Text:

ARTICLE XVI - GENERAL PROVISIONS

Section 1:

a) The Union will, within sixty (60) days from the date of this agreement, notify the Company in writing of the members of the Shop Committee. The Union or Shop Committee will inform the Company in writing when any member change takes place on the said Committee. No member of the Shop Committee will be recognized by the Company unless the above procedure is carried out.

b) For the purposes of this agreement, when the word 'Committee' is used it shall mean Shop, Camp, Mill, or plant committee, members of which are appointed by the Union.

c) Official Union representatives shall obtain access to the Company's operations for the purposes of this agreement by written permission which will be granted by the Company on request and subject to such terms and conditions as may be laid down by the Company.

Section 2:

The Company agrees that the rate for Board and Lodging shall be two dollars and thirty-five cents ($2.35) per day.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 1:

Sub-section a) places the onus on the Union to notify the Company regarding composition and changes to the plant committee. The employer can request a list from the union if required. The Union determines the structure of the plant committee. Shop or plant committee members are typically voted in by the general membership at an operation or appointed by the union, as per sub-section b).

Regarding sub-section c), it is advisable for the Company to develop written protocol pertaining to access of union officials.

Section 2:

This is a historical component of the agreement and is no longer applicable to CONIFER members. *It is obsolete and has been flagged for removal at the next round of negotiations in 2023.*

Text:

ARTICLE XVI – GENERAL PROVISIONS

Section 3: No Strike Pending Grievance and Arbitration Procedure
The Union agrees that it will not cause, promote, sanction, or authorize any strike, sitdown, slowdown, sympathetic strike or other interference with work by the employees for any cause whatsoever until all provisions of this agreement relating to grievance and arbitration procedures have been complied with, unless failure to comply with such procedure is due to any act or refusal to act or misconduct of the Company.

Section 4: No Lockout Pending Grievance and Arbitration Procedure
The Company agrees it will not create or institute any lockout of the employees with respect to any dispute between the Company and the Union or the Company and its employees until all provisions of this agreement relating to grievance and arbitration procedure have been complied with, unless failure to comply with such procedure is due to any act or refusal to act or misconduct of the Union or its employees.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 3: No Strike Pending Grievance and Arbitration Procedure

Section 4: No Lockout Pending Grievance and Arbitration Procedure

Sections 3 and 4 are somewhat redundant given the current content in the Labour Relations Code of BC. The intent of these sections was to prohibit strikes or lockouts during the term of the agreement through contractual reinforcement of the use of the grievance and arbitration procedures.

Part 5 of the Labour Relations Code now has an impact on the applicability of Sections 3 and 4 of the collective agreement.

Section 57 of the Labour Relations Code prohibits strikes or lockouts during the term of the collective agreement. Section 58 prohibits strikes or lockouts during continued operation of a collective agreement.

At any point that a member company experiences any form of an illegal work stoppage, which may include an outright illegal strike, sitdown, overtime ban or slowdown, the staff at CONIFER should be notified, along with the officials at the Local Union. Companies who wish to develop more elaborate policy guidelines to address illegal work stoppages are advised to contact CONIFER for assistance.

Text:

ARTICLE XVI – GENERAL PROVISIONS

Section 5: Working Foreman

Employees outside the bargaining unit will not perform work that is normally done by employees in the bargaining unit. However, nothing in this agreement shall be construed as prohibiting foremen from doing work for purposes of instruction, provided by doing so a lay-off of bargaining unit employees does not result, or in the case of an emergency when regular employees are not available, provided that every reasonable effort is made to find a replacement.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 5: Working Foreman

The traditional USW (formerly IWA) position has been that anyone outside the bargaining unit (for example, a supervisor) is not allowed to do any physical bargaining unit work whatsoever. This is not the case. From the Company perspective, this section states that a non-bargaining unit employee will not engage in bargaining unit work on a sustained basis without some sound reason. Supervisors can engage in bargaining unit work for "instructional" purposes, and they can also pitch in during unique circumstances, i.e. an emergency.

A June 2009 arbitration decision from Northstar Lumber addresses the issue of supervisors and "bargaining unit work" during an indefinite mill closure. During the curtailment, a supervisor occasionally plowed snow to ensure site access and to keep fire hydrants accessible. In this case, the arbitrator made a clear distinction between supervisors performing a "caretaker" function as opposed to production work. The arbitrator found this activity to be a function of protecting the company's asset for fire protection purposes and not production related work. Although this principle may work in some situations, this is a unique circumstance requiring careful analysis before engaging in such activity. (*See Case References #1, #2, #3 and #4)*

Case References – Article XVI, General Provisions, Section 5:

1. **NORTHWOOD PULP AND TIMBER LTD. AND IWA LOCAL 1-424**
   Arbitrator: Ken Albertini, January 14, 1993 (CONIFER AR 3/93)
   Click here to read this case reference

   CONCLUSION: Grievor claimed that a non-bargaining unit employee, i.e. inspector, did bargaining unit work contrary to Article XVI, Section 5. Violation did occur when Quality Control inspector ran Tilt Hoist Machine.

2. **FINLAY FOREST INDUSTRIES AND IWA LOCAL 1-424**
   Arbitrator: Alex Brokenshire, November 2, 1988 (CONIFER AR 9/88)
   Click here to read this case reference

   CONCLUSION: In the body of the award, the Arbitrator stated: "Local 1-424 recognized that minor assistance from foreman was a normal give and take of the workplace". However, the Arbitrator upheld the grievances in this case.

3. **BALFOUR FOREST PRODUCTS INC. AND IWA LOCAL 1-424**
   Arbitrator: David Vickers, November 14, 1986 (CONIFER AR 6/86)
   Click here to read this case reference

   CONCLUSION: Testing of equipment is outside the scope of normal work and may be performed by non bargaining unit people.

4. **NORTHSTAR LUMBER, DIVISION OF WEST FRASER MILLS LTD. AND USW LOCAL 1-424**
   Arbitrator: Gabriel Somjen: June 29, 2009
   Click here to read this case reference

   CONCLUSION: The Arbitrator stated the following: "Although the same type of work (i.e. snow clearing) was done by bargaining unit employees during production at the sawmill, the snow clearing during the shutdown was done to protect the asset (the mill) rather than to facilitate operational use of the asset."

Text:

ARTICLE XVI – GENERAL PROVISIONS

Section 6: Permanent Plant Closure – Severance Pay

a. The Company agrees that employees affected by permanent plant closure shall be given sixty (60) days notice of closure.

b. Employees terminated by the Company because of permanent closure of a manufacturing plant shall be entitled to severance pay equal to ten (10) days' pay for each year of continuous service with the Company, and thereafter for partial years in increments of completed months of service with the Company.

Employees who transfer to another division of the Company because of permanent closure of a manufacturing plant shall be entitled to severance pay equal to seven (7) days' pay for each year of continuous service with the Company.

c. Severance pay for uncompleted years of service shall be computed on the basis of completed months service.

d. Where a plant is relocated and the employees involved are not required to relocate their place of residence or are not terminated by the Company as a result of the plant relocation, they shall not be entitled to severance pay under this article.

e. If a plant is indefinitely closed, and is subsequently permanently closed, those regular fulltime employees laid off at the time of the indefinite closure or subsequently laid off, will be entitled to the severance provisions provided for in b) above based on their seniority at the time of their layoff.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 6: Permanent Plant Closure – Severance Pay

Sub-Section a)

Section "a" outlines the Company's obligation to provide employees affected by a permanent plant closure with sixty (60) days notice of such a closure. Part 8 of the Employment Standards Act (Termination of Employment) should be reviewed in the event a company is planning a permanent plant closure. Given substance of the collective agreement, it is the position of CONIFER that section 63 of the Employment Standards Act does **not** apply.

Regarding group terminations, as is inherently the case with permanent plant closures, Section 64 of the Act does apply. The corresponding notice requirement varies with the number of employees affected. The pivotal point of "termination" at which Section 64 becomes applicable is the point at which 50 or more employees lose their seniority retention within a specified two-month period.

In the event of a permanent plant closure, employers also need to be cognizant of their obligations under Section 54, "Adjustment Plan" of the Labour Relations Code of British Columbia. Sub-Section 1 of Part 54 states:

"If an employer introduces or intends to introduce a measure, policy or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies,

a. the employer must give to the trade union that is party to the collective agreement at least 60 days notice before the date on which the measure, policy, practice or change is to be effected, and
b. after notice has been given, the employer and the trade union must meet, in good faith, and endeavor to develop and adjustment plan, which may include provisions respecting any of the following:

i. consideration of alternatives to the proposed measure, policy, practice or change including amendment of provisions in the collective agreement
ii. human resource planning and employee counseling and retraining;
iii. notice of termination;
iv. severance pay;
v. entitlement to pension and other benefits including early retirement benefits;
vi. a bipartite process for overseeing the implementation of the adjustment plan

2018-2020 marked a period involving substantial litigation at the BC LRB regarding the meaning of and obligations under section 54. The focal case originated in the context of the plant closure of Tolko, Quest Wood Division. This is a complicated legal issue with complexity beyond the scope of this Manual. **Companies contemplating curtailment or closure are advised to seek legal advice regarding the implications of Section 54 of the Labour Relations Code of BC.**
Any questions regarding a prospective permanent plant closure and severance entitlement can also be directed to CONIFER.

Sub-Section b)

A permanent plant closure is defined as a complete closure of the entire operation. In the event of a permanent plant closure, ten (10) days' pay is applicable for each year of continuous service and a pro-rated portion in relation to completed months of service beyond one year.

Temporary plant shutdowns or a cessation of operations does not entitle employees to severance pay. A cessation of operations is not deemed permanent when seniority retention expires. (*See Case Reference #1)* Explanatory guidelines in sub-section (e) addresses this issue further.

The second sentence in part (b) of Section 6 is content implemented into the 2009 to 2013 collective agreement. This language addresses situations for employees that 'transfer' to another division of the Company because of a permanent plant closure of their original division. Employees in this circumstance will only be entitled to seven (7) days' pay for each year of service, as opposed to ten (10) days' pay for each year of continuous service.

Subsection c)

Section (c) outlines that severance pay for incomplete years of service will be calculated on a pro-rated portion in relation to completed months of service beyond one year. It should be noted that employees with less than one year are not entitled to severance pay under this Article. As well, casual employees are not entitled to severance pay.

Subsection d)

Relatively self explanatory, section (d) outlines that when a plant is relocated and employees involved are not required to relocate their place of residence or are not terminated by the Company, said employees shall not be entitled to severance pay in such situations.

Subsection e)

Item "e" is content that was incorporated into the 2009 to 2013 Collective Agreement that is a significant and fundamental shift from previous industry position and jurisprudence on severance pay obligations resulting from a permanent plant closure. Prior to the 2009 to 2013 collective agreement, the jurisprudence around severance pay after seniority retention expired was such that if the employer announced a permanent plant closure subsequent to employees losing their seniority retention, that no severance obligations were due to those employees whose seniority retention expired. Item (e) is a fundamental shift from previous collective agreement language and was agreed to during 2009 to 2010 collective bargaining. Part "e" now **provides for a severance pay** entitlement if an

indefinite plant closure evolves into a permanent plant closure, even if the permanent plant closure decision is made following the point in time associated with the loss of an employee's seniority retention. The basis for this revised understanding derived from the Valemount Forest Products arbitration case. Although the Valemount Forest Product and USW, Local 1-417 arbitration decision award by John L. McConchie dated January 7, 2010, occurred prior to the implementation of item "e" into the 2009 - 2013 collective agreement, it was a important catalyst for the Union to pursue this issue in collective bargaining and the arbitration was a key turning point that lead several key players in the forest industry to agree to this provision. (*See Case Reference #2)*

Case References – Article XVI, General Provisions, Section 6:

1. DOWNIE STREET SAWMILLS LTD. AND IWA LOCAL 1-417
Arbitrator: Donald R Munroe: November 28, 1988
Click here to read this case reference

CONCLUSION: The union claimed that the cessation of operations extended to the point that all employees had lost their "seniority retention" and hence they should be entitled to severance due to the closure. The Arbitrator stated, "This, the decision as to whether a 'permanent closure' has occurred may be a mix of objective and subjective considerations. It is not a decision which is automatically made upon the arrival of the date of which 'seniority retention' will be lost."

2. VALEMOUNT FOREST PRODUCTS AND USW LOCAL 1-417
Arbitrator: John L McConchie: January 7, 2010
Click here to read this case reference

BACKGROUND: When VFP announced its permanent plant closure in March 2009, it paid severance pay to the employees of the bargaining unit who remained on the payroll and to employees whose seniority rights had not expired. The Union grieved, seeking severance pay for all employees who were on the seniority list in May 2006. VFP took the position that those employees lost their seniority and recall rights and were therefore terminated at a time when the mill was not permanently closed. Therefore, they were not entitled to severance pay under Article XVIII at the time that the permanent plant closure was announced.

CONCLUSION: Arbitrator McConchie held that, on May 24, 2006, it was simply unknown whether the closure was temporary or permanent and it continued to be unknown when VFP purchased the mill shortly thereafter. The closure became known when VFP announced that in March of 2009. The employees who lost their seniority and who were terminated during the period of May 2006 to March 2009 were terminated "because of a permanent plant closure" and were therefore entitled to severance pay.

Text:

ARTICLE XVI – GENERAL PROVISIONS

Section 7: Permanent Partial Plant Closure

The Company shall notify the shop committee and the Union not less than sixty (60) days in advance of intent to institute permanent partial plant closure.

A permanent partial plant closure for a lumber manufacturing facility is defined as the permanent cessation of a Planermill, Sawmill, or Kilns.

Following the application of seniority, employees who are not able to obtain an alternative position in the operation and are therefore laid off are entitled to severance pay of ten (10) days pay (eight (8) hours per day) for each year of service with the Company. Acceptance of severance pay results in termination of employment.

If a Planermill, Sawmill or Kilns is indefinitely closed, and is subsequently permanently closed, those regular fulltime employees who were initially laid off in accordance with the preceding paragraph, and have not obtained an alternative position during the period of indefinite closure, will be entitled to severance pay as provided in the preceding paragraph based on their seniority at the time of their layoff. Acceptance of severance pay results in termination of employment.

The application of this section becomes effective upon ratification of the 2009 to 2013 collective agreement. There is no retroactivity of application of this section to events which occurred prior to ratification.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 7: Permanent Partial Plant Closures

As a result of 2009 - 2010 collective bargaining, this was a new section in the 2009 to 2013 Collective Agreement. Formerly, severance pay emanated from a single and distinct closure circumstance, a **PERMANENT** complete plant closure.

This language now provides for a severance entitlement in the event of a 'permanent partial plant closure'. It is important to note that a 'permanent partial plant closure' is specifically defined for a lumber manufacturing facility as a

"**permanent cessation of a Planermill, Sawmill, or Kilns**". Any circumstance short of meeting this definition does **NOT** trigger a severance entitlement under the application of this language.

An indefinite partial plant closure that goes on for some duration, and subsequently is categorized as a permanent partial plant closure, will still trigger a severance entitlement for eligible employees, based on seniority at the time of their layoff. Stated otherwise, the loss of seniority retention due to an extended indefinite "partial plant closure", will not negate an entitlement to severance pay if that partial closure is subsequently determined to be permanent.

Note: There is no entitlement to severance pay if an employee is able to apply their seniority and continue employment elsewhere in the operation. The application of seniority must be exercised by the employee. It is not an option.

Text:

ARTICLE XVI – GENERAL PROVISIONS

Section 8: Contractors

a) The Company will not contract out any work that is performed by employees in the Bargaining Unit at the effective date of the agreement.

b) Current practices in operations shall be agreed on with the local union in writing. Until such time as agreement is reached the above clause a) only will apply.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 8: Contractors

The purpose of this manual is to provide guidelines to aid in the administration of the language contained in the Collective Agreement, as opposed to providing a detailed history regarding how the language was derived. This section is one exception whereby some understanding of the history is instrumental to the application of the language as intended by the parties to the Collective Agreement. The development of this language involves some of the most complex and significant industrial relations events in the forest industry in the last five decades.

Over the course of the 1970's and early 1980's it became readily apparent in the process of collective bargaining in the BC forest products industry that the issue of "contracting out" was very significant to the IWA. In 1983 the structure of collective bargaining was established on an industry wide basis. During this round of bargaining, Mr. H. A. Hope was invited into the collective bargaining activity in attempt to resolve the differences in perspective over the contracting out issue. Jack Munro, then president of the IWA, wanted assurance in writing (contract language) that the forest industry would not contract out work which would result in the loss to the union of bargaining unit jobs. Response from the industry was that they were not willing to incorporate any language in the Collective Agreement which would restrict its right to contract out work, or to

have a similar commitment put in writing. However, the industry committed there would be no change in the status quo regarding contracting out practices over the term of the next prospective Collective Agreement. Collective bargaining in 1983 reached a conclusion without any contract language on an industry wide basis that restricted contracting out practices.

The issue of contracting out remained alive and in 1986 negotiations it was again tabled as a demand by the IWA. It rapidly became the focus of negotiations activity and it was apparent the union was determined to implement some change regarding contracting out practices. The notion of contracting out goes right to the very core of management rights, and the restriction of such was perceived by the union to be absolutely instrumental to their continued survival as an organization.

Failure to resolve the issue in initial 1986 collective bargaining culminated with a province wide strike by the IWA. The basis for resolving the work stoppage varied between, and within, traditional collective bargaining regions (coast, southern interior, northern interior) and subsequently threatened to undermine the historical bargaining structure of the forest industry. In some areas, the work stoppage lasted for 4 months, until early December 1986.

Resolution to the work stoppage in the CONIFER Association was relatively quick and was triggered by the agreement to the current language in Article XVI, Section 8: Contractors.

The words in the language are straight forward, however, it is not solely those words that carry the weight; it is the intention of the parties, and the activity that was engaged in pursuant to Section 8 b) that is also of material significance.

Subsequent to the completion of 1986 negotiations, a joint committee of CONIFER staff and IWA representatives visited each CONIFER operation to "audit" contracting out activities of the particular operation. Lists were compiled by the audit committee to categorize work activity that involved contractors. The lists included work, which was done exclusively by contractors, and "overlap" contract

work, defined as activity that involved both contractors and bargaining unit employees.

These lists form part of a Letter of Understanding at each operation as called for by Article XVI, section 8 b), and are integral to the management of contractor activity as negotiated and intended by the parties. CONIFER maintains the original documents concluded in this process in the event you require copies.

These Letters of Understanding exist for each CONIFER member company party to collective bargaining in 1986. They are the result of the detailed work and efforts of the Joint Audit Committee. **These Letters of Understanding should NOT be opened up, updated, re-negotiated, or restructured at the mill level.** They are relevant today and clearly outline the resolution of the complex problem in 1986 negotiations. Any issue, which arises at the mill level, which involves the Letters of Understanding achieved pursuant to Article XVI, Section 8 b), should be thoroughly reviewed with the staff of CONIFER.

The philosophy of the language contained in Section 8 is to ensure the prevention of the loss of USW employment as a result of contracting out, or similarly stated, the prevention of the loss of positions held by USW members through the process of contracting out. That is the real essence of this section. **In the opinion of CONIFER, failure of a Company to meet their obligations under this section COULD occur as follows:**

- Engage in the contracting out of activity stipulated on the list of contracting practices contained in the Letter of Understanding pursuant to 8 b) in such a fashion that it results in the loss of a bargaining unit employee's position. There would have to be a clear **CAUSE AND EFFECT RELATIONSHIP** between the contracting activity, and the elimination of a bargaining unit position. *(See Case Reference #1)* The company would have to engage the services of a contractor **(CAUSE)** in such a manner or fashion as to directly

link the contractor's activity to the lay off of bargaining unit positions **(EFFECT).**

- Shift the assignment of work from the "overlap" category in a manner that excludes or eliminates the traditional role of the bargaining unit position and establishes the causal link to the layoff of the bargaining unit position. Stated similarly; change the orchestration of the completion of work that is traditionally a combination of contractor/bargaining unit efforts and assign that activity exclusively to a contractor such that there is a coincidental layoff of a bargaining unit position.

- Engage in the contracting out of activity that is very clearly traditionally recognized as exclusively bargaining unit work activity; work that was not listed on the "audit" of contracting out practices in the Letter of Understanding pursuant to 8 b). *(See Case Reference #2)*

It was clearly established in the process of negotiations that the commitment of the parties regarding management of contracting out practices was that it was not to extend to the generation of overtime work. More specifically, obligations that stem from the "overlap" list were not to extend to the point of the provision of overtime for bargaining unit employees. *(See Case Reference #3)*

Finally, the inclusion of this language in the Collective Agreement was not to be construed as functioning as a building block for bargaining unit membership. Companies have the flexibility to continue to contract out work in a fashion consistent with the "audit" and are encouraged to do so with application of sound industrial relations common sense.

The employer should be sensitive to this issue and the company should maintain close communication with the union on operational matters, which could lead to contracting out concerns. Perceptions and concerns regarding contracting out activity can be quite volatile as it strikes at the bargaining unit's sense of job security. For additional assistance regarding administration of Article XVI, section 8, please contact the staff at CONIFER.

Case References – Article XVI, General Provisions, Section 8:

1. SLOCAN GROUP, QUESNEL DIVISION AND IWA, LOCAL 1-424
Arbitrator: Alex Brokenshire, December 21, 1999 (AR 01/00)
Click here to read this case reference

BACKGROUND: In July 1998, the Company arranged for a contractor, consistent with their past practice, to fabricate 10 kiln carts. The operations of the mill were curtailed from July 20 to August 4, 1998, due to market and quota related issues, and essentially all bargaining unit employees were laid off. The contractor delivered the kiln carts during this shutdown period. The grievor, a millwright, alleged that the circumstances were a violation of Article XVI, section 8 and the letter of understanding associated with section 8 b). He claimed lost wages for the shutdown period.

CONCLUSION: The Arbitrator stated the following: "I conclude the Company was not required to call back company tradespeople to do that work. The mill shutdown was totally market driven. To use a term that appears in several past arbitration decisions, there was no causal link between the fabrication of the kiln carts and the mill shutdown which in turn caused Mr. Florell (the grievor) and other company employees to be laid off from July 20 to August 4, 1998. I also conclude the contracting out of the kiln cart fabrication did not result in the loss of any bargaining unit employee's position. When the mill resumed operation on August 5, 1998, the bargaining unit tradesperson's positions were intact. None had been lost. The Company is not in violation of Article XVI, Section 7 of the agreement or the terms of the October 10, 1997 Letter of Understanding." *Note: In this case, the Company had restated the historical Letters of Understanding from 1986-87; hence, the date of October 10, 1997. As per guidelines above, Companies are advised to leave the historical Letters of Understanding intact as established in 1986-87.*

2. SLOCAN GROUP, PLATEAU DIVISION AND IWA LOCAL 1-424
Arbitrator: Alex Brokenshire, February 29, 1996
Click here to read this case reference

BACKGROUND: Due to weak Lumber markets in the fall of 1993, the finished lumber yard storage room became full to capacity and the company established an off-mill site storage and reloading facility in Prince George. Finished lumber was loaded by the bargaining unit loading crew onto trucks, transported to the off-site storage/reload site and shipments were reloaded onto rail cars by non-bargaining unit contractors. The grievor, a car loader, claimed the company had contravened Article XVI, Section 8: Contractors, of the Collective Agreement (Section 7 at that time).

CONCLUSION: The Arbitrator ruled on the unambiguous contract language and the Letter of Understanding re Contracting out practices. The Arbitrator states the following: "The work being done by employees in the bargaining unit on the effective date of the agreement and in particular by car loaders was the **initial** loading of rail cars at the mill with lumber produced by the company's sawmill. The loading of cars at any other location was not being done by mill car loaders, nor had those crews loaded cars away from the mill at any time in the past…When the Union and the Company signed the Letter of Understanding dated December 7, 1987, they agreed lumber transportation from the mill yard, i.e. Truck or rail, would be done by non-bargaining unit people on a contract basis. The reloading of lumber onto rail cars in Prince George in May, June, and July 1994 was a component part of lumber transportation from the mill yard. The company was not in violation of Article XVI, Section 7 a) or b) of the agreement when lumber from the mill as reloaded in Prince George in 1994."

3. SLOCAN FOREST PRODUCTS, QUESNEL DIVISION AND IWA LOCAL 1-424
Arbitrator: Ken Albertini, November 12, 1993
Click here to read this case reference

BACKGROUND: This case was deemed to be a contracting out dispute, although in the opinion of CONIFER that was not the real essence of the case. The union grieved the failure of the Employer to call in a bargaining unit employee to work on Saturday with a contractor engaged to perform a major clean up of the Employer's log yard. The Union took no issue with the actual contracting out of the major clean up. The grievor was awarded four hours pay at overtime rates. The major clean up was on the "overlap" list of the corresponding letter of understanding. There was a history of bargaining unit employees working with the log yard clean up contractor, however, that history was always on regular working days of the log yard crew. This case involved overtime.

CONCLUSION: It was the clear intention of the parties to 1986 negotiations that the overlap list was not to become a generator of overtime work opportunities for bargaining unit employees. The outcome of this arbitration award is contradictory to the above intent. CONIFER does not consider this award to carry "precedent setting" weight to be considered in the administration of contracting out obligations within the CONIFER Association.

4. RIVERSIDE FOREST PRODUCTS LTD, SODA CREEK DIVISION AND IWA LOCAL 1-425
Arbitrator: R.B. Blasina, JULY 24, 2002
Click here to read this case reference

CONCLUSION: This case involved an alleged violation of the contracting out provisions of the Collective Agreement. The company utilized a contractor to load logs for transport to another division. The logs had been stored at the Soda Creek site. The grievance was upheld. This case clearly captures the application of the contract language and contracting practices letters.

5. SLOCAN GROUP AND IWA LOCAL 1-424
Arbitrator: D.C. McPhillips, JUNE 20, 2002
Click here to read this case reference

CONCLUSION: The union claimed a violation of the contracting out language on the basis that bargaining unit log hauling had been discontinued. The grievance was dismissed on the basis that contracting out restrictions did not apply to logging.

Text:

ARTICLE XVI – GENERAL PROVISIONS

Section 9: Planerman Training

The Millwright Apprenticeship Program or the Planermill Maintenance Technician I and II Programs may be utilized by the Company to train Planermen. These programs will be accessed on a site specific basis according to the requirements of the Company.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 9: Planerman Training

Traditionally, the position of "Planerman" was categorized as a production related position. Establishment of the wage rate was determined through application of the job evaluation program. (*See Tab 27*) Training was designed at the mill level.

This training process and the status of the position of Planerman evolved significantly over the course of the mid 1970's and 1980's.

The former Industry Training and Apprenticeship Commission (ITAC) had listed the designated trades of Millwright, Planermill Technician I and Planermill Technician II. The Solid Wood Trade Development Initiative (February 2006) initiated a review of the future viability of the Planer Technician Trade categories. The former Planermill Technician "trades" are NO longer listed under the ITA system in 2020. The industry has gravitated to the use of Millwrights with an additional planer educational module for this purpose.

Text:

ARTICLE XVI – GENERAL PROVISIONS

Section 10: Tools

a) The Company will repair or replace those Tradesman tools that are damaged or broken in the performance of regular duties.

b) The Company will make available Tradesmen's tools required upon the introduction of the metric system.

c) During the introduction of equipment which requires the use of metric tools, the Company will make metric tools available at no cost, for use by Tradesmen.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 10: Tools

a) The employer is advised to maintain accurate and updated tool lists for all employees who bring in their own tools. The commitment under this section does not apply to lost tools. It also does not apply to the misuse or abuse of tools.

b)/c) Metric tools made available to employees are the property of the Company.

Reference should also be made to Article XXV – Tool Insurance.

Text:

ARTICLE XVI – GENERAL PROVISIONS

Section 11: First Aid Training

Employees of the Company who, by mutual agreement, train or re-train for Industrial First Aid Certificates, will be compensated in the following manner:

a) The Company will pay the cost of the course tuition and materials required to those employees who pass the course.

b) The Company will pay lost time wages to designated First Aid Attendants.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 11:

The company is obligated to pay lost time wages to designated first aid attendants who are required to miss time from their work schedule to attend first aid courses. The fact some course activity may be on a weekend does not trigger an overtime obligation on the company.

Companies are encouraged to contact the staff at CONIFER should any questions regarding "pay for lost time wages" arise.

Text:

ARTICLE XVI – GENERAL PROVISIONS

Section 12: Construction Contracting

a) It is agreed that Plant Tradesmen who are assigned by the Company to carry out work directly related to 'new' construction with tradesmen employed by an outside contractor, plant tradesmen will be paid the 'outside' contractor(s) rate(s).

b) For the purpose of this agreement 'new' construction shall be defined as meaning:

i. The construction of major new buildings and major additions to existing buildings.

ii. The addition of new or used major production machinery and related equipment not previously in existence.

c) i. 'Tradesmen' shall mean journeymen and apprentices in the following trades:

Machinist	Millwright
Steamfitter/Pipefitter	Welder
Electrician	Carpenter

ii. 'Contractor's Rate' shall only mean the hourly wage paid by that contractor and not any other payment or working conditions.

Guidelines:
ARTICLE XVI – GENERAL PROVISIONS

Section 12: Construction Contracting

The above clause became effective July 1st, 1981. The following Guidelines must be complied with in order to achieve uniform application of the clause.

In a), "Plant Tradesmen" affected are clearly defined as those tradesmen identified in paragraph c) i. of this Article.

The intent of this clause is to pay Plant Tradesmen the same rate as a Contractor when the Plant Tradesman is working with a Contractor in the same trade. i.e. Plant Electrician will receive the same rate as the Contractor Electrician he is working with.

Work 'directly related to new construction' does not include preparatory work conducted prior to the outside Contractor coming on site, or work performed after the Contractor has completed his part of the project.

Plant Tradesmen will be considered to be carrying out work with tradesmen employed by an outside Contractor when:

a) They are working simultaneously
b) On the same project
c) Doing the same work (i.e.: same trade); and
d) The job comes within the definition of 'new' construction.

The words "new construction", "major new buildings", "major additions" and "major production machinery" were used to exclude any small project and maintenance repair project.

i.e.
a) Although the enclosing of a planer to reduce the noise level may be considered 'new' construction, it is not 'major'.
b) Although re-tubing, or the re-building of a boiler may be a 'major' project, it is not 'new'.

Subsection c) i, defines those recognized Tradesmen and Apprentices in those trades to whom this Article applies. The trades categories of Heavy-Duty Mechanic and Automotive Mechanics, as referred to in Supplement No. 1, are not subject to consideration under this Article.

Subsection c) ii, defines 'Contractor's Rate' as being the straight-time hourly rate paid by the Contractor to those Tradesmen defined in c) i. When hiring outside Contractors, a Company should immediately obtain a list of rates currently being paid by that Contractor to those Tradesmen and Apprentices affected.

The words in the second and last lines of c) ii, "and not any other payment or working condition" are very significant as they establish that it is not necessary for companies to pay any additional premiums and benefits that may be in excess of the agreement, but provided for in the Contractor's Labour agreement, such as travel time, shift differential, hours of work, et cetera.

Text:

Section 13: Disciplinary Action:

For discipline investigative meetings, or where a verbal warning, written warning, suspension or termination is being issued, the employee shall have the option of requesting Union representation.

Discipline will remain on the employees' file for 24 months and will not be used after that period provided no other discipline has occurred during that time. In disciplinary cases involving harassment the time limits may be extended. The employee must be informed of this decision at the time of the discipline.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 13: Disciplinary Action:

The intent of the Disciplinary Action language is to give an employee the option of requesting union representation by asking that a job steward or member of the plant committee be present during an investigation meeting that may lead to disciplinary action, or formal disciplinary meetings. Prior to the 2018 – 2023 collective agreement, this option was only applicable to meetings whereby conveyance of formal disciplinary decisions was to be made. The concept was broadened to include "discipline investigative meetings" effective the 18-23 CA.

If the employee makes such a request, the employer is obligated to make all reasonable efforts to comply with this request. If union representation is not available or does not attend the investigation or disciplinary meeting, this does not negate the discipline. This content in the Collective Agreement is not applicable to non-disciplinary interactions with employees, such as coaching or performance feedback discussions.

It is important to note that this language does not eliminate management's right to send employees off site when necessary for improper behavior, pending further investigation and in anticipation of a decision involving discipline.

The following clarification letter on the next page was provided to IWA Local 1-424 from CONIFER outlining the intent of the 'Disciplinary Action' language. The February 13, 2019 MOA between CONIFER and the USW affirmed the ongoing applicability of the 2003 clarification letter:

Conifer

Council on Northern Interior
Forest Employment Relations

November 4, 2003

MR. FRANK EVERITT
PRESIDENT
IWA CANADA, LOCAL 1-424
100 – 1777 Third Avenue
Prince George, BC
V2L 3G7

Dear Mr. Everitt;

The purpose of this letter is to provide clarification with respect to Item 11 (Disciplinary Action) of the Memorandum of Agreement dated October 27, 2003, between the specified CONIFER member Companies and IWA Canada, Local 1-424.

It is understood that the application of "the employee shall have the option of requesting Union representation" means that if an employee makes such a request all reasonable efforts will be made by the Company to ensure such representation.

It is also understood that non-attendance of a union official will not negate the discipline.

Sincerely,

Michael Bryce,
Executive Director

MB/jd

Suite 902 - 299 Victoria Street, Prince George, BC V2L 5B8 Phone (250) 564-5166 Fax (250) 563-3124 email admin@conifer.bc.ca

If an employee has no formal discipline over a 24-month period, then the previous discipline record will no longer be relevant for subsequent disciplinary action. *(See case reference #1)*
Discipline for harassment related issues may warrant an extension of the 24-month time limit. The employee must be informed of the extension of applicability at the time of the discipline for the harassment related behavior. It is advised to maintain the employee disciplinary records, even though they may not be used for future discipline. They may become relevant for other purposes at some point (i.e. proving compliance with Worksafe BC regulations).

Case Reference – Article XVI, General Provisions, Section 13: Disciplinary Action.

1. CONIFEX, FT. ST. JAMES DIVISION AND USW, LOCAL 1-2017
Arbitrator: Robert Blasina, January 26, 2018.
Click here to read this case reference

BACKGROUND: The grievor, an employee with six years' service with the Company, was terminated for repeated culpable attendance incidents.

At paragraph 54, the arbitrator writes:
"In the two years preceding her discharge, the Grievor received a verbal warning, a written warning, two one-day suspensions, a three-day suspension, and two five-day suspensions. The "sunset clause" agreed to under the collective agreement stipulates that "Discipline will remain on the employee's file for 24 months and will not be used after that period provided no other discipline has occurred during that time." A nine-month period of good attendance does not truncate the "sunset clause", A "sunset clause" should provide an incentive to an employee to maintain good behavior for the full period stipulated. Had the Grievor done so, she would have had attained seven and one-half years seniority, with a discipline free work record. She did not do it.

The case authorities cited by the employer in this case (that the Arbitrator seems to have followed) essentially say that where the parties agree to a

sunset clause, that duration of time becomes the period the parties have contractually agreed to be relevant for consideration for the purpose of progressive discipline. Stated otherwise, an employee is in a worse position with a 9-month discipline free period working under an agreement with a sunset clause than under an agreement without one.

Text:

Section 14: Ongoing Problem Resolution:

The Parties agree to a process of ongoing timely resolution of matters as they arise in operations during the term of the Agreement. Either Party may request the involvement of CONIFER and USW Canada for the purpose of assistance in the resolution of such matters.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 14: Ongoing Problem Resolution:

Any questions on the applicability of this language can be directed to the staff at CONIFER.

Text:

Section 15: Chargehand

A designated Chargehand acting as a representative of the Company is a work coordinator and can exercise job/work direction.
Chargehands do not have the right to hire, discharge or discipline employees.
The Company shall have the right to select employees for the position. The Plant Committee and Local Union will be advised by the Company of Chargehand appointments.
The only premium designated Chargehands shall receive is seventy-five cents (75¢) per hour in addition to their regular job rate.
Any premiums being paid, in excess of this agreement, will be withdrawn effective September 1, 1997.
None of the foregoing is intended to restrict any of the usual activities of a Chargehand as designated by the Company.

Training received by a Chargehand, other than training received in accordance with divisional agreements, will not be recognized for future job postings or in the application of seniority at a reduction of forces.

It is understood that Chargehands do not have priority to overtime over and above divisional overtime agreements.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 15: Chargehand

The content is straightforward; with respect to the second to last paragraph, training received while in the capacity of a Chargehand cannot be applied to future job postings or a reduction of forces circumstance. In addition, the last sentence affirms that a chargehand does not have priority status for overtime beyond that which is provided for by divisional overtime agreements.

Text:

Section 16: Humanity Fund

a) The Company agrees to deduct on a bi-weekly basis the amount of 1¢ per hour from the wages of all employees in the bargaining unit for all hours worked.

b) Prior to the 15th day of the month following said deduction, the Company shall pay the amounts to the "Humanity Fund" and will forward such payment to United Steelworkers National Office, 234 Eglinton Avenue East, Toronto, Ontario, M4P 1K7. The Company will advise in writing both the Humanity Fund at aforementioned address and the Local Union that such payment has been made, the amount of such payment and the names of all employees in the bargaining unit on whose behalf such payment has been made.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 16: Humanity Fund

Effective March 1, 2014, $0.01 must be deducted from all employees and submitted to the Humanity Fund in accordance with the procedures outlined in item b).

Text:

Section 17: Utility/Relief

Without restricting the employer's rights under any other provision of the Collective Agreement, or under any local agreement, when the employer requires a permanent utility/relief operator position it will be posted in accordance with local job posting supplements.

Guidelines:

ARTICLE XVI – GENERAL PROVISIONS

Section 17: Utility/Relief

Self-explanatory; in the event a permanent "utility/relief" position is required, it must be posted in accordance with the procedural aspects of the operational Job Posting LOU.