In the Matter of the Arbitration Between:		
AMALGAMATED TRANSIT UNION, LOCAL 308		
and		**Class Action Grievance No. 1111-23 (Subcontracting)**
CHICAGO TRANSIT AUTHORITY.		

BEFORE ARBITRATOR JEANNE M. VONHOF

INTRODUCTION

The undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. The hearing was held over seventeen days.

Ms. Anita Tanay, of Jacobs, Burns, Orlove & Hernadez at the time of this hearing, represented Amalgamated Transit Union, Local 308, hereafter referred to as the Union or 308. The following witnesses testified on behalf of the Union:

Nieves Almarez	Car Repairer
Rafael Berovides	Rail Controls Inspector
Paul Bounsinh	Car Repairer
Brian Johnson	Rail Terminal Instructor II
Gary Johnson	Rail Technician
Joe Pugh	Rail Leader
Edward Regester	Car Repairer

Mr. David Novak, Jackson Lewis P.C., represented Chicago Transit Authority, hereafter referred to as the Authority or CTA. The following witnesses testified on behalf of the CTA:

Luis Criollo	Quality Improvement Coordinator
John Goralczyk	Rail Maintenance Manager
Walter Keevil	Asst./Chief Rail Equipment Engineer
Robert Kielba	Chief Rail Equipment Engineer
Jerry Kinney	Bombardier Field Service Technician
William Lone	Budd Company Site Manager
Gary Massey	Bombardier Product Introduction Manager

Ronald Piantkowski	Vapor/WabCo Sales Service Manager
Stephen Roberts	CTA; Morrison-Knudsen Field Service Manager

The parties submitted post-hearing briefs in this case, and additional briefing was received in August 2018.

ISSUE:

The parties were unable to agree upon the precise statement of the issue at hearing. However, the Authority in its closing brief did not object to the Union's formulation of the parties' dispute as set forth below. Accordingly, the Arbitrator concludes that the issue is:

"Did the CTA violate the parties collective bargaining agreement, including but not limited to Section 2.7 of the Agreement, by subcontracting and/or assigning others to inspection, maintenance, and repair work on the Series 5000 rail cars? If so, what shall the remedy be?"

RELEVANT CONTRACT LANGUAGE

Article 2 - Union Recognition

2.6 Non-Interference The Authority shall be at liberty at all times during the existence of this Agreement, and subject to provisions hereof, to operate its property according to its best judgment and the orders of competent authority…

2.7 Subcontracting The Authority shall not subcontract or assign to others work which is normally and regularly performed by employees within the collective bargaining unit of Local 241 or of Local 308, except in cases of emergency when the work or service required cannot be performed by the available complement of unit members. The Authority reserves the right to continue its present practice of contracting out certain work of the nature and type contracted out in the past.

Article 14 – Other Working Conditions, Rail System, Local 308

14.1 General

…

(d) Past Practice All present working conditions shall remain in effect during the term of this Agreement, unless a desired change is agreed to by the parties.

Article 17 – Arbitration

17.1 Arbitration

...

17.3 Decision The decision of a majority of the arbitration committee shall be final, binding, and conclusive upon the Union and the Authority. The authority of the arbitrators shall be limited to the construction and application of the specific terms of this Agreement and or to the matters referred to them for arbitration. They shall have no authority or jurisdiction directly or indirectly to add to, subtract from or amend any of the specific terms of the Agreement or to impose liability not specifically expressed herein.

ATTACHMENT C-2

Rail Excel – Local 308

...

1.01 ...

The Car Repairer Qualification Program (Excel) is a complete and comprehensive rapid transit employee skills/knowledge enhancement program that makes pay commensurate with ability and work assignment. The program utilizes CTA Training Groups and other training and education centers to provide to new and existing employees the knowledge and skills necessary to perform their jobs in the most safe and cost efficient manner. It is the main objective of the program to foster a work environment which will ensure that the work is being conducted by a workforce that is well-trained and motivated.

...The program also establishes an incentive benefit that will entice knowledgeable employees to perform more responsible and skilled work.

Job Descriptions Submitted by the Union

Position: Car Repairer 'A'

Position Summary
Inspects, maintains and repairs rail vehicles

Primary Responsibilities

1. Inspects and repairs various components of rail vehicles, such as parking and emergency brakes; inverter, converter and motor generator, electrical systems, acceleration and braking control system, auxiliary system, ventilation heating and air conditioning.
2. Tests and determines cause of malfunction of rail vehicle components, using knowledge, instruments and gauges.
3. Removes and replaces various components of rail vehicles.
4. Adjusts and repairs various components of rail vehicles...

Position: Rail Carbody Inspector

Position Summary

Performs the Annual and Periodic Inspection of all components accessed through the Carbody of CTA Rail Vehicles. Inspects, adjusts, gauges, replaces and/or repairs all components found on related systems such as Automatic Announcement Systems, Passenger Door Systems, Destination Sign Systems and other Carbody components. Uses shop testing equipment to diagnose systems and components for proper operation. Performs repairs and/or change-outs of defective components…

Position: Rail Technician

Position Summary

Performs the troubleshooting repair of all components and subcomponents found on CTA Rail Vehicles. Inspects, adjusts, gauges and repairs all components and subcomponents found on sub-systems. Uses shop testing equipment to change-out, adjust and gauge rail car components and diagnoses repeaters and complex defects on rail cars.

Primary Responsibilities

1. Performs basic and advanced troubleshooting of rail cars and related systems.
2. Following approved shop procedures removes defective sub-components per related maintenance bulletins.
3. Installs new or rebuilt sub-components per related maintenance bulletins.
4. Gauges, adjusts and tests components to determine proper operation.
5. Performs other Car Repairer jobs as directed by maintenance manager on all jobs qualified to perform when necessary.
6. Performs related duties as assigned.

Position: Rail Truck Shop Repairer

Position Summary

Performs the replacement of major components on CTA Rail Vehicles. Uses shop jacks, hoist systems and powered industrial trucks. Replaces, adjusts, tests and gauges rail car components per CTA bulletins and standards. …

Position: Rail Leader

Position Summary

Provides supervisory support to maintenance terminals on a temporary basis in the absence of a Maintenance Manager. Organizes maintenance workload in Rail Maintenance Terminals and assigns Car Repairers & Motor Cleaners to work assignments based upon worker qualifications. Communicates with transportation and other maintenance personnel at other work sites to organize maintenance activities.

Primary Responsibilities

1. Organizes work at maintenance terminals to schedule the repair and/or inspection of rail vehicle cars.
2. Checks the yard sheet and identifies rail cars for maintenance/inspections.

...

5. Counsels and/or trains repairers on all sub-components repair and replacement as per related maintenance bulletins and Rail Maintenance Training documents...

...

9. Performs basic troubleshooting of rail cars as needed when necessary.
10. Removes defective sub-components per related maintenance bulletins, following approved shop procedures.
11. Performs other Car Repairer jobs as needed.

Sections of the General Specifications for Series 5000 Rail Cars
Contract with Car Manufacturer Bombardier
Submitted by the Authority

Section 3 – General Obligations of the Contractor (Cont'd)

...

J. As part of the data assembled for the design of the Cars, the Contractor shall make its own study of the Authority's current practices in the operation and maintenance of its rail cars, related safety practices, and the environmental conditions (including track, shops and right-of-way) in the Authority's area of operations. The Contractor shall also study the average skill levels of Authority's present operating and maintenance personnel and the Authority's car repairman training.

Section 14 – Local Representation

A. The Contractor shall have competent technical personnel available to assist in any problem which the Authority might have on the Cars at no additional cost to the Authority.

For the period of time between the delivery of the first prototype Cars and the acceptance of the last Car, the Contractor shall have on Chicago Transit Authority's property, a site manager and field representative who will provide technical assistance at each terminal location specified by the Authority.

The contractor's representatives will:

1. Assist in post-shipment check-out of Cars
2. Provide technical support to CTA maintenance personnel
3. Provide on-site assistance during Car revenue operation
4. Provide warranty support to the Authority

...

B. After acceptance of the last Car, competent technical personnel shall also be made available by the Contractor during the guarantee period for items covered by the Contractor's guarantee. Such personnel shall be available to perform corrective and warranty work within twenty-four (24) hours after the Authority notifies the Contractor of a problem...

C. These technical personnel shall continuously work on the problem and remain on the Authority's property until all problems are solved to the satisfaction of the Engineer.
...

Section 16 – Guarantees (Cont'd)

C. Contractor's warranty and guarantee is subject to the condition that the Authority has reasonably complied with the requirements of any maintenance manual furnished by the Contractor to the Engineer...

