or new Concierge tasks, and this includes: 20% for dealing with churn by making L&R offers, offering L&R bolt-on gifts, with the same discretion for discounts as L&R agents; 5% for escalations; and a portion of the 25% listed for provisioning orders, which is a term that includes moves. The provisioning order section of the Job Survey also includes new responsibilities of Concierge agents to check on back end systems, and ensure orders go through smoothly and order fallout does not occur. Placing retention offers is also an L&R function coded as saves. Information from the Job Survey document indicates about 55% to 80% of the job is either L&R or new Concierge tasks.

The Employer's main response as to why Concierge agents do not warrant classification as L&R Reps is that they do not perform all of the work of agents on the L&R queue which was also performed to a significant degree by agents on the High Value queue, who received L&R queue overflow. The Employer states this is consistent with the bargaining objective in 2011 when the L&R Rep job title was moved to the list

of clerical quasi job titles, and L&R Rep IVs became L&R Reps, but employees who performed some of the same duties were not so moved.

The test under Article 1.02, however, invites an assessment based on “commonality of duties” and to the extent the Concierge agent job performs a significant amount of work associated with L&R consistent with that performed by other call centre agents classified as L&R Reps, there is no basis upon which to exclude these L&R Rep jobs from comparison. The Employer’s right to transfer work between classifications as per Article 8.04 cannot be read so broad as to render Article 1.02 meaningless, which it would be if the Employer’s argument on this point was accepted.

In performing an assessment based on commonality of duties it bears noting that terms used to describe the work of call centre agents, such as “potential churn risk” and “L&R queue overflow”, that were referenced as distinguishing features between various jobs do not actually describe “duties”. The evidence shows, for example, that both L&R Reps and CCR IVs deal with “potential churn risk”, but there is a qualitative difference in the duties and responsibilities between the two, and the Concierge agent performs duties associated with this description in common with the L&R Rep. Concierge agents, like L&R Reps, have greater discretion to exercise and tools to address potential churn situations.

CCR IVs regularly deal with customers who are unhappy with the Employer’s services, threaten to leave the Employer or otherwise indicate an intention to cease services with the Employer. In respect of these calls, CCR IVs have a number of “tools” in their “kit” to satisfy the customer, depending on the circumstances, including offering soft shoppers discounts, bill discounts, bill credits, and free movies or offering an earlier appointment date if the customer was upset about a missed appointment for the installation of service. However, as compared to the L&R Rep, the discretion exercised by a CCR IV, and the tools available used by employees in that job classification, are of a lesser degree and substance than that associated with the higher-level L&R Rep. Indeed,

if a customer remains unsatisfied, or otherwise indicates an intention to cancel their services with the Employer after the CCR IV has exhausted the tools in their kit, the CCR IV gives the customer a “warm transfer” to the L&R Rep on the L&R queue with greater abilities to address the situation.

The effect of Ms. Paquette’s absence as a witness regarding the rationale for classifying the Concierge agent as CCR IV is compounded by the complete absence of notes from participants of key meetings the Employer held regarding pay for employees in both the High Value and Concierge queues that would shed light on the factors considered in determining the classifications for those jobs. One such meeting relates to the telephone conversation in July 2012 between the High Value queue’s Wade Domries and Labour Relations’ Mr. Langley that led Mr. Langley to conclude High Value agents warranted classification as L&R Reps as they would be accepting a significant amount of L&R queue overflow calls, which is work that Concierge agents do not perform.

Also, there are no notes from any of the participants from the Employer’s March 18, 2013 meeting involving the Concierge queue business group and Labour Relations representatives regarding the options for classification and pay scale for the Concierge agents. Nor were any notes produced from the Employer’s March 20, 2013 Client Experience Leadership Team (CE LT) meeting regarding “FFH Concierge Service Expansion”, which included the pay scale option of “Modify SIP for Care” that replaced an option from the March 18 meeting: “Create a new, higher wage group for the Client Care IV”. The Employer’s March 20 power point slide deck document for this meeting states: “LR Job Evaluation not conducted for (High Value queue) based on the understanding that HV would handle a majority of L&R related calls, including overflow from regular L&R queues.” The document also stated: “Job Evaluation indicates work performed by Concierge agents does not reflect the L&R title.”

