

**FEDERAL MEDIATION & CONCILIATION SERVICE**

**In the Matter of the Arbitration**

**Between**

International Brotherhood of  
Electrical Workers,  
Local 194

- And -

Valley Electric Co-Op

**Grievant:** R. McGaskey  
**FMCS Case No.:** 06-55817-3  
**Grievance No.:**

**BEFORE:** Maretta Comfort Toedt, Esq., Arbitrator, duly selected by the parties through the procedures of the FMCS

**APPEARANCES:**

For the Employer:

Gregg R. Kronenberger, Advocate

For the Union:

William Lurye, Advocate

**Place of Hearing:**

Natchitoches, LA

**Date of Hearing:**

August 17, 2006

**Date of Award:**

October 19, 2006

**Relevant Contract Provisions:**

Articles 3, 5, 7 and 14

**Contract Year:**

2004-2007

**Type of Grievance:**

Promotion

**Hearing**

A Hearing was held in the above matter on August 17, 2006 at the Ramada Inn, 7624 Highway 1 Bypass, Natchitoches, LA. The witnesses were sworn and were sequestered during the hearing. Both parties had full opportunity to make opening and closing statements, to examine and cross examine witnesses under oath, to offer exhibits, to raise objections on procedural rulings and otherwise to make known their respective positions and arguments on the issues involved in the grievance. There were no arbitrability issues. The parties stipulated that the matter was properly before this Arbitrator for final and binding opinion and award. In reaching the decision within, all arguments made, the entire record in the case and any arbitral and case citations were carefully considered, whether discussed or not. The oral portion of the record was

declared closed on August 17, 2006. The parties requested until October 10, 2006 to cross-exchange and postmark briefs. The record was closed on October 13, 2006.

### **Appearances**

#### **For the Union**

William Lurye	Advocate
Reginald McGaskey	Grievant
Glenn Brannen	International Rep., Witness
Terry Reynolds	Business Manager, Witness
Margaret Nichols	Union Chairman, Witness

#### **For the Employer**

Gregg Kronenberger	Advocate
Robbiee Laffitte	Manager, HR & PR, Witness
Thomas Epperson	General Manager, Witness
Chris Goings	Substation Superintendent, Witness
Allen Wiltz	Engineer, Witness

### **Issue**

The parties stipulated to the issue as follows:

Did the Company violate the CBA when it awarded the position of engineering technician (ET) to Gene Knueppel? If so, what is the appropriate remedy?

### **Arbitration Awards Submitted and Considered**

#### Cases Submitted by the Union

*United States Steel*, 36 LA 1082 (Crawford 1961)

*Kroger Co.*, 34 LA 414 (Emerson 1959)

#### Cases Submitted by the Company

James W. Hoose, FMCS Case No. 99-03576 (1999)

Dencil M. Newton, Natchitoches, LA

### **Relevant Contract Language from 2004-2007 CBA**

#### **Article 3**

#### **Management Rights**

**3.1 Management Rights.** The Company retains all rights of management which it had prior to the selection of a collective bargaining agent by the employees except as such rights are specifically relinquished, limited, or modified by express provisions of this Agreement.

Such rights include, but are not limited to, the right to:

a) Plan, direct and control the work.

- e) Determine job content.
- j) Determine the qualifications, competency, skills, ability and fitness of employees.

## **Article 5**

### **Grievance and Arbitration Procedure**

#### **5.4. Arbitrator's Authority.**

(a) The sole function of the arbitrator shall be to interpret the provisions of this Agreement and apply them to the facts of the grievance, and if he determines that the Agreement was breached he may award an appropriate remedy. The arbitrator shall have no power to modify, supplement or otherwise alter this Agreement.

(c ) The arbitrator shall have authority to overturn any factual determination by the Company only upon an expressed finding by the arbitrator that the Company's factual determination was clearly erroneous.