D. During the respective periods of the guarantee, the Engineer will promptly notify the Contractor in writing of each claim and the Contractor shall promptly remove the items that are the subject of a claim and replace same with new parts, or if agreed to by the Engineer, remove, repair and replace (or repair in place) all parts which fail...including parts damaged as a result of defect in, or malfunction of other Car parts, all without any expense to the Authority.

Section 20 – Authority Labor, Materials and Facilities

A. The Authority shall be under no obligation to provide its own labor or facilities in the performance of requirements which are obligations of the Contractor under the terms of the Contract Documents...

Notwithstanding the provisions of this Section 20.A of the General Specifications, the Contractor and Authority, may at the Authority's option, arrange for the performance of necessary modification, retrofit, or warranty work by the Authority at the expense of the Contractor. The Authority specifically reserves the right of first refusal on any modification, retrofit, or warranty work required on Cars built under this contract.

BACKGROUND AND SUMMARY OF TESTIMONY AND EVIDENCE:

The Chicago Transit Authority (CTA) provides mass transit service to the Chicago area through its "L" (elevated) rapid transit trains and city buses. CTA operates a fleet of around 1200 to 1300 rail cars to provide "L" service. The Authority employs approximately 245 employees generally referred to as Car Repairers, who are represented by ATU Local 308. These individuals perform inspections, maintenance, and repairs on rail cars. In addition to Car Repairers A and B, (also referred to "GBs"), the classification includes specialized positions, including HVAC Repairers, Rail Truck Shop Repairers, Rail Carbody Inspectors, Rail Controls Inspectors, Rail Technicians, Rail Leaders (including K580s), and Rail Terminal Instructors.

Car Repairers perform their work at the Authority's train maintenance facilities, terminal shops and yards located at Kimball, Midway, Howard, 98th Street, 54th and Cermak, Rosemont, 63rd and Ashland, Des Plaines, and Linden. There is also a "heavy rail maintenance shop" located in Skokie. The Skokie facility is used for major repairs on rail cars that have sustained damage in a collision and also for operations undertaken to extend the life of rail cars. Prototypes and new or rehabbed rail cars are also generally received at the Skokie facility.

Contract Language Proposed Changes

ATU Locals 241 and 308 and the Authority engage in joint bargaining. Local 241 represents employees employed by the Authority in its bus operations, as well as some of the skilled trades at the Skokie facility. The collective bargaining agreement in effect at the time this dispute arose was in effect from January 1, 2007 through December 31, 2011. (Jt. Ex. 1) A successor Agreement was subsequently negotiated and ratified in December 2012.

The primary issue in dispute between the parties in this grievance involves the application of the "Subcontracting" clause, Section 2.7 of the Agreement, as it relates to the work of Car Repairers, after the introduction of the Series 5000 rail cars. This provision was first incorporated into the parties' collective bargaining agreement in 1985 pursuant to an interest arbitration award, and remained as part of the Agreement as the parties negotiated successor CBAs. In the negotiations leading up to the 2004 Agreement, the Authority sought to delete the subcontracting clause in its entirety and to add a provision to Section 2.6 (Non-Interference) that specifically permitted CTA to subcontract work. During the same contract negotiations, ATU Local 241 presented a proposal to add a provision that "all warranty work must be performed by bus repairmen." Both proposals were ultimately withdrawn with no change to the Agreement.

During contract negotiations that occurred while the current dispute was ongoing, the Authority submitted a proposal dated January 20, 2012, which sought to amend the Non-Interference section of the Agreement (2.6) to add a management rights clause giving CTA the explicit right to subcontract, and to modify Section 2.7 as follows:

> "This Agreement shall not preclude the Authority from providing public services in the most cost efficient way by using a competitive bidding process in which private service providers, employees and labor organizations which are the exclusive representatives of the Authority's employees compete to provide public services in the manner set forth by the Authority, provided that the CTA shall not use a competitive bidding process to provide the core operation services performed by bus operators, rapid transit operators, switchmen and towermen."

This proposal was withdrawn with no change to Sections 2.6 or 2.7 of the Agreement.

Introduction of the Series 5000 Rail Cars

In 2005, the Authority issued a Request for Proposals (RFP) for the manufacture of new rail cars, to be equipped with AC propulsion. Older CTA rail cars operated with DC propulsion. The new rail cars would also incorporate ethernet technology for the first time, as well as a new hydraulic suspension system to lift and lower cars, in compliance with the Americans with Disabilities Act (ADA).

Bombardier Transportation was the successful bidder, and on May 10, 2006, the CTA Board authorized the expenditure of $933,991,657 for the manufacture and delivery of up to 706 rapid transit rail cars. The Authority formally accepted Bombardier's offer on July 14, 2006. The

first prototype rail cars were delivered to the Authority at the Skokie shop in late 2009 and underwent a year or more of testing at Skokie and on different "L" lines. This grievance does not claim any work performed on the prototype cars.

As the testing of the prototype cars wound down, discussions were held among representatives of upper-level CTA management regarding who would perform the inspection, maintenance, and repair work on the new 5000 Series cars. Mr. Robert Kielba, current Chief Rail Equipment Engineer, testified that those involved in these discussions included Mr. Dave Kowalski, Chief Operating Officer; Mr. Phil Lamont, Director of Rail Maintenance; Mr. Jim Lehmann (who worked as a manager under Lamont); Mr. Chris Hegarty (title unknown); and Mr. Walter Keevil, then Chief Rail Equipment Engineer. Kielba testified that the discussion probably involved the President of CTA, who was either Mr. Richard Rodriguez or Mr. Forrest Claypool at the time. None of these individuals testified at the hearing with the exception of Keevil, who testified that he was not involved in these discussions directly but that he was aware of them.

Kielba indicated that he was kept informed about these discussions as they progressed. According to Kielba, at these meetings CTA and Bombardier discussed permanently subcontracting all of the inspection, maintenance, and repair work on the Series 5000 rail cars to Bombardier. CTA management considered converting the 54th St. garage for Bombardier employees to perform this work, as well as establishing a separate Bombardier facility on CTA property at 63rd St.

Evidence was introduced demonstrating that high-level discussions took place between the Authority and Bombardier over this matter. Mr. Gary Massey, Product Introduction Manager for Bombardier, testified that he did not participate directly in these discussions but was kept abreast of them by Mr. Cummings, Bombardier's Product Introduction Manager for the U.S. Massey testified that the discussions began as early as 2009, he believed, and reached an advanced stage, although he did not think that plans had actually been drawn up for a new Bombardier facility on CTA property. Massey testified that as part of these discussions he and Cummings discussed plans to hire a workforce of about 200 to 225 Bombardier employees, in order for Bombardier to assume all maintenance and repair responsibilities at the Authority for the 5000 Series cars. The record is not entirely clear about how long these discussions continued, because those who participated in them did not testify at arbitration. However, there is sufficient evidence in the record to conclude

that they continued into late 2011 or early 2012, about six to eight months after the first Bombardier trains were delivered.

The first production rail car was accepted at the Authority on June 16, 2011. Thereafter, the rail cars were to be delivered on a schedule of ten to fourteen rail cars every thirty calendar days. After acceptance, the earliest production rail cars were directed to the 54th Street (Pink Line) maintenance facility.

The contract between Bombardier and the CTA for the manufacture and delivery of the rail cars required Bombardier to train the Authority's workforce on the new cars. The specifications required providing familiarization training to CTA personnel, including Car Repairers, concurrent with the delivery of the first prototype cars. While some instructors, engineers, and management personnel received familiarization training during prototype testing, only a few of the Car Repairers received this training at that time.

In addition, training was to include a "Train the Trainer" component, where fifteen instructors would be trained and would, in turn, train the CTA Car Repairers. This training was to have occurred at the time the first production rail cars were delivered, beginning in June 2011. The contract contemplated that there would also be more detailed classification training conducted later.

Keevil testified that Bombardier had a schedule to produce training materials for the Authority and its workforce under its contract with CTA. According to his testimony, Bombardier did not meet that schedule because the training materials they produced were of very poor quality. He said that there were many meetings between Bombardier and the CTA to improve the quality of the materials, but those efforts were unsuccessful prior to his retirement in October 2011.