The Employer’s Labour Relations Department expressed concern about diluting the L&R Rep classification and it maintained the position that employees not performing

all of the duties belonging to that job title are not entitled to receive the L&R Rep rate. On this matter, Mr. Langley's March 24, 2013 email to the Concierge queue business group provides in part:

...L&R Reps (FFH and Mobility) are wage group E and FFH Care Reps are wage group D.... However, the additional cost is not the key issue from an LR perspective. The main concern in attempting to add the Concierge/Cell Pilot work to the L&R Rep title is the fact that it significantly broadens the L&R function and creates a strong argument that other work (e.g. Mobility, High Value, FFH Client Care, etc.) should also be included in the title. This would defeat the purpose of what we did last round of bargaining by taking the L&R Reps out of the job evaluation process as an exception, and moving them up a wage group.

Notwithstanding the Employer's concerns, there is no basis for ignoring jobs in other classifications or wage groups when conducting an assessment in accordance with Article 1.02, and it was unreasonable not to do so. As noted above, Article 1.02 would be rendered meaningless if Article 8.04 is given the broad interpretation the Employer seeks.

In relation to the present grievances, to the extent the evidence establishes a commonality of duties between those performed by Concierge agents and employees classified as L&R Reps, which is a job title listed in Attachment A-7, the JEMS process does not apply. It falls on the arbitration process to determine the dispute between the parties raised by the grievances regarding placement of the new job/job title "within the appropriate Appendix and Wage Schedule based on a commonality of duties".

A party exercising its discretion under a Collective Agreement must not act in a manner that is in bad faith, arbitrary, discriminatory or otherwise unreasonable, and the Employer violated this obligation in making a decision not to properly assess the Concierge agent job and then classify it as a CCR IV without any assessment of commonality of duties under Article 1.02. A proper assessment based on the Article 1.02 test reveals commonality between the Concierge agent and L&R Reps, particularly those that were in the High Value queue agent job. Despite their respective differing customer

service delivery models, the actual duties performed by both these agents, as shown by the statistics regarding their use of codes, was relatively the same in relation to higher-level complex functions such as moves, ceases, and saves, which CCR IV agents, as at the relevant time, did not perform. As noted above, at some point after the Union's first grievance in this case the Employer transferred the save function to the Care queue, where it had existed prior to being assigned to the L&R Rep job title when it was moved to the list of clerical quasi job titles around the time of 2011 bargaining.

The evidence discloses there is a significant overlap in duties between job titles as contemplated by Article 8.04 of the Collective Agreement, which is codification of the well-established principle that, without negotiated restrictions, job classifications are not to be viewed as "watertight compartments" that preclude duties being performed by employees in different classifications. It has long been recognized, however, that at some point distinctive identifiable functions ordinarily assigned to a higher rated position for a significant period of time become associated with the higher rate, and it may not necessarily be presumed the parties intended such functions to be included in different classifications with substantially different pay rates.

On the evidence the parties themselves have recognized the Employer does not possess the right to unilaterally move out job duties viewed as core to a quasi job. Both Employer Labour Relations Consultant Kate Nemeth and Union Representative Betty Carrasco testified that once negotiated into a quasi job title, duties may not be removed from that job title without negotiation. As an aside, Ms. Carrasco also expressed the view that duties could not be added to a quasi job either without agreement, but this was not agreed to by Ms. Nemeth. Mr. Langley was not asked any questions about this matter.

The parties' mutual acknowledgement of having to negotiate the removal of duties from quasi job titles has bearing on the Employer's exercise of discretion under Article 8.04, revealing recognition there are certain core characteristics of the L&R Rep job title, which justify it being a quasi job that is excluded from the JEMS process. Negotiated

quasi jobs make no sense if the Employer is correct in its position that it is entitled to assign a significant amount of duties recognized as belonging to a quasi job to a lower rated job and then claim the JEMS process must apply.

The core functions of the L&R Team are described in the Employer's Onesource document updated August 29, 2013, which draws a distinction between L&R and Care agents. The document outlines the "L&R Main Function" as follows:

Saves:

- Attempting to prevent Clients from taking their Local, ADSL & TV business elsewhere

Movers:

- Ensuring clients' moves go smoothly

Outbound Calls:

- Welcome Campaign > calling clients with newly activated ADSL & TTV to ensure that their process went smoothly and to inquire if they have any questions regarding their service and reduce new client churn.
- Contacting at risk or vulnerable clients to secure their business through specific and targeted offers.
- Various targeted campaigns for: outages, frequent callers, and any other important outbound calls.

The Onesource document elaborates on the distinction between the work on the Care queue as opposed to that handled by L&R in relation to when the Care queue agents are to transfer calls to L&R. The document indicates if the situation does not involve "client churn impacting and/or client moving" there is "no need to transfer to L&R". Calls to be "handled by L&R" involve "client churn impacting and/or client moving". Information regarding the specific types of calls that are to be directed to L&R are outlined as follows:

General Order Processing

- Processing orders requiring Save Tools
 - Previous order fallout – order needs to be re-issued.
 - Order not processed originally – Order needs to be issued.
 - Client calling back to accept save offer.
- Stuck Cancel Orders – post-install (after due date)

Movers

- Any clients moving their service

BOLT-ON Product**Escalations**

- Existing Clients (over 30 days)
 - Threatening to churn because they are not eligible.

Service Cancellation Requests

- Local Line
- Internet
- Optik TV
- Satellite TV
- All service cancellation requests where the service is already in place.

Shopping Clients

- Hard Shoppers (Clients looking for a specific deal):
 - I.e. Client request a competitor match that is not available in the Care Soft Shopping tools.

The focus of Article 1.02 is on actual duties performed by its agents and the best evidence of this is contained in the statistical information relating to codes used by employees in performing their work in the various queues. The statistics support the existence of a much greater commonality between Concierge agents and L&R Reps in relation to substantive performance of “complex” tasks such as moves, ceases and saves that are infrequently performed by CCR IVs and are generally observed as belonging to L&R Reps. These functions are of a higher level, with greater responsibility and

discretion, than those performed by employees in the CCR IV classification, and their performance appear to be a defining feature between CCR IVs and L&R Reps.

The statistics show L&R Reps on the L&R queue use codes for moves/ceases about 24.3 to 24.6% of the time; L&R Reps on the High Value queue approximately 31.1%; and Concierge agents – 18.5 to 26.4%.

CCR IVs on the Care queue, on the other hand, use such codes 0.16%.

Similarly, regarding save codes, L&R queue agents use these 55% of the time; High Value agents – 40%; and Concierge agents – 37%.

On the other hand, Care agents use L&R save codes about 2.66% of the time.

The statistics in relation to the use of discount codes used by employees in the various queues from 2013 to 2016 (2013-2014 for High Value) show a similar degree of connectedness between L&R Reps and Concierge agents. Agents on the L&R queue used L&R codes 57.24% of the time; High Value – 39.62%; and Concierge – 37%. On the other hand, agents on the Care queue used L&R codes 2.66% of the time. The statistics regarding the use of Loyalty codes by agents in the various queues for the same periods of time shows these are used by agents on the L&R queue 1.59% of the time; High Value – 3.69%; and Concierge – 3.31%. Care queue agents use Loyalty codes 21.51% of the time.

The evidence indicates that the reason Care queue agents use so few moves/ceases and save codes is because they are to transfer these calls to L&R Reps. CCR IVs do not have authority to use the L&R specific codes but can only make what were referred to as “soft shopper” offers where clients are just looking for a better deal, as opposed to a specific one offered by a competitor. Care queue agents can only use the L&R save codes in specific situations, for example, where an L&R Rep has made an offer, written it

in the diary notes on the customer's file, and a customer has called back in to accept it. In this situation the L&R Help Desk can allow a Care agent to place that L&R save code on an account.

While Concierge agents do not receive L&R queue overflow calls, as High Value agents did previously, they possess the tools to perform that work, and they do so in relation to the clients they serve in significant amounts as revealed by the statistics. The discretion exercised by, and the tools available to, the Concierge agent are more akin to those associated with the L&R Rep as opposed to the CCR IV, and Concierge agents perform the higher-level duties at a rate much more common with agents on the High Value and L&R queues as opposed to the Care queue.

To perform their work Concierge agents received training well beyond that provided for CCR IVs. Concierge Agents were trained to receive a "cross-functional skill set" that included L&R retention and order resolution skills. Training to perform work associated with those classified as L&R Reps relating to moves, ceases, cancels and escalations comprised of about seven and one-half days. Concierge agents received more training than High Value agents and other L&R Reps because of the addition of new tools and processes used in the Concierge service delivery model. One does not require additional training to go from the L&R queue to the High Value queue, but they did require such to go to the Concierge queue. The evidence indicates that it takes about same amount of time for an employee to become comfortable in an L&R Rep job, as it is for the Concierge agent job.

CCR IV call centre agent on the Care queue perform a sales-oriented job, whereas the focus of work performed by Concierge agents is not on sales but rather enhancing loyalty and retention. Just like agents in the L&R queue and also the High Value queue, agents in the Concierge queue have fewer sales opportunities than Care queue agents, and this is reflected by the modified SIP calculation for Concierge agents. The SIP Plan is

primarily sales-based for CCR IVs in the Care queue, with 67% being based on sales, whereas for Concierge agents sales is 30%.

The use of discretionary SIP payments to essentially increase the effective wage of Concierge agents to closely mirror that paid to L&R Reps is indicative of the relatedness between the two. To an extent it reveals recognition the CCR IV wage rate is inadequate for the Concierge agent job. Documentation relating to the Employer's process in arriving at its conclusion regarding payment for the Concierge agent job, noted above, suggests recognition of commonality between it and L&R Reps, which is the only comparison contained in the SIP documentation. The Employer's explanation to the effect it is basically paying the Concierge agent at a rate near that of L&R Rep to address morale issues arising from the job previously having L&R Reps during the pilot, and also because it sought to attract previous L&R Reps from the High Value queue, is convenient but not compelling in the face of the evidence regarding the SIP discussions that did not mention such rationale. In all likelihood it paid the Concierge agent a higher rate because it was determined a higher rate of pay was warranted based on the duties performed.

Viewed objectively, the Concierge agent job has increased responsibility and discretion so as to take it out of the purview of a CCR IV classification. Increased responsibility to the customer was the intention of the Concierge service delivery model and that queue was designed to increase loyalty to the Company by its highest spending customers. Concierge agents have more responsibility to the customer to ensure processes are done properly and fix mistakes before they happen.

Concierge agents are captured by the CCR IV job profile that outlines the "key purpose" being to: "provide customer service and sales support related to the provisioning and billing of telecom products and services (for residential home-based business clients) and provide related account maintenance." However, consistent with the L&R Rep job summary, Concierge agents have a significant loyalty and retention role to: "resolve client concerns, issues, analyze, optimize clients current account and secure

contracts via inbound and outbound queues; assist clients with technical issues and resolve or refer to others”, and “promote telecom products and services to build relationships and loyalty to reduce churn; update and maintain client accounts”. To accomplish these objectives the Concierge agent job performs the same duties as L&R Reps, and to the same relative degree, as disclosed by the statistics in relation to the matters of moves/ceases and saves.

This is not a case where the Concierge agent job performs an insignificant amount of time performing duties generally associated with the higher level, but rather, as the statistics disclose, they are performing these duties to a significant extent and in relative close alignment with L&R Reps on the L&R queue and also those on the High Value queue. Not surprisingly, expansion of the Concierge service delivery model to the Employer’s other customer segments beyond the first two segments would effectively do away with the need for the L&R queue. The success of the Concierge model led to the demise of the High Value queue for service in the particular customer segments they once shared. It is not always the case where a group of agents perform the same duties as those they are replacing, but it is in this case as the statistics show regarding the work performed.

The evidence indicates the manner in which customer service is provided differs between the Concierge and other queues, with Concierge acting in a more proactive manner as about 50% of that job involves outbound calls at pre-established milestones, as opposed to few or no outbound calls for agents in other queues, (other than distinguishable outbound cold-calling comprising of about 10% of the work of an agent on the L&R queue). However, the focus of an Article 1.02 inquiry is on commonality of duties performed and in the present circumstances there is strong commonality between Concierge agents and L&R Reps. The fact the Concierge queue is a more proactive than reactive customer customer service delivery model does not affect the relevant inquiry being upon job duties.

On balance, an objective application of the “commonality of duties” test in Article 1.02 leads to a conclusion that the “appropriate Appendix and Wage Schedule” for the Concierge agent job is Attachment A-7, Wage Group E consistent with the L&R Rep job title. Any reasonable comparison of the Concierge agent job to other jobs in accordance with Article 1.02 required consideration of the High Value agent classified as L&R Rep, particularly as they were both using most of the same tools, training, knowledge, skills, expertise, responsibility and discretion for achieving the same purpose being the retention of high value customers, albeit in two different customer service delivery models. Concierge agents do everything that High Value agents did, in close to the same proportions, with some additional duties. The fact the Concierge queue did not receive overflow from the L&R queue does not bar it from warranting classification as an L&R Rep.

In its bargaining document from July 26, 2010, “Appendix C, Proposal 3”, the Employer outlines the following rationale prompting it to seek to have L&R Rep IVs moved to the list of Clerical Quasi Job Titles:

What is prompting this change?

L&R is currently paid at group D in the West. The role of the L&R team is to ensure we retain our existing client base through reactive and proactive offers. These offers depend on the clients value (revenue spend) and tenure.

- The team members in L&R are asked to do real time assessments of a client’s value to ensure they offer the appropriate level of retention incentive. Although they have guidelines, they must make real time decisions on a customer by customer basis.
- We expect them to be fully conversant on all our competitor’s offers so they can easily discuss with clients. In most cases, clients come with offers from our competitors so our L&R agents must utilize this knowledge in constructing a counter offer.

- This role carries with it a higher degree of negotiation skill set than the other contact centre roles. Comparing a Care and L&R role, the Care role focuses more on sales and the L&R on negotiations.
- L&R agents have a higher degree of credit and adjustment leeway (bill or hardware credits) than their Client Care peers (by pay).
- We need to establish a higher level of pay for these employees to ensure we are attracting and retaining the best employees both internally and externally.

These features and attributes, described by the Employer as justification for moving L&R Reps to the list of Clerical Quasi Job Titles, apply to the Concierge agent, and effectively support the evidence in relation to commonality of duties between the Concierge and L&R agents, particularly those in the High Value queue, classified as L&R Reps.

As noted, the Employer essentially takes the position the High Value agent position is not comparable to the Concierge agent job as it was responsible for taking L&R queue overflow calls that have never gone to Concierge. Mr. Langley gave evidence to the effect that after he was informed on July 10, 2013, by Ms. Nemeth that the High Value business group intended to post the High Value agent job as a L&R Rep contrary to Labour Relations view that it was captured by the CCR IV job title, he only became comfortable with the L&R Rep job title after a telephone discussion he had with Company Vice-President Wade Domfries sometime after the July 10, 2012 meeting. Mr. Langley testified Mr. Domfries informed him that the majority of the High Value agent's job would be L&R overflow and for large periods of time the work of agents on the respective queues would be indistinguishable.

With the exception of the representation Mr. Domfries made to Mr. Langley, there is no indication that it was ever contemplated the majority of High Value agent work

would be L&R overflow. Notes from the Employer's July 10, 2012 meeting between the business group and Labour Relations that caused Ms. Nemeth to involve Mr. Langley, and consequently Mr. Domfries, estimates agents on the High Value queue would take L&R queue overflow calls about 15 to 20% of the time. This work would be in addition to 10% of the job performing what the business group on June 20, 2012 recognized as L&R work in relation to "moves, cancels, saves, special offers, one stop shop for High Value Clients".

There are no notes and no documents that ever suggest more than 25-30% of the High Value queue calls would be L&R calls. When the High Value queue was established with agents at the L&R Rep job title, it was expected to take 25-30% L&R calls, which included L&R calls from its own queue together with L&R queue overflow. As it turned out, these early assessments of the amount of L&R queue overflow that High Value agents would receive were relatively accurate as borne out by the statistics that show 31% of all calls over the life of the High Value queue were taken for both moves and ceases, and this includes calls into the High Value queue from its customer base and also calls received from L&R queue overflow.

In an email dated March 25, 2013 from senior manager, Ms. Mehta regarding the Concierge agent, she notes, "Currently, the HV Queue volume is 50-60% Care Overflow from the regular queue, and 5-10% L&R overflow from the regular queue. About 30% of the work they do is serving HV customers". In an April 19, 2013 power point slide deck document drafted by the Concierge business group, it was noted the HV Queue call breakdown is approximately:

- 6 – 10% L&R Overflow
- 40 – 50% Care Overflow
- 30 – 40% HV Care and L&R

The Employer disputes the power point slide deck figures are accurate and asserts they likely just constitute a snapshot at that particular point in time. On the face of the slide deck document that is not apparent. In any event, however, there is no statistical evidence to show High Value agents performed anything close to what Mr. Domfries represented to Mr. Langley in terms of a majority of calls to the High Value queue being L&R queue overflow.

I am not prepared to conclude the Employer's decision to classify the High Value agent as an L&R Rep was based on a single representation by Mr. Domfries to Mr. Langley to the effect the agent would be performing the majority of their time handling L&R queue overflow calls. Suffice to observe this claim conflicts with the preponderance of credible evidence on the matter of how much L&R queue overflow work High Value agents would receive. There are no notes from the conversation and Mr. Langley could not recall what day the call took place, although he expressed in cross-examination it was within five to ten days after hearing from Ms. Nemeth on July 10 and bearing in mind the announcement was made on July 13. Further, Mr. Domfries' alleged commitment, which the Union first became aware of when Ms. Nemeth raised it in her evidence in this hearing, bore little resemblance to what was anticipated by its managers, and also little resemblance to what actually occurred. More than likely the Employer accepted the work it projected for that queue to warrant the L&R Rep classification. Based on the statistics of the calls handled by High Value agents for the entire time that queue existed, the High Value projections from its managers were relatively accurate.

In any event, as noted above, the term "L&R queue overflow" referred to by the Employer as a key distinction between High Value and Concierge agents is not a duty per se, but there are duties that are performed in taking these overflow calls, and these are represented in the statistics regarding the use of codes by agents, which essentially indicate little difference between complex duties performed by Concierge and High Value agents and also L&R Reps on the L&R queue.

The circumstances warrant a determination upholding the grievances, a declaration that the Employer has violated Article 1.02 of the Collective Agreement by failing to place the Concierge agent job within the same Appendix and Wage Schedule as the L&R Rep job title based on a commonality of duties, and an order for all employees who worked as Concierge agents to be compensated for their loss. It is so ordered.

As noted above, the Union seeks an order for costs. It points out many days of hearing – at least five and one-half – were lost due to adjournments caused by the Employer’s failure to produce information directly relevant to the grievances. The Employer did not comply with pre-hearing requests for production, nor orders issued during the hearing. The Union adds the fact the Employer did not provide any notes of any of the participants in many key meetings regarding the classification of the both the Concierge and High Value agents, indicates it did not take the disclosure orders issued seriously. The Union points out some documents, including ones that appear to conflict with positions expressed by the Employer at these proceedings, were not disclosed until well into the hearing, despite numerous requests and multiple orders and in some cases after the Union had closed its case. No explanation was given for this conduct. Late disclosed documents included those from the Concierge business group expressing concerns about Labour Relations’ view its agent was a CCR IV as opposed to L&R Rep, and also the Employer’s bargaining document containing its rationale for seeking to move L&R Rep IV to the clerical quasi job title.

The Union seeks reimbursement for the witnesses attending the hearings that were adjourned due to the Employer, including travel costs and wage replacement, and also Counsel fees in relation to having prepared its case based on the information provided as at the commencement of the hearing.

In Shoppers Meat Markets Ltd. (Metro Provisions) and United Food and Commercial Workers International Union, Local 633, supra, Arbitrator Solomatenko

summarized the law regarding the awarding of costs as a term of granting an adjournment, stating:

10 Accepting that an arbitrator may award costs as a term of granting an adjournment, the question still remains as to the circumstances under which that discretion should be exercised. Although each request must ultimately be decided on its own merits, there must still be some regard for general principles or guidelines against which to assess the request. Certainly, extraordinary costs, such as the transportation costs of witnesses in the *Air Canada* case, should receive strong consideration for reimbursement. Whether or not the party seeking the adjournment has given prior notice to the other party is similarly a relevant factor. Costs may also be appropriate where there is abuse of the process or the party seeking the adjournment has been singularly responsible for numerous delays. The overriding consideration, however, must be the labour relations context itself. It is a long-established principle of the labour arbitration process that each party shares equally in the costs of the procedure, regardless of its success in the matter. Wherever costs of an abortive hearing are awarded as a term of granting an adjournment, it should still be in the context of this historical principle that the parties normally share all costs.

11 Awarding costs on a punitive basis has no place in the labour relations context. Litigants in a court action are only concerned with the one time financial outcome of the suit; there is usually no concern about any ongoing relationship of the litigants thereafter. But, the opposite prevails in the context of labour arbitration. Notwithstanding that arbitration is an adversarial process, the participants are still subject to an ongoing legal relationship after the conclusion of any one case. Perhaps trite, but it bears emphasis that there is a certain amount of give and take to the collective bargaining relationship. On a given occasion, one party may incur some additional costs attributable to the other party, but the reverse may be true on the next occasion. As a general rule, costs of an abortive hearing should only be awarded where there are extraordinary factors, as previously mentioned, such that it can be said objectively that it would be unfair for the other party to bear those costs, notwithstanding that costs of the process usually balance out over the long-term.

Application of these principles leads me to conclude this not an appropriate case for costs to be awarded, although it is very close, particularly in light of the Employer's late disclosure of obviously relevant documents and its misrepresentation to the effect the

Union had all the relevant information that the Employer possessed. Suffice it to observe the parties have a longstanding relationship with many hearings and, over the course of time, these matters will likely even out. It appears that one of the significant matters relating to late disclosure of certain material involved a misunderstanding by Employer Counsel, and one of the adjournments was based on a short notice family emergency of an instructing witness. I therefore decline to order costs as sought by the Union.

The grievances are upheld as provided above. I shall remain seized with jurisdiction to resolve any dispute that may arise out of the implementation of this decision. It is so awarded.



Christopher Sullivan