## **Article 7**

### **Seniority**

#### **7.3 Posting of Vacancies.**

- a) All non-entry level job openings within the bargaining unit shall be posted for seven (7) calendar days so that employees may indicate by signing the bid sheet their desire for the vacancy. Such notice shall contain the job classification, the department and the number of available openings and the qualifications and responsibilities for the job.
- b) In the filling of any jobs, vacancies, and making promotions (the word "promotion" shall mean advancement to a higher job classification), seniority (as defined in Article 7) shall be given consideration, and where ability, skill and qualifications are reasonably equal, seniority shall control. Final determination of such qualifications shall be made by the Company, except that any dispute which may arise in connection with any such matter shall be handled in accordance with the provisions of Article 5 (Grievance and Arbitration) of this agreement. (emphasis in original)

## **Article 14**

### **Miscellaneous**

#### **14.3 Performing Work in a Different Classification,**

- a. TEMPORARILY RELIEVING IN HIGHER CLASSIFICATION: Any employee covered by this agreement who is designated to temporarily relieve or

substitute in a higher classification for a period of eight (8) or more consecutive hours shall be paid an additional \$1.00 (one dollar) per hour for each hour worked.

### **Position of the Union**

The Union makes the following arguments and contentions in support of its position:

First, every contract imposes a duty of good faith and fair dealing and this duty was breached by the Company. Although the Company has discretion under Article 7.3 to determine the qualifications for promotion, this discretion must be exercised in a fair and reasonable manner. The Company failed to exercise its duty of good faith and fair dealing by training a junior mechanic, Gene Knueppel, for approximately 11 months as an Engineering Technician ("ET"). When the Union questioned this assignment, it was told twice that Knueppel was being trained to replace a non-bargaining unit person, Mike Rachel, Substation Superintendent. Plant Manager Epperson never denied this. The Company misled the Union into thinking that Knueppel was going to replace a non-bargaining unit employee.

The duty of good faith and fair dealing was also breached by the Company in that Knueppel, a junior employee, received 11 months of training for a job in which he had no background or prior experience. This gave him an unfair advantage over other applicants, including the Grievant.

The Company breached its duty of good faith and fair dealing in that its actions resulted in making the bidding and interview process a sham. By providing Knueppel with training that no other employee got, the Company prejudiced the playing field. Knueppel's experience in the ET position resulted in him having far greater knowledge of the job responsibilities than the other candidates, most of whom were more senior employees.

Knueppel should only have been "set up" in the higher paying ET position on a temporary basis, not 11 months. "Set up" pay for work in a higher classification is intended to be used for truly temporary situations, such as vacations and illnesses. The Company breached its duty of good faith and fair dealing by placing Knueppel in the ET position for an extended period of time.

Second, the selection process was flawed. The Company argues that pursuant to Article 5.4(c), the arbitrator may not overturn a factual finding unless it is clearly erroneous. This provision is not applicable here. The Company prejudged the applicants by impermissibly setting up Knueppel in the ET position for a period of time that was not temporary, as required by the Agreement. Therefore, the Company's factual determination could not have been correct.

The selection process was additionally flawed because the non-technical questions developed by Robbiee Laffitte were not sufficiently related to the qualifications of the job as stated on the posting. In addition, the technical questions were extremely detailed. The technical questions led one to conclude that the interview was rigged and that only an experienced person could have answered those questions. In fact, the results indicate that none of the other applicants did as well as Knueppel.

The evidence also indicates that the applicants believed the selection process was rigged. One of the applicants, George Lloyd, was contacted the evening before the interviews and offered help from Allen Wiltz who was the Manager of Engineering at the time. This was clearly improper. Lloyd told Wiltz that interviewing was a waste of time as everyone knew that Knueppel had been hand picked for the job. During the actual interviews, Lloyd got upset during the technical questioning and left the room. Lloyd had to be coaxed back to the interview by Robbie Laffitte.

The Company relies on a prior arbitration award issued by arbitrator James Hoose. This award is not applicable here. In that decision, arbitrator Hoose compared the qualification of applicants and affirmed the selection made by the Company. Here, however, there were allegations and facts presented to show that the Company misled the Union and set up an employee in a job for almost a year thereby affording him an unfair advantage to learn the job. This opportunity was not extended to any other employee.

The Union requests that the grievance be sustained and that the job be re-bid with the explicit instruction that Knueppel's job experience and skills cannot be considered superior to any other applicants'.

#### **Position of the Employer**

The Employer makes the following arguments and contentions in support of its position:

The Union has not established that there was any violation of the CBA. First, the successful bidder, Gene Knueppel, possessed far greater qualifications, skills and abilities for the ET position than did the Grievant. Pursuant to Section 3.1(j) of the CBA, the Company retains the right to determine the qualifications, skills, ability and fitness of employees. According to Section 7.3(b), final determination of such qualifications shall be made by the Company and any disputes that arise in such matters shall be handled in accordance with the grievance and arbitration procedure. Finally, Section 5.4(c) provides that the arbitrator may overturn any factual determination by the Company “only upon expressed finding by the arbitrator that the Company’s factual determination was clearly erroneous.” This “clearly erroneous” standard has been upheld by arbitrator James W. Hoose in a 1999 promotion decision. Considering these provisions together, it is clear that the Union must establish that the Company’s determination that Knueppel was more qualified than the Grievant was clearly erroneous. The Union has not sustained this burden.

The Company established that Knueppel had superior qualifications, skills and abilities than the Grievant. Knueppel had better attendance, greater job knowledge, more formal education and a demonstrated willingness to work overtime than did the Grievant. Knueppel also had other experience and qualities that made him more qualified than the Grievant. For example, Knueppel had prior experience in the military that had given him experience with DC voltage, which was necessary to understand in working at a substation. Knueppel also had a strong work ethic, was reliable and willing to learn. The Grievant did not testify and the Union did not offer evidence to demonstrate that the Grievant’s qualifications, skills and abilities were reasonably equal. Because the qualifications, skills and abilities of Knueppel and the Grievant were not reasonably equal, the Grievant’s seniority was properly not used to give him the promotion.

Second, the Union failed to establish that the Company violated the CBA in the selection process that it used to fill the ET vacancy. The Company showed that the qualifications in the job posting were job related and that the factors and criteria used were appropriate to fill the vacancy. The Company carefully explained the selection process and demonstrated that it used a fair and reasoned decision-making process.

Third, the Union has failed to establish that the Company acted improperly or

arbitrarily in selecting Knueppel instead of the Grievant. The essence of the Union's argument is that the Company acted in bad faith when it "set up" Knueppel in the ET position in April 2005. The Union contends that the Company did this because Mike Rachel, the Substation Superintendent, had indicated his intention to retire and Chris Goings, the current ET had indicated his desire not to take the promotion to Rachel's position as Superintendent. The Union's testimony was that the Company later learned that Goings would indeed accept the promotion so the ET position became vacant. Therefore, the Union argues that Knueppel was selected as the most qualified candidate for the ET vacancy because of his tenure in the position. This is not sufficient evidence of bad faith. The Company intended to train Knueppel for the Superintendent position. When the ET position became vacant through no act or fault of the Company, the Company posted the vacancy and established a fair and job-related selection process. The evidence produced at the hearing clearly establishes that Knueppel was the best qualified candidate for the ET position. To the extent that Knueppel's qualifications were the result of his experience in the position, it was entirely proper for the Company to consider this. Although the Union has argued that this experience was unfairly or wrongly gained, the Union has failed to show that the Company acted in bad faith under the circumstances.

Based on the above, the City respectfully requests that the Arbitrator deny the grievance in its entirety.

### **Discussion and Opinion**

The weight of the evidence indicates:

#### **Factual Background**

Valley Electric is an electric power cooperative owned by its members. It distributes energy throughout eight parishes in northern Louisiana. The Company's main office is in Natchitoches, with district offices in Mansfield and Hornbeck, Louisiana. The Company receives electric power from power suppliers and routes that power to its 27 substations. At the substations, the power is stepped down so that it can be transmitted to end users over power lines maintained by the Company. The substation is typically staffed with a substation superintendent and an engineering technician ("ET").

In 2001, the Louisiana Public Service Commission conducted an audit of the

Company's operations and recommended that the Company contract out its tree trimming operations. At the time, the Company had forty four (44) employees performing this work. By 2005, as a result of employee retirements and attrition the Company had only nine (9) employees performing tree trimming work. Related to the tree trimming work was also the maintenance of large equipment, such as mechanical mounted trimmers, bush hogs, bucket trucks and chippers. This work was handled in the Company's garage.

There are two versions as to how Gene Knueppel was set up in the substation area. According to General Manager Tom Epperson, in 2005 Substation Superintendent Mick Rachel informed him that he needed help, temporarily, installing an automatic meter reading ("AMR") system. At that time, Rachel had one ET, Chris Goings. Epperson testified that he suggested to Rachel that they take someone from the garage as they still had too many people working there. Epperson talked to several people that had expressed an interest in the position and Gene Knueppel was one of them. Chris Goings then talked to Knueppel and concluded that he would work well at the substation and could help with the AMR installations. Knueppel was then "set up" (i.e., paid an additional \$1.00 per hour more pursuant to Section 14.3(a) of the CBA for temporarily working in a higher classification). Knueppel was not paid at the higher ET rate and the Company did not create a new ET position at that time.

Margaret Nichols, Union Steward, testified that around March or April 2005, she had a conversation with General Manager Epperson who told her that the Company was going to set up Knueppel in engineering to fill a position. Nichols testified that she told Epperson he could not do this and that he responded that the move was to fill Superintendent Rachel's position because Chris Goings did not want to take the promotion as he made more money in overtime in his current ET position. Therefore, Knueppel would be set up to take the superintendent's position. Nichols testified that she again told Epperson she did not see how he could do that because this was not the normal line of progression and then called Glen Brannen, the Union's International Representative.

Brannen testified that he received the call from Nichols and then called Epperson himself and told him what he had heard from Nichols. Brannen testified that Epperson explained to him that the Substation Superintendent, Mike Rachel, would be retiring



within a year or so and that the current ET, Chris Goings, did not want the promotion because he got more money with OT in that position. Brannen asked Epperson whether a lineman would not be more qualified and Epperson responded that he thought Knueppel had the qualifications and that Knueppel would shadow Rachel for about a year and then take the job. Brannen testified that this explanation was why the Union did not file a grievance at the time.

In early 2006, around January, Superintendent Mike Rachel retired and Chris Goings was promoted to the substation superintendent position. Goings position as ET was posted as a vacancy on February 20, 2006 and taken down on February 24, 2006.<sup>1</sup> Robbiee Laffitte consulted with Goings, Martha Dalme, Coordinator of Engineering and Operations Services, and Goings' supervisor, Allen Wiltz, Electrical Engineer,<sup>2</sup> regarding the content of the job posting. The posting listed sixteen (16) qualifications and responsibilities. These were obtained from prior postings for this position and from additions from Goings. Eight applicants posted for the vacancy, including the Grievant. The qualifications and responsibilities listed were as follows:

- a. Must have good work record/attendance.
- b. Subject to call-out during non-working hours.
- c. Will be required to pull call during the week and on weekends.
- d. Must be able to show proof of high school diploma, GED or equivalency.
- e. Must have working knowledge of the substation and distribution system.
- f. Must have knowledge of or the ability to learn to follow instructions in technical documents and wiring programs.
- g. Must have knowledge of or ability to learn to operate a windows based personal computer.
- h. Must have knowledge of or ability to learn to operate special equipment communication and programming software.
- i. Will be required to work out of Natchitoches office.
- j. Must have good leadership abilities.
- k. Must have a clear understanding of all Safety Rules, including Vemco, RUS, State and Federal Guidelines.
- l. Must be capable of maintaining accurate substation and down-line apparatus logs, records and/or files.

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<sup>1</sup> Although the Union noted at the hearing that the vacancy was not posted for a full 7 days as required by Section 7.3(a) of the CBA, this issue was not raised during the grievance procedure and no claim was made at the hearing that this noncompliance prejudiced any bargaining unit member.

<sup>2</sup> At the time of the selection process, Wiltz was Manager of Engineering. The Substation Superintendent position reported to him.

- m. Must have the ability to read and interpret substation drawings and designs.
- n. Must be able to troubleshoot and maintain automated meter reading equipment in substations.
- o. Must be willing to enroll and complete the LA Lineman Training Course.
- p. Must (sic) willing and able to follow supervisory instructions in detail.

Laffitte, Dalme & Goings met to discuss how to determine the most qualified person for the position. It was decided that each would develop a set of questions or criteria they felt were important. These submissions were shared amongst the group and ultimately all three submissions were used in the interview process. Goings developed his set of questions primarily from the Louisiana Lineman's Handbook which is issued to everyone who takes the Louisiana Lineman Training Course. This is a course that many of the Company's linemen, including the Grievant but not Knueppel, had taken. Other questions were derived from Goings' experience as an ET and were company-related. Goings testified that he was aware of the advantage that Knueppel had by virtue of having performed the job for some ten months, therefore he consciously excluded questions he felt Knueppel could answer based on his work experience. Dalme, Laffitte and Epperson also reviewed the questions. Epperson testified that he reviewed the questions and understood that they were developed so that they would be consistent and everyone would get the same questions. Epperson's concern was that the applicants not be tested, i.e., he did not want them to sit down and write answers to questions. After reviewing them, Epperson did not make any changes to the questions.

Dalme submitted eighteen (18) questions and Laffitte developed a spreadsheet of information about the interviewees, taken from information in their personnel file, and an Evaluation Sheet. The spreadsheet listed all eight (8) applicants and showed their date of hire, education, positions worked for the company, evaluations, lineman training status and other training programs completed. The spreadsheet was updated after the interviews with information obtained from the applicants. The Evaluation Sheet asked the applicant to rate himself on loyalty, dependability, willingness to work overtime, willingness to take a call, ability to work with others, attendance and safety. Attendance was taken from the personnel records over a two-year period.

Laffitte, Goings and Dalme next agreed on four (4) factors which would be given equal weight: formal education, job knowledge, attendance and willingness to work overtime. The eight applicants were then interviewed on or about March 2<sup>nd</sup> by Laffitte, Goings, Dalme and Wiltz. The applicants were asked the questions that had been developed by the panel. One applicant, George Lloyd, announced during his interview that Wiltz had contacted him the night before to see if he had any questions to ask before the interview. Lloyd apparently told the interviewers that he felt the selection process was rigged and that everyone knew Knueppel would get the job.

After the interviews, Laffitte and Dalme compiled the notes for each applicant and then met with Goings to discuss the applicants' performance. Formal education, attendance and willingness to work overtime were scored objectively. The job knowledge factor was scored based on the applicant's performance during the interview. After scoring all of the factors, the applicants were ranked from 1 to 8. The result of the scoring and ranking was that Knueppel, number 7 in seniority, scored the highest overall and the Grievant, the most senior employee, scored the lowest. Based on these scores, Knueppel was awarded the position on March 16, 2006.

The Union filed a grievance and in its appeal to Step 3 dated March 14, 2006, stated that:

Mr. McGaskey was not awarded the job of Engineering Technician even though he has seniority and his ability, skill and qualifications are reasonably equal to other candidates who bid on the position.

On March 22, 2006 a Step 3 meeting was held. Notes taken at the meeting by Terry Reynolds, Union Business Manager, indicate that Brannen, International Representative, stated that the Union had been concerned when Knueppel was set up and that: "the bid process was circumvented by the setting up of an employee to train for a position and then using that training as a basis for determining who is most qualified for the position." According to the notes, Brannen further stated that: "You knew the retirement was coming and you hand picked the person to fill the vacancy. You could have trained several different people for the position." Epperson, Dalme, Goings, and Laffitte were present at this meeting but no one specifically denied this allegation. According to Reynolds' notes, the Company responded that they looked at job

knowledge, formal education, in-house education, sick leave and willingness to work overtime.

The Company's written response at Step 3 was to confirm that: "Based on the interview process, the qualifying criteria considered and the rankings of the eight Vemco employees that applied we must remain committed (sic) to our original selection for the position of Engineering Technician." On April 19, 2006, the Union requested arbitration of the grievance.

### Discussion

This is a contract dispute and the Union has the burden to establish by a preponderance of the evidence that there was a violation of the Collective Bargaining Agreement. The question to be answered is whether the Company violated the CBA when it awarded the ET position to Gene Knueppel.

#### The Selection Process

The Union has argued that the selection process was faulty. First, the Union contends that Laffitte's non-technical areas of questioning (education, training, loyalty and dependability) were not on the posted job notice. A review of the sixteen job qualifications/responsibilities indicate that several of the listed items could easily fall under one or more of the four categories. For example, a good work record/attendance could be classified as a dependability factor. Computer knowledge or knowledge of programming software could be classified as an education or training factor. The qualifications/responsibilities listed on the job posting are sufficiently related to the categories on the "Evaluation Sheet." Furthermore, the Evaluation Sheet lists factors that are not only job-related for almost any job but are factors that the applicants rated themselves on. If an applicant did poorly on this section, he has only himself to blame.

Second, the Union notes that Wiltz called Lloyd the night before his interview and asked him if he had any questions. According to Wiltz, Lloyd responded that while he did not have any questions, he felt that the selection process was rigged and that Knueppel had been handpicked. Lloyd also made similar statements to the interviewers the next day during his interview. While Wiltz's conduct was improper, it does not appear as though Wiltz unfairly prepped Lloyd before his interview. What this exchange reflects however is that there was a perception that the selection process was not fair

because Kneueppel had such an advantage over everyone by virtue of his having been in the ET position for nearly a year.

Third, the Union contends that the interview notes reflect that no one except Kneueppel could answer any significant number of the technical questions concerning the job duties. The record does reflect that Kneueppel performed significantly better than the other applicants on the technical aspect of the interview process, even though Goings testified that he tried to eliminate questions that only Kneueppel would know based on his job experience. Goings testified that the technical questions he developed came from the unit on substations from the Lineman's Handbook which most of the applicants had completed. Goings testified very credibly and it would appear that he made every effort to ask questions that the applicants could or should have known. However, it is clearly quite difficult to separate the degree to which Kneueppel's eleven (11) months of job experience from April 2005 until March 2006 benefited his performance on these questions.

Based on a review of the overall selection process, it appears to me that the parties involved in the process (i.e., Dalme, Goings & Laffitte) made a considerable effort to ensure that the process was job-related, objective, and not simply a ruse to ensure that Kneueppel ultimately got the position. What the interviewers could not have completely corrected for however was the simple fact that the playing field was not level before they even began. This will be discussed next.

#### The Covenant of Good Faith and Fair Dealing

As the Union has noted, "[s]tandard contract jurisprudence holds that '[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and in its enforcement.'" Elkouri, *How Arbitration Works*, 478 (6<sup>th</sup> Edition), quoting *Restatement (Second) of Contracts, Section 205* (1981). As discussed in Elkouri, the covenant of good faith and fair dealing "serves as the basis for the proposition that managerial discretion must be exercised reasonably and discretionary management decisions will be reviewed to determine if they were arbitrary, capricious or discriminatory." (p. 480) Elkouri also notes that "while the implied covenant can serve as a basis for a claim of breach of a collective bargaining agreement, the claim must be coupled with some specific allegation of a violation of the collective bargaining

agreement or the federal labor laws. (p. 480).

The Union has alleged that the selection was clearly predetermined. The Company allowed Knueppel an opportunity to train for the ET position by setting him up for eleven (11) months in a job he had very little background in while denying the Grievant and other employees more senior to Knueppel the opportunity to train for the job. The Union notes in its post hearing brief that:

[W]here the contract recognizes seniority as a factor, management may not afford training opportunities to junior employees while arbitrarily denying them to senior employees and then proceed to promote or retain junior applicants on the basis of training. [footnote and numerous cases cited therein omitted] Such action not only may constitute impermissible discrimination, but also improper nullification of the seniority clause. [footnote and numerous cases cited therein omitted] In a pair of cases, arbitrators have held that training and experience received by junior employees could not be credited to the juniors in considering relative ability.

Elkouri at p. 896-897.

Section 14.3(a) provides for set up pay for an employee who is “designated to temporarily relieve or substitute in a higher classification....” Management has some discretion here but that discretion must be exercised in a manner that is not arbitrary, capricious or discriminatory.

Section 14.3(a) seems to indicate that set up pay is given when someone is filling in for someone else on a short-term basis. Brannen testified that this section is used for employees who go on vacation or who are out sick and that it is not used for periods of nearly a year. The Company did not essentially rebut this. But, Knueppel was not filling in for, substituting for, or temporarily relieving anyone. Knueppel was paid set up pay to either add to the ET complement or to train him for Rachel’s job, or perhaps both. The evidence is conflicting at best.

It does appear that despite Epperson’s not recalling those discussions, he did tell the Union (i.e. Nichols & Brannen) that Management intended to have Knueppel replace Rachel when Rachel retired because at that time, Goings did not want the promotion. Assuming that was true, when that situation changed is anyone’s guess.

There was testimony that Wiltz instructed Rachel to teach Knueppel everything he knew and that Wiltz assigned Rachel to train Knueppel. He did not assign Goings to train Knueppel. This indicates that Wiltz may have thought Knueppel was being trained

to replace Rachel.

Goings, the current ET, essentially confirmed that they were short-handed and needed help installing the AMR system and with RUS compliance. Goings testified that Knueppel worked with him and that at the time of this placement, it appeared that the workload would require two ETs indefinitely. Goings was not asked if he knew how long Knueppel's set up was to last or how long the AMR installation would take. Neither party asked Goings whether he had at some point told Management that he did not want to take Rachel's position because he could not earn as much money. Goings did not testify that he was aware that Knueppel was set up to learn Rachel's job, not the ET job.

The Union has argued that what Epperson told Nichols and Brannen was patently false because Goings and Wiltz testified that Knueppel was set up because the department was short-handed and there was an indefinite need for another employee. As noted, the testimony is conflicting at best and it is possible that the placement of Knueppel in the substation department may have started out as training him to replace Rachel, but that situation obviously changed when Goings took that position. However, no matter how you look at it, Knueppel was not temporarily relieving or substituting for someone in a higher classification for the eleven (11) months that he performed the job and his placement for such a lengthy period ended up giving him an unfair advantage over other senior employees.

While I cannot say that Section 14.3(a) cannot be used to train bargaining unit employees to become supervisory employees, based on the evidence before me, the set up of Knueppel pursuant to Section 14.3(a) was discriminatory in that it gave Knueppel, who was the second most junior of the applicants for the ET position, an unfair advantage in the selection process for the ET vacancy. But for his placement in this slot, he would not have gained the extensive knowledge of the ET position that he did, which in turn enabled him to outperform all the other applicants. While the Company has extremely wide berth under Section 7.3 to determine the qualifications of applicants, that determination is not without limits. While I did not find that the Company's factual determination in the selection process was clearly erroneous, as required by Section 5.4(c), I did find that the precursor to the selection process, namely the temporary assignment of Knueppel to the substation, was discriminatory and therefore in breach of

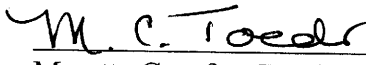
the covenant of good faith and fair dealing.

For all of the above reasons and in light of the circumstances presented by the evidence, I find that the Company did violate the CBA when it awarded the position of engineering technician to Gene Knueppel.

#### **Award**

The grievance is sustained. The Company did violate the collective bargaining agreement when it awarded the position of engineering technician to Gene Knueppel. The ET position shall be re-bid and Mr. Knueppel's experience and skills cannot be considered superior to any other applicant's. With the agreement of the parties, the arbitrator will retain jurisdiction in the event there are any questions or need for clarification regarding the implementation of the remedy.

Signed this 19<sup>th</sup> day of October 2006 in  
Houston, Texas

  
Maretta Comfort Toedt, Arbitrator