The Union entered into the record a document demonstrating that Kielba signed an invoice from Bombardier entitled "Delivery of all Maintenance, Operations and Parts Manuals" on November 14, 2011 in the amount of $11,132,742.49. The progress report which is a part of that document states that Bombardier was submitting 500 final hard copies of the Operator's Manuals/Troubleshooting Guides, with another 500 copies to be delivered as soon as possible, and certainly by December 2012. Bombardier also delivered DVD/CD's of all Maintenance Manuals, Parts Manuals and the Operator Manual/Troubleshooting Guide, according to this document.[1]

[1] This grievance included a claim that the Authority had improperly contracted out bargaining unit training work in connection with the introduction of the Series 5000 cars. That portion of the grievance was bifurcated and heard in a

According to Kielba, at the time of the transfer of the first new rail cars to the 54th Street facility, the decision on whether to permanently subcontract the maintenance and repair work of the Series 5000 cars to Bombardier was still under consideration. While a final decision had not been made yet, a decision was made that troubleshooting and repairs on the cars were going to be performed at that time by Bombardier and not CTA employees. Bombardier employees began performing the troubleshooting and repair work of the trains, including yellow parks (a car with a brake problem); white lights (indicating a problem with the inverter system); blue lights (indicating a fault in the car's propulsion or auxiliary power system); and "BO" (bad order) trains which need to be repaired. Kielba acknowledged that there would not have been much point in training the Car Repairers on the 5000 Series cars when they were first introduced because the plan at that time was that Local 308 members would not be working on these cars. He could not provide specific details about who made these staffing decisions; when they were made; or how they were communicated to managers at the Authority.

In late 2011 or early 2012, inspection work was removed from the 54th Street facility and transferred to the Harlem location, a decision made by Lehmann. At that point, according to Kielba, someone made the decision that Local 308 employees and not Bombardier personnel, would do the inspections on the 5000 series, as part of the CTA Maintenance Department's regular responsibility to conduct routine maintenance. Local 308 Car Repairers were to perform routine maintenance tasks in conjunction with these inspections, including replacing consumables, such as batteries, brake pads, filters and vandal shields. They were told to refer repairs to Bombardier, unless it was a consumable or damaged item, according to Kielba.

Until the removal of the inspection work from the 54th St. location, Bombardier employees had performed what the CTA states was a small number of inspections on the Series 5000 rail cars. Kielba testified that he believed the vast majority of inspections of the Series 5000 cars have been performed by CTA employees.

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separate arbitration hearing. See, *Chicago Transit Authority v. Amalgamated Transit Union Local 308*, Grvs. 513-35/613-16, 1111-23 (Crystal, Arb. 2018). It is not clear that Arbitrator Crystal was presented with the same evidence as this Arbitrator regarding training issues.

Work Performed by Bombardier Personnel As Cars Were Introduced

Mr. Paul Bounsinh, a Car Repairer assigned to 54th Street shop in the fall of 2011, testified that there were Series 5000 rail cars being worked on daily at that time by Bombardier personnel. This was a few months after the first 5000 Series cars had been introduced. He testified that there were approximately eight to ten Bombardier employees using their own tools and working on the new rail cars on any track that was available.

Bounsinh recounted a conversation he said that he had with a CTA senior manager Jim Lehmann about assignments of work on the new rail cars. He asked Lehmann when CTA Car Repairers would be trained so they could work on the Series 5000s. According to Bounsinh, Lehmann responded that that CTA employees would not be working on the new rail cars, and he had no idea when they were going to get training on them. The Union supplied records at arbitration reflecting that none of the Car Repairers working at 54th Street in fall of 2011 had received familiarization training on the Series 5000 rail cars.

Mr. Nieves Almarez, a Car Repairer who also worked at 54th Street in 2011, testified that the 5000 Series rail cars just started showing up there without advance notice, and Bombardier employees also began showing up. While the number varied, he recalled about ten Bombardier employees in the fall of 2011. The Bombardier employees had their own tools, he said, and he observed them doing inspections, troubleshooting, repairing, fixing blue lights, and removing and replacing parts, including modified parts, on the 5000 Series cars. Almarez said that the Bombardier employees were working both inside the shop and out in the yard, and that Local 308 employees were not working on the 5000 Series cars. Almarez testified that he did receive familiarization training on the Series 5000 cars in March 2012 and but the only work that he recalled performing on them was replacing vandal shields, a film that covers the windows to protect them from graffiti and etching.

Mr. Joseph Pugh is a Leader Repairman with more than twenty-five years' experience, and has worked as a working foreman, supervising other Car Repairers. When the Series 5000 rail cars arrived, he was working in a specialized position, known as K580, where he rescued stuck rail cars that broke down on the tracks, moving the trains to platforms and unloading passengers. He testified that he was informed by his manager, Mr. Don Miller, that if a Series 5000 train broke down, Pugh was to travel to 54th Street and pick up a Bombardier representative, or have one of

them meet him at the location. Pugh would climb the el structure and do whatever he could to get the train moving and get it to the platform. The Bombardier person would be at the platform with his laptop and troubleshoot the train from there.

Pugh testified that he would go to the 54th Street facility daily during this period to pick up Bombardier representatives for rescues, and also to deliver parts. He was familiar with the shop, having worked there previously. He testified that after the Series 5000 rail cars began to arrive at the 54th St. shop, "It was all Bombardier. All the CTA guys weren't allowed to touch trains." He said that before the Series 5000 rail cars arrived, Local 308 Car Repairers worked on all four tracks (A, B, C, and D). After the Series 5000 rail cars were delivered, he observed that Bombardier employees were working on Track B, doing inspections and troubleshooting the Series 5000 rail cars. They were also doing "heavy" work on the 5000s on track D, a track reserved for truck shop work. He testified there were "at least 15, maybe 20" Bombardier employees working at the 54th Street location. He testified that the Local 308 Car Repairers, in contrast, were restricted to working only on Track A, inspecting older 2600 Series rail cars.

Pugh testified that he was also in charge of working out of the Harlem facility a few hours a day after rush hour, making work assignments to Car Repairers. He testified that there were Series 5000 cars at Harlem at the time. However, Pugh says that he was told by his manager Mr. Don Miller that Pugh could not assign 308 Car Repairers to troubleshoot the 5000 Series cars, instructing him, "Can't use 308. They can't touch them," and saying that only Bombardier employees were permitted to perform that work. Pugh testified that one of the Bombardier employees had no experience in troubleshooting, but he was forced to assign him that work. Pugh also testified that Local 308 members were also told "Don't touch them trains," by Mr. Dave Watkins and Ms. Karen Muldrow, other Managers at the 54th St. facility. [2]

Pugh testified further that in October or November 2011, Miller told him that Bombardier was taking over all maintenance work at CTA effective January 1, 2012 and that CTA was going to get rid of all the Car Repairers. According to Pugh, Miller said that the Car Repairers would be fired but given an opportunity to apply to work for Bombardier.

Pugh testified that he knew Mr. George Cavelli, who was Vice President of Maintenance, because Pugh had worked with him in the past when Cavelli was a Car Repairer and Leader. Pugh

[2] Pugh testified that later in 2013 the Bombardier employees left 54th St. and Local 308 Car Repairers began working on the Series 5000 cars, including troubleshooting. Many of the cars remained under warranty at that time.

said that he called Cavelli and asked him if what Miller had told him was true. Pugh said that Cavelli confirmed to him that on January 1, 2012 CTA would be terminating the Car Repairers and Bombardier was taking over their work. Pugh testified that Cavelli told him that if Car Repairers wished to remain working on CTA trains, they would have to re-apply to Bombardier and be evaluated, and that they were not going to take all the Car Repairers, "just the good ones." Cavelli also said that management had concluded that about 50% of the Car Repairers would go to work for Bombardier, because they would need the work, according to Pugh. Pugh responded that he was going to the Union to stop this change. According to Pugh, Cavelli replied that he was not worried about the Union, that the "Union ain't stopping shit." Neither Miller nor Cavelli testified at the arbitration hearing.

On November 29, 2011, the Union filed its grievance in this matter. The grievance alleges that the Authority was having an outside contractor perform the work of the Car Repairers on the new Series 5000 rail cars, in violation of Section 2.7 of the Agreement. The grievance also alleged that the Authority was refusing to train 308 Car Repairers on the new Series 5000 rail cars. As referenced above, the training component was later severed from this proceeding by agreement of the parties and a separate arbitration award was issued over that matter.

On December 16, 2011, the Authority issued a press release stating that all of the Series 5000 rail cars were being removed from service. According to several witnesses, a serious flaw in a steel component (journal bearings housing) supplied by a Chinese manufacturer was discovered by CTA personnel. The flaw posed a substantial risk of derailment. The Series 5000 rail cars remained out of service until May 12, 2012 while Bombardier personnel replaced the trucks on all the affected rail cars. The Series 5000 rail cars yet to be delivered were modified to resolve the defect at Bombardier's factory in New York.

Pugh testified that after the Series 5000 rail cars were pulled out of service, he had another conversation with Cavelli, and that Cavelli told him that the plan to subcontract the Car Repairers' work to Bombardier had been scrapped. Massey confirmed in his testimony that the decision to assign all of the work on the Series 5000 cars to Bombardier was abandoned at around the time of the journal bearing housings issue, but he was not told why the decision was made.

Kielba testified that at around this same period of time, he was informed there would be no separate Bombardier facility. He was unsure who made the decision or why, but he believed that it was because it was not a cost-effective proposition for the Authority or for Bombardier. He was

not aware that any consideration had been given to the Authority's contractual obligations with the Union in considering these decisions or the assignment of this work.

Staffing at the Authority's Facilities with Bombardier Personnel and its Subcontractors/Vendors[3]

The Union does not dispute that car manufacturers and vendors typically have service representatives present on the property, when there are new or rehabbed rail cars delivered to the Authority, including the 5000 Series. In addition to the Bombardier staff, there were a number of vendors on the Authority's property for the 5000 Series, including Power Propulsion and Controls (PPC), a Division of Bombardier, builder of the propulsion system; WabTec, a subcontractor for the couplers, brakes, and the master controllers; and Vapor, subcontractor for the train doors. These three subcontractors all had some presence at CTA following the introduction of the Series 5000 rail cars. Other vendors who had a more sporadic presence on the property included Liebeherr, MerAk, Verint, Axion, and PHW.

As more Series 5000 rail cars were produced and released for revenue service from the Skokie shop, they were directed to the Harlem shop, then to Howard, and to the 98th Street shop. Along with the transition of Series 5000 rail cars to other "L" lines, Bombardier expanded its presence at those shops. Bombardier personnel continued to work on the Series 5000 rail cars in the same manner as they had originally done at 54th Street, with the exception that they were not doing any periodic or annual inspection work. They performed troubleshooting and repairs, including working on "BO" cars, responding to yellow parks, blue lights and white lights, as well as performing modifications. Some worked midnight shifts so they could repair the rail cars during off hours. Kinney testified that he and other Bombardier personnel worked overtime, especially when the number of Series 5000 rail car deliveries increased. He said that Bombardier employees received their instructions from Authority shop managers, who told them which cars were "BO" cars, waiting in the yard.

[3] The subcontractors of rail car manufacturers are frequently referred to at CTA as "vendors."

The following chart reflects the number of Bombardier Field Service Technicians at various Authority facilities at specific transition points. These figures were extrapolated from spreadsheets produced by the Authority during the hearing, particularly Un. Ex. 60 A-D.[4]

Date	Total	Skokie	54th	Midway	Harlem	Howard	98th	Linden
01/08/11	6	6						
02/12/11	6	3	3					
11/12/11	10	2	8					
03/10/12	9	1	2	6				
05/12/12	12	2	10					
06/02/12	12	2	6		4			
11/24/12	16	0	4		10	2		
06/29/13	16	4	4		5	7		
10/12/13	16				8	5	3	
12/28/13	20		1		8	5	6	
03/24/14	21		2		6	7	4	2
12/27/14	15				3	7	5	
06/05/15	24		9		5	7	3	
11/21/15	19					7	11	

Mr. John Goralczyk, at the time a supervisor for Bombardier, was responsible for the scheduling of Bombardier employees. Staffing began with six employees working at or out of the Skokie facility. Bombardier employees began working at 54th Street in February 2011. After the rail cars were placed in regular revenue service in November 2011, that number increased to ten, primarily stationed at 54th Street. Bombardier expanded its staff over the next few months to the Harlem and Howard shops and later to 98th St., and to Midway and Linden for limited periods of time.[5] Bombardier staff reached its peak numbers in mid-2015, with 24 employees assigned to CTA work.

Bombardier had a core group of three or four of its own staff that it initially brought to work on the CTA project who were experienced technicians. Massey testified that other than its core employees, Bombardier hired seven or eight "permanent temps." The number of additional temporary employees varied based on the project being done at the time.

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[4] The Union entered into a stipulation with the Authority's counsel at hearing regarding the number of the Bombardier subcontractors described in Un. Ex. 60.

[5] A review of the documents reveals that there were about as many Bombardier staff at 54th Street in May of 2012 as there were CTA Car Repairers.

Goralczyk testified that he interviewed potential employees and recommended to Massey which applicants to hire. He was responsible for about fifteen to twenty hires during the time he worked for Bombardier. Employees were interviewed based upon resumes they had submitted to employment agencies. Most had no experience in train mechanics, but rather came from backgrounds as auto mechanics or in refrigeration. Goralczyk testified it was industry practice to "staff up" using temporary agencies. The temporary staff received informal training through the Series 5000 training manuals; from Bombardier instructors when they were in Chicago; and through on-the-job training from the small core of experienced Bombardier technicians. They also underwent safety training required by CTA.

Duties of Car Repairers and Work Performed by Bombardier Which Union Claims

CTA has several specialty sub-classifications of Car Repairers. Mr. Brian Johnson has worked seven years as a Car Repairer with the Authority, the last five years as a Rail Terminal Instructor II. To become an Instructor, the employee must have trained three times in each individual Car Repairer class and be able to teach all of those jobs, including those requiring Excel qualifications, a special negotiated skills/knowledge enhancement program. Rail Terminal Instructor II is the highest-qualified position in Excel, and Johnson was qualified through Excel as a Yard Inspector, Basic Inspector Brakes, Carbody Inspector, Control Inspector, HVAC Repairer, and in troubleshooting General Repair.

According to Johnson, the Car Repairer's job involves identifying a problem and fixing it, if possible. Car Repairer duties may involve inspecting or troubleshooting, and removing a defective part and replacing it with a good part. If a general Car Repairer (GB) cannot resolve a problem, then a Rail Technician is assigned to troubleshoot, locate the problem and correct it, if possible. The Rail Technician job requires advanced troubleshooting skills.

Johnson also described in general the duties of other specialized positions of Car Repairers. Truck Shop Repairers remove or install heavy components such as the wheel assembly, HVAC system, and motor blowers, typically working underneath the rail car to remove or install these parts. The Carbody Inspector's job is to inspect the various components inside and outside of the rail car body and identify and correct the problem or initiate a service request. The Rail Controls Inspector inspects the propulsion controls and identifies and corrects a problem or initiates a

service request. Truck Inspectors and HVAC Inspectors perform the same functions as other inspectors on those respective components.

Johnson and other Car Repairers testified about the Car Repairers' duties in regard to "modifications," (or MODS) which involve a significant change to a system or component, accompanied by Field Modification Instructions, which describe the changes. According to Johnson and others, if the MOD involves a change in a part, the duty of the Car Repairer generally is to remove and replace but not to fix or modify the part. Johnson testified that performing work in connection with modifications is a regular part of a Car Repairer's job. Modifications can be done during inspections, on the repair line, or if the car is out of service. In some cases the removed part is tagged, and shipped to the Skokie shop or to the manufacturer if the part is under warranty, so that CTA receives credit from the manufacturer for the part.[6]

CTA uses the MMIS system to track the maintenance and repair tasks performed on a particular car. The Union produced repair records for about 20 rail cars to show that ATU 308 employees were prevented from performing their normal and regular work, while Bombardier employees performed the work. Johnson provided testimony about numerous work orders, their associated modification instructions, and other work entries on the MMIS sheet for Green Line Car 5044, from late November 2011 to October 2014. Johnson testified that the work involved in these orders was traditional work of Car Repairers that could be done with little training but was performed by Bombardier personnel on this and other Series 5000 cars. Below are select entries and an abbreviated description of Johnson's testimony regarding each:

Work Order #	Description of Work
2244-2011-213	Removed screw from windscreen panel and added spacer.
2244-2012-831	Added decal in cab electrical locker.
2244-2012-1759	Water leaked into battery cutout box through ground wire; applied heat shrink wrap to seal wire to car body terminal.
2244-2012-2894	Removed and installed truck from rail car for general bearing/housing casting replacement.
2244-2012-2901	Exterior grille installed upside down, installed properly.
2244-2012-2900	Sign replaced with updated signs.
2244-2012-5225	Tested passenger intercom unit.
2244-2012-7619	Decal backwards, removed and replaced.
2244-2012-8305	Cut power to door, adjusted weather strip, recycled doors.

[6] Other non-modified parts may also wear out or malfunction, while still covered by the warranty, and are also tagged for warranty credit.

2244-2012-9351	Blue light, troubleshot auxiliary power supply. Found IC contactor did not remain closed. Replaced line contactor. Part was bad.
2244-2012-9517	Inverter door open caused blue light fault. Checked inverter door to make sure it was closed. Reset blue light.
2244-2012-11704	Miscellaneous brake hardware replaced. (nuts, bolts)
2244-2012-11711	Changed out the propulsion control unit blower fan.
2244-2012-11703	Tightened brake pad caliper.
2244-2013-2107	Passenger strap came loose. Replaced hardware.
2244-2013-11706	Changed window hardware.
2244-2013-8523	Inspected ground brush assembly, if defective replaced.
2244-2013-14936	Cab blue light bell ringing caused white light to flicker. Changed auxiliary bulb.
2244-2013-6155	Master Controller sticking. Moved to maximum power then replaced Master Controller and tested it.
2244-2014-10667	Removed hardware from truck, replaced with new hardware. Bracket came loose and bolts breaking.

Johnson further testified that after reviewing the MMIS car history he found other work that was traditional Car Repairers' work. However, it was work that would have required training because the systems were new, including work on the suspension system, the ethernet, and the propulsion system. He testified that once trained, Car Repairers could have performed the work on these components.

On cross-examination, Johnson conceded that he had not actually performed or observed the performance of some of the operations he testified about from the MMIS car history sheet. He testified, however, that performing operations on older Series of rail cars involved some of the same operations and tasks as those performed on the Series 5000 rail cars. In addition, he said he was familiar with some of the operations because he had sat in the class three times when the operations were being taught, in order to qualify as an Instructor.

Almarez, a Car Repairer has worked for CTA since 1985 with Excel qualifications in truck shop, car body, controls, HVAC and Leader. Before coming to the Authority he worked for the electromotive division of General Motors, building locomotives and for the Santa Fe Railroad as a locomotive electrician. He also had classroom education in electrical work and electronics and was trained by CTA in a six-week training class when hired. He was grandfathered into his Excel qualifications, except Leader, because of his pre-hire experience.

Almarez testified from MMIS sheets about Car #5023, a Pink Line train, about specific work that he said was normally and regularly performed by bargaining unit personnel but was performed by Bombardier, such as adjusting a guide when a lower bottom door guide was found

rubbing against a threshold. Similar to Johnson's testimony, Almarez testified that numerous entries involved work where no special training was necessary. For example, on Work Order #3369, which involved a software installation to correct the functionality of the temperature controller, Almarez testified that he had done software installation before on the Public Address system using a flash drive, and that it was work that was normally and regularly done by Car Repairers. On other systems, however, such as ethernet rewiring, Almarez testified that a, ATU 308 Car Repairer could perform the work, but would need specialized training on the Train Controls Management System (TCMS).

Some Car Repairers Receive Training and Begin Performing Work on the Series 5000 Rail Cars

B. Johnson testified that he personally received familiarization training by Bombardier on the Series 5000 rail cars at the Skokie shop in 2009. Through the fall of 2011, he received no further training. He testified that at some point in 2012, he received classification training in the suspension system and in carbody. In 2014, he received training as a Trainer in the various systems on the Series 5000. He was the only ATU 308 Instructor in the class. The other attendees were technical trainers, who were not bargaining unit personnel. At the time of his testimony in January 2015, Johnson had not been scheduled to teach any training classes on the Series 5000 rail cars to Car Repairers.

Bounsinh testified that he received familiarization training in March 2012, TCMS training in June, and in September he received Carbody training. Berovides testified that he received Low Voltage Inverter training in December 2014, and in January 2015 received TCMS training. Almarez said that he received familiarization training in March 2012, Coupler System training in September 2012, Air Comfort Training in December 2012, and TCMS, Propulsion and Suspension training in 2013. He also received training on the Auxiliary Power Supply but did not recall exactly when. Almarez also testified that at some point after he received TCMS training in 2013, he began troubleshooting the Series 5000 rail cars, and that he continued to do so at the time of his arbitration testimony.

Pugh testified that after Bombardier employees left the midnight shift at the 54th Street shop in 2013, ATU Local 308 Car Repairers were troubleshooting the Series 5000 rail cars. The cars were still under warranty at that time. Mr. Gary Johnson, a Rail Technician and expert

troubleshooter who fixes "repeaters," cars which repeatedly demonstrate the same malfunction, testified that he was troubleshooting the Series 5000 rail cars on the midnight shift at the 54th Street shop with Pugh and another repairer, Bailey, beginning in early 2016. Bounsinh testified that at the time of his testimony in June 2015, he was troubleshooting and repairing Series 5000 rail cars at the Harlem shop.

As of September 2015, all 714 Series 5000 rail cars had been delivered. Kielba testified that as of early 2016, ATU 308 Car Repairers were doing troubleshooting and repairs on all Series 5000 cars. He said that some of these repairs were still under warranty, and that CTA was exercising its option to have its employees perform those repairs. When asked who made that change and when, he said that it was decided on a case-by-case basis.

Work Performed By Bombardier on Series 5000 Rail Cars

Mr. Kielba was in charge of monitoring warranty compliance on the Series 5000 cars, and provided significant detail regarding the warranty provisions. There was a bumper-to-bumper warranty for two years, and an additional five-year warranty on the structure, car body, seats, and paint. The CTA's contract with Bombardier provided that a rail car's warranty was extended three days for every two days the car was out of service due to warrantied failures. There was also a fleet failure clause: if a certain component or system failed in more than ten percent of the fleet's cars, the manufacturer was compelled to replace the faulty part with a new and improved component. The warranty started anew for a period of two years on these replaced components.

Kielba emphasized that Section 16 (d) of the CTA's General Specifications in its contract with Bombardier for the rail cars required that, if there were a claim for a defective item, "the car builder or his subcontractors are liable or they're supposed to remove and replace the part with one that's reliable or working." He said that the liability belonged to the car manufacturer: the CTA was under no obligation to provide the labor or facilities to perform work covered by the warranty. He testified that the same or similar language had been incorporated into the contract specifications for the purchases of the older Series of rail cars, although he was not involved in drafting or monitoring compliance with those contracts.

Kielba testified that it was routine for CTA to use the manufacturer's (or vendor's) employees to perform work covered by the warranty on the 5000 Series. Under its contract with

Bombardier, the Authority was permitted, at its option, to provide its own labor and issue a "charge-back" invoice for reimbursement from the manufacturer or subcontractor when it used CTA labor. He testified, however, that CTA preferred that the manufacturer or subcontractor use its own employees instead of CTA employees to perform the work, because of concerns related to manpower, expertise and liability. With respect to manpower, Kielba stated that CTA's fleet consisted not only of Series 5000 cars, but also many cars from older Series that continued to require maintenance and repair. He estimated that in July 2014, there were probably 800 rail cars from earlier Series that were still in the Authority's fleet. With regard to expertise, he maintained that the manufacturer's employees had more in-depth knowledge of the rail cars and/or component parts and could probably fix them faster and more efficiently than CTA employees. He testified further that if a Car Repairer made an error in repairing a component under warranty, the contract between the CTA and Bombardier voided the warranty on that component, and this liability was a concern for the Authority.

Kielba testified that the Engineering Department monitored and managed the warranty provisions of the contract with the manufacturer. He admitted that he was not on the shop floors and not making work assignments to Car Repairers on a daily basis. However, he testified that Engineering had daily conference calls with the maintenance shops and went through failures and warranty issues on the Series 5000 rail cars. They would identify repeat issues and report them to Bombardier who would create TIs (Technical Issues) that were then investigated. After investigation, a modification could be deemed necessary. The TI stayed open until there was a conclusion of the issue. According to Kielba, when a TI was initiated, either Local 308 or Bombardier employees could address it, but if it became a modification, the vendor typically performed the work on it.

The Authority produced a spreadsheet that detailed dates the Series 5000 rail cars were formally accepted by the Authority and the date of the original (or extended) warranty expiration. Kielba explained that there was an extension of the warranty on an early group of rail cars because of the journal bearing housings issue that caused the fleet to be temporarily taken out of service in December 2011. The Authority also provided a spreadsheet of fleet failures on the Series 5000 rail cars. This summary included the component or system that failed and the associated MOD number. Ninety-nine modifications had been done to the Series 5000 rail cars by the time of the hearing.

Kielba presented several days of testimony in which he went through entries in Un. Ex. 11, the maintenance and repair history for Rail Car #5044 about which the Union had presented testimony. He provided explanations for why the work in those entries was performed by Bombardier (or in some cases, its subcontractors) and why the work was covered under warranty. Below is an abbreviated version of his explanations as they relate to the Work Orders testified to by Union witness B. Johnson, above. If there were an associated FMI (Field Modification Instruction), Kielba consulted that for his testimony. The Union lodged a standing objection to Kielba's testimony, arguing that he did not have direct knowledge regarding the work performed, but was relying solely upon the information stated in the MMIS.

Work Order #	Description of Work
2244-2011-213	Bombardier had done an improper job of reinforcing a panel in the area of the screws and because it was a design defect, Bombardier performed the work of putting in spacers.
2244-2012-831	This MOD was to replace incorrect identifying decals in the equipment locker that contain the control device (TCMS) for the rail car. This was a workmanship issue covered under the warranty.
2244-2012-1759	Water was leaking into the battery cut-out box so Bombardier added a heat shrink strip to a piece of wire to create a better seal so it would not short out the electrical systems. According to Kielba, this was a design defect covered by the warranty.
2244-2012-2894	Trucks were replaced on cars because of a journal bearing housing problem. Quality assurance issue covered under warranty.
2244-2012-2901	MOD 845 was a workmanship problem. Exterior air intake grilles on sides of car to prevent debris were installed backwards and were making a whistling sound.
2244-2012-2900	Route and system maps replaced with updated electronic signs. Kielba testified that there was not a modification number associated with it and it is unclear why it's being done but it may be related to new CTA stations added to the system. Vendor was issued a Change Order[7] to reprogram and modify the signs.

[7] An addition and change to the original contract between Bombardier and CTA.

2244-2012-5225	Incident ID. Rail Operator reported that the Passenger Intercom Unit was offline. Bombardier personnel checked it but the intercom came back on by itself. Ongoing issue and software modification done but still not effective as of date of his testimony. Because this is a programming problem, it is covered by the warranty.
2244-2012-7619	Modification related to decals (related to #831 above). Were replaced but not correctly so were replaced again.
2244-2012-8305	Incident ID related to a failure in service when the doors failed to close. Adjustments made on weather stripping and doors checked for proper operation. Since then, major problems with doors during seasonal weather, requiring several modifications. Extended warranty eventually negotiated with Bombardier. Design defect.
2244-2012-9351	Blue light Incident ID. Replaced contactors within the Auxiliary Power Supply (APS) system. Premature defect replaced under warranty.
2244-2012-9517	Incident ID. Blue Light. Bombardier troubleshot this car which was falsely reporting door open. Checked out okay. Eventually there was a modification -- a software change was made to fix it.
2244-2012-11704	Brake release mechanism corrosion. Supplier supplied wrong type of bolts (carbon steel) that would rust. Replaced with stainless steel bolts. A parts change-out under warranty to address a specification compliance issue.
2244-2012-11711	Propulsion blower and motor change-out on Propulsion Control Unit (PCU). Blowers were causing vibration that did not comply with specifications. Performed under warranty by PPC, subcontractor of Bombardier.
2244-2012-11703	Tightened bolts on brake calipers. Not correctly torqued during manufacture. Performed under warranty as poor workmanship.
2244-2013-2107	Passenger straps falling off, screws falling out. Replaced screws with Lock Patch, through the whole fleet. Poor design or workmanship.
2244-2013-11706	Incorrect screws installed on some window assemblies. Replaced with hex-head screws on all cars. Specification compliance issue.
2244-2013-8523	MUP issued by CTA because of broken bus bar(s) associated with main power cable to traction motors, which could lead to cracks and loss of connection. Fleet-wide inspection ordered. Premature failure covered under warranty. Modification later issued to replace brackets.

2244-2013-14936	Blue light causes bell to ring which was causing white light to flicker. Replaced bulb that had a diode to prevent interference. White light coming on randomly is not compliant with specifications.
2244-2013-6155	Incident ID. Operator reported Master Controller handle sticking. Replaced with another unit. Eventually there was a modification and two fleet failures on Master Controllers. Design defect.
2244-2014-10667	Bracket bolted to truck frame. Bolts snapping off causing vibration and dropping into cables causing friction. Replaced the hardware. Eventual fleet-wide replacement of bolts with special locking hardware. Design defect.

Kielba also testified about certain MMIS entries that described work that was performed by Car Repairers on the Series 5000 rail cars. Some examples included general cleaning of rail cars; graffiti removal; periodic maintenance to air conditioning units; seasonal removal of sleet scrapers; periodic inspections; measurement and other tasks associated with those inspections; changing filters; replacing paper route maps in rail cars; replacing hairnets on filters; installing decals and signs provided by CTA (not covered under warranty specifications); and vandal shield replacements. Kielba described most of what the Car Repairers were doing on the 5000 Series cars as "routine maintenance" and replacing consumables not covered under the warranty.

In a few cases, Kielba testified that work done by Bombardier should have been done by CTA personnel. For example, Work Orders #4885, #5683 and #102 all involved incidents onboard trains where it was necessary for security reasons to pull the video hard drive. Bombardier personnel pulled the hard drive in each of these cases and Kielba testified that that work should have been done by 308 employees because it was unrelated to warranty work or modifications. There was another example of a TOTS touch-screen cracked due to use or abuse that Kielba testified should have been the responsibility of ATU 308 personnel because it would not have been covered as a warranty issue. Repair records of Cars 5001, 5002 and 5037 demonstrate that Bombardier personnel pulled hard drives on other occasions as well.

Under questioning from the Union, Kielba testified that he was aware that the duties of Car Repairers included conducting inspections, maintaining, and repairing rail cars. He agreed that troubleshooting was part of a Car Repairer's job and that work encompassed responding to blue lights, white lights and yellow parks, and fixing problems if they are able to do so. He testified that

it was normal for Car Repairers to install CTA-initiated upgrades on rail cars, although some upgrades are done by the trades at the Skokie shop.

He admitted that some of the tasks which Bombardier did on the Series 5000 cars fell into the category of work normally and regularly performed by the bargaining unit. One task that Kielba testified would not have been performed normally and regularly by ATU 308 employees was working with software, because "it's an engineering task, not a maintenance task." A number of entries on the MMIS sheet for Car #5044 involved installation of software or work involving the ethernet wiring. Kielba testified that ATU 308 employees did not know how to program Bombardier's software; did not have access to certain Bombardier software; and that this was not routine work performed by 308 Car Repairers. Kielba's testimony demonstrated that at times Bombardier personnel installed updated software from the manufacturer, as opposed to programming software. For example, Bombardier employees reinstalled malfunctioning temperature controllers, which had been reprogrammed by vendor MerAk.

Kielba testified that a decision had been made that while the Series 5000 rail cars were under warranty, Car Repairers would not be permitted to repair, troubleshoot, or do any modifications or warranty work. He testified that it had always been the policy that vendors did modifications, not just software but also mechanical modifications. That policy, he testified, was decided "by the contract" between the CTA and the manufacturers, and CTA was just taking advantage of their "contractual requirements to have them [the vendor] do warranty work and modifications." Kielba testified on direct examination that he did not believe that with the 5000 Series cars, the CTA had deviated from its past practice regarding the repair of cars under warranty, even though other witnesses described Car Repairers doing troubleshooting and repair work on older Series of rail cars when they were new.

Kielba also testified that CTA made a decision, or had a practice, not to do "charge-backs" on the Series 5000 cars. He indicated it was CTA's right to refuse to use its own employees for warranty work, under its contract with the manufacturer. He did not know who made the decision, but he admitted that as a consequence it was necessary to have sufficient manpower from Bombardier to perform the work. Kielba was not aware of any direction given to Bombardier personnel as to when they would depart CTA facilities, but stated that Bombardier had a contractual obligation to cover warranty-related issues for two years from the date of the delivery of the last car.

Kielba acknowledged that CTA 308 employees were still not performing modifications on the Series 5000 at the time of his initial testimony at the arbitration hearing, whether or not the rail cars were under warranty. He also acknowledged that Bombardier employees performed "a much greater quantity of work" than had been performed by vendor field service representatives when the 3200 Series of rail cars had been introduced. Kielba's testimony about the volume of work of Bombardier employees on the Series 5000 cars in the first few years after they were introduced is borne out by the work orders in evidence.

Under further questioning from the Union, Kielba testified that it had been and currently was standard practice that when an ATU 308 Car Repairer removed a part that was under warranty, it was tagged with a green tag and put in a bin to be sent back to the vendor. Kielba testified that he believed that warranty claims had been filed for parts under warranty that were removed by ATU 308 employees on the Series 5000 rail cars. He testified that if ATU 308 employees did work on BO rail cars, the Authority would file a warranty claim for that work. Kielba acknowledged that certain work performed by ATU 308 Car Repairers on Car #5015, as described by Almarez, was performed while the rail car was still under warranty. He stated, however, that some of this work involved CTA-initiated MUP's, which involved work not covered by the warranty, or troubleshooting of blue or yellows lights where 308 Car Repairers only checked the problem and everything tested okay.

Kielba acknowledged that 308 Car Repairers had performed some work on the 5000 Series cars throughout the warranty contract, on a case-by-case basis, and that there was no reason why ATU 308 Car Repairers could not do warranty work. As of the date of his testimony in February 2016, Kielba testified that the warranty had expired on certain Series 5000 rail cars, but there would still have been components or subsystems that were under warranty. When questioned about who made the decisions on a day-to-day basis about what tasks 308 employees would do, he said that, as far as modifications and other repairs, the default position was that they would be done by Bombardier. Fleet-wide modifications were also reserved for Bombardier employees. He agreed that it was possible that 308 Car Repairers had been troubleshooting Series 5000 rail cars at 54th Street in 2013 after Bombardier personnel temporarily left that location. According to Kielba, it was up to shop management on any given day to decide whether an ATU 308 person could troubleshoot a Series 5000 train, and he knew of no directive provided to shop managers to guide them. He related that certain managers permitted 308 Car Repairers to do repairs on the Series

5000 rail cars after inspection or on BO rail cars, although most BO rail cars were handled by Bombardier.

Kielba acknowledged that he did not know what, if any, consideration had been given to the training, qualifications, and experience of Car Repairers in management's decisions about what work Car Repairers would or would not do. He also admitted that CTA did not know what training, other than mandatory CTA safety training, Bombardier personnel received. He personally knew that a few of Bombardier's employees had worked around a third (electrified) rail. He acknowledged being aware that Bombardier hired some employees from temporary agencies, and said that CTA makes no effort to determine their skills.

Kielba confirmed that CTA had hired some employees as Car Repairers from Bombardier and that those employees were no longer permitted to do modifications to Series 5000 rail cars once they became ATU 308 bargaining unit employees. He agreed that ATU 308 employees were doing little work on the Series 5000 rail cars other than inspections through at least 2012, while Bombardier employees were doing a great deal of work on the cars at that time.

Goralczyk was hired from Bombardier by CTA as a supervisor of Car Repairers in early 2014 at the 54th St. facility. He said that ATU 308 employees did not necessarily know whether a car was under warranty or not. He testified that when 308 Car Repairers were told that a car was under warranty, some commented to him, "Shouldn't Bombardier be doing that work?" Goralczyk testified that ATU 308 employees were not doing much troubleshooting on the Series 5000 cars until he began work at the 54th St. terminal. He said that the 308 Car Repairers were "trying to troubleshoot" and "shadowing" Bombardier employees to learn the rail cars. He acknowledged that 308 Car Repairers were experienced mechanics, but said that in his opinion, "not every mechanic can work on a 5000 Series train." Goralczyk said that by August of 2015, at the 98th Street shop where he was currently working, Bombardier employees were doing very little troubleshooting and that it was being done by the ATU 308 senior technicians and experienced Car Repairers.

Kinney, Bombardier Field Representative, confirmed that he or other Bombardier staff were the first to troubleshoot blue, yellow, and white lights on the Series 5000 rail cars when they were introduced. He said that he did not receive any formal training on the 5000 Series, and that, "as long as you can read the schematic and the maintenance manual, you should be able to do it." He testified that ATU 308 Car Repairers were not doing removal and replacement of warrantied

parts on the Series 5000s in 2011. He testified that they may have begun performing this work later in 2012, but he was not sure that the warehouse was stocked with replacement parts at that time.

The maintenance records introduced at arbitration confirm that Car Repairers were not working on the Series 5000 trains after the trains were returned to service in 2012. The MMIS records for Car 5015 demonstrate that Bombardier employees performed nearly all of the work on the rail car until late 2013 or early 2014. As for Car 5001, the record show that Bombardier employees performed nearly all of the troubleshooting and repair work until into 2014.

Historical Practice

Prior Rail Car Series[8]

Series	# Purchased	Manufacturer	Dates of Delivery
2200	150	Budd	1969-70
2400	200	Boeing-Vertol	1977-1978
2600	600	Budd	1981-1987
2200R	142	New York Air Brake	1990-?
3200	257	Morrison-Knudsen	1992-1994
2600R	600	Alstom	1999-2002

General Testimony on Historical Practice

Mr. Keevil provided general background testimony on warranty work for the CTA's earlier Series of rail cars. He began his career at the Authority in 1968, and eventually rose to the position of Chief Rail Engineer. His responsibilities included preparation of specifications for new rail cars; negotiating contracts with manufacturers; overseeing the delivery of the new rail cars; and monitoring warranty administration. He was directly involved in the acquisition and warranty administration for the Series 2400, 2600, 3200, and 2600R (rehabbed)[9] rail cars.

Keevil testified that the one-year bumper-to-bumper warranty on the rail cars for the 2200 and 2400 Series expanded to two years on the later series. Similarly, warranties on subsystems expanded from two to five years, and a fleet failure clause was added. The warranty provisions of

[8] Adapted from CTA Ex. 6.
[9] Keevil was also involved, until his retirement, in acquisition of the Series 5000 rail cars.

the Series 2600R rail cars were reduced because it was a rehab project and did not involve new rail cars. The CTA introduced portions of the warranty specifications for the new or rehabbed vehicles into evidence.

Keevil testified that, during the warranty periods, the rail car manufacturers and their subcontractors had representatives on Authority property. The numbers of representatives ranged from five to fifteen, according to Keevil, some at Skokie and some in the rail terminal shops. He testified that it was typical for a manufacturer to have some representatives present on CTA property continuously over the life of the warranty. Keevil testified that General Electric (GE), the subcontractor for the propulsion system and/or the Auxiliary Power Supply (APS) on a number of the new and rehabbed Series of cars, had a continuous presence at the Authority over many years, with a trailer at Skokie.

Keevil described the first level of a rail car's warranty as parts change-outs: a defective part would be removed, and a new part obtained and installed. Keevil testified that CTA personnel would normally perform this work. Manufacturers or their subcontractors could also be involved in a change-out of a major system, where CTA might need assistance, especially early in the contract when CTA employees were not familiar with the car. Keevil gave a more specific definition of a parts change-out:

> "An item goes bad, lighting ballast goes defective so you get a new one and put it in, bring the old one back and file a warranty claim on it…That's simply replacing Item No. 3 with the same thing. No modification required, nothing. It's just something went—lighting ballast failed so you get a new one, put it in."

Keevil was aware of the practice of removing parts and tagging these parts with warranty tags. A warranty claim would then be filed.

The next level of warranty work described by Keevil involves modifications or retrofits to the systems on the rail cars. He explained that a modification is a redesign or remanufacture of a defective part. Keevil testified that a car manufacturer or its subcontractors would be responsible for this modification work, because CTA did not have the personnel available or the familiarity with the equipment necessary to perform the modification. According to Keevil, it was not the mission of Car Repairers to actually redesign or modify parts.

Keevil clarified that modifications may involve replacing a certain part with a modified part, such as replacing a bad caliper with a modified caliper. The defective part could be removed, and a modified part reinstalled by ATU 308 personnel. Manufacturers and their subcontractors

also performed a certain amount of these parts change-outs as part of modifications, according to Keevil.

The Authority produced Field Modification Instructions for work done on rail cars manufactured by Morrison-Knudsen, Alstom, and Boeing-Vertol (called Service Bulletins), and for systems manufactured by GE. Keevil testified that he had no reason to doubt that the manufacturers or their subcontractors had performed the vast majority of the work on these modifications. Keevil agreed with Kielba's testimony that if CTA personnel performed faulty work with regard to a modification, it could void the warranty. However, Keevil knew of no situation where a warranty had been voided because of ATU 308 Car Repairers' work.

Keevil acknowledged that he was not in the terminals frequently and his office for the most part was located at the Skokie shop. Although he was not in the shops frequently and did not make assignments to Car Repairers, he said that he was generally familiar with their work. He described it as to inspect, troubleshoot, maintain, and repair rail cars, including diagnosing and fixing blue lights, yellow parks and white lights.

Keevil testified further that the specifications for newly-acquired rail cars included a training component. Manufacturers were obligated to train ATU 308 Car Repairers during the prototype phase or early in the production of new or rehabbed vehicles so they would be able to maintain the rail cars. Keevil said that ATU 308 Car Repairers "normally work on new trains," once they are trained and obtain the requisite knowledge and ability. He said that he knew of no limitation on 308 Car Repairers performing work on new or rehabbed rail cars on the Series 2400, 2600 and 3200 cars.

According to Keevil, the specifications for each of these earlier car series also included a charge-back provision that permitted CTA personnel to perform the work. The vendor would then be billed by CTA for its labor costs. He testified that this provision had been invoked in the past.

Other witnesses also shared their general perspective about the historical practice: Kielba testified that he was aware from reviewing correspondence that ATU 308 Car Repairers had done some modifications on the Series 3200 rail cars, as well as the Series 2600Rs and Series 2600s. He testified, however, that a decision had been made that Bombardier personnel would do significantly more work on the Series 5000 rail cars than Morrison-Knudsen's field service representatives did on the Series 3200s.

Goralczyk, who had worked for various vendors, testified that in the past when rail cars were under warranty, CTA employees troubleshot and repaired the cars; performed inspections, and repaired what they found wrong during inspection. They took care of blue lights, white lights and yellow parks. The Car Repairers' mission was changed, however, with the Series 5000 cars, according to Goralczyk, when they were not permitted to do this work.

Goralczyk testified in the past that Car Repairers probably did CTA-initiated modifications that were not part of the scope of the contract with the car builder. Piantkowski, who had worked for CTA before working for various vendors, testified that based upon his experience, when there was a modification proposed by the manufacturer or subcontractor during the warranty period, their employees did the modification rather than CTA personnel.

B. Johnson, who was a Car Repairer before he became an Instructor, testified that Car Repairers who were working on the Series 2600s did a majority of the modifications. He testified,

> "When there was a change from the vehicle, from either a procedure or a change from the original part or a change from the maintenance manual procedure, the car repairer would do it."

Series 2400 Rail Cars

Mr. Edward Regester, a retired Car Repairer, testified about work he performed during the introduction of the new Series 2400 rail cars in 1977, manufactured by Boeing-Vertol. Regester was a general repairman (GB) working at the Kimball shop on the day shift along with about fifteen other Car Repairers. Of the nearly 15 Car Repairers assigned there, some were general repairers like himself and others were inspection personnel. There was also an afternoon and evening shift at Kimball, each staffed with two Car Repairers. The shop had two tracks, one for inspection and another for troubleshooting. At the time Regester started working there, there were Series 6000 rail cars, an older car, and the brand new Series 2400s.

Regester said that he began working on the Series 2400s immediately after they were delivered and while under warranty. He described his basic job duties as troubleshooting and repairing rail cars, including those brought to his attention because of blue lights, white lights, or yellow parks. He also did some inspection work. He was given his assignments by the foreman, Mr. John Antonucci. He testified that he was never told there were tasks he could not perform on the Series 2400 rail cars because they were new and under warranty. He testified that if he found

any problems with these components on inspection, he was expected to try to fix them, just as he was expected to do on the older 6000 Series cars.

Regester testified that he was told to set aside cars with recurring problems, "repeaters." Boeing representatives, usually with a Car Repairman, would try to fix the repeaters. Regester testified that, "If we had an issue we couldn't take care of, if we had something we couldn't – didn't know how to repair, we would ask them for technical support." He did not recall Boeing personnel ever spending an entire day troubleshooting Series 2400 rail cars. Although one or two Boeing representatives were present in the shop daily, he did not see additional Boeing representatives coming or leaving on other shifts. Representatives from other vendors were present in the shop less frequently. He identified that Boeing representatives as Crocker, Koral and Hart.

Regester moved to the Wilson shop in 1978 or 1979, where he said that the Series 2400's were still under warranty and being worked on by a crew of thirty to thirty-five Car Repairers on the day shift. He testified that the Car Repairers did similar work as at Kimball, with the addition of truck shop work. He said that the vendor representatives at Wilson worked on the Series 2400 rail cars to the same extent as they did at Kimball. When he moved to the Wilson shop, he knew the 2400s were still under warranty because Car Repairers were still required to tag parts.

Regester testified that he also performed modifications at Kimball, and later at the Wilson shop, on the Series 2400 rail cars while they were under warranty. He identified the modification procedures/instructions as the green manuals known as Service Bulletins. He testified that the Boeing reps did not themselves perform the modifications, but they would show Car Repairers on the shop floor how a specific task was done.

Regester described several modifications he performed, including removing a threshold and hardware and replacing a heating element at each door, a modification performed on all of the Series 2400's. He testified that he consulted with Boeing-Vertol representative Hart about how the modification was to be done, but he actually performed the work.

Regester also recalled replacing all the brake calipers and replacing an A-frame with H-frames on the trolley beam on all the Series 2400 rail cars. He said that the latter was done by CTA employees. There was also a modification to the motor bellows, requiring the replacement of a U-bolt that was breaking. There were also modifications done to all the 2400s related to the signal brackets and cleat blocks, which had bolts that were breaking, according to Regester. He said that most of these modifications were done during inspections. Regester confirmed that some of the

modifications were initiated by CTA Technical Services. He was not sure how many, but thought it may have been a large number. He described that some of the parts he replaced on the Series 2400s were worn, such as the ground brushes, cables, and bolts.

Kielba, in rebuttal testimony, challenged Regester's identification of several people, specifically Ray Hart and Kenny Koral, as Boeing representatives. Kielba provided documents he said he found in files left him by Keevil, which were introduced into the record, that identified Hart and Koral on a CTA 1978 organizational chart as CTA employees, Equipment Technicians I. Kielba also identified Hart by sight and "possibly" Koral in an undated photograph of members of the Rail Engineering Department, holding CTA hats.

Kielba also submitted rebuttal testimony concerning some of the modifications work about which Regester had testified. The Authority produced an exhibit which Kielba testified was a CTA-initiated retrofit regarding the A frames. It was issued in 1981 and Kielba testified that the rail cars were basically out of warranty at that time. The Authority produced another exhibit which Kielba described as a CTA service bulletin that described the signal bracket modification Regester referred to. He said that it was undertaken in February 1980, after the Series 2400 rail cars were out of warranty.

With respect to Regester's testimony regarding the motor bellows, the Authority produced another document, dated January 18, 1983. Kielba testified that the document was a CTA service bulletin related to the replacement of the 2400 blower duct and traction motor blower ducts, referred to as bellows. He testified this was a CTA-initiated modification undertaken when the Series 2400 rail cars were out of warranty. He said that CTA modifications or MUPS (Multi-Unit Projects) were not covered under warranty because they were not vendor modifications.

On cross-examination, Kielba acknowledged that employees, such as Piantkowski, worked for CTA but also for vendors in the industry before and/or after their employment with CTA. Kielba did not recall for whom Crocker worked. With respect to the warranty expiration on the Series 2400 rail cars, Kielba conceded that he could not be sure when they were all out of warranty without knowing when the last rail car was delivered.

A review of the Service Bulletins of Boeing-Vertol indicates that some of the work was to be performed by a vendor (Service Bulletins 335-12 and 335-31), and some by CTA personnel. Service Bulletin 335-139 (ATC Antennae Support Bracket) and its attached Engineering Change Order stated, "Parts to be furnished by Boeing-Vertol. Brackets in service to be retrofitted during

6000-mile inspection. Labor to be furnished by CTA." Also, Service Bulletin 335-153 (October 2, 1979) stated, "b. CTA Service Personnel will perform the authorized work as defined below..." and Service Bulletin 335-152 (August 28, 1979) stated, "CTA service personnel will perform the authorized work as defined in Boeing-Vertol Dwg 335-11169..." Other Boeing-Vertol Service Bulletins directly or indirectly suggest that work was performed by 308 personnel because the work was designated to be performed during regular inspections (Service Bulletins 335-121 (March 27, 1978) and 335-144 (March 22, 1979). Many of the Service Bulletins, while indicating that Boeing-Vertol would be responsible to "coordinate and schedule the work authorized," were not specific as to who would perform the work. Several referenced, "The parts are included in kit," followed by an identifying number. Some Service Bulletins referenced returning removed parts to Boeing-Vertol.

Series 2600 Rail Cars

Witnesses for both parties testified regarding work performed after the introduction of the Series 2600 rail cars to CTA, beginning in 1981. The manufacturer was Budd (later Transit America).

Almarez was working at the Rosemont shop after the Series 2600 rail cars were delivered. He was doing truck shop work at the time, inspection and troubleshooting. He testified that he received training on the new Series 2600s that facilitated him being able to perform work on them.

Almaraz said that he observed representatives of the manufacturer, Budd, in the shop on a daily basis. He believed there were two of them. He testified that they did not have tools and he never observed them doing truck shop work or troubleshooting the new rail cars.

Almarez stated that the role of a Car Repairer in regard to modifications is to remove and replace the part, but not to modify the part. Almarez recalled campaigns being conducted on the new Series 2600s while he was there, but he didn't actually work on them himself. Campaigns involve modifications performed on a large number of cars, sometimes the entire fleet. One campaign involved removing and replacing brake calipers, which he said that he saw Car Repairers doing. Budd representatives did not work on these campaigns, according to Almarez. He testified that he troubleshot and performed work on the Motor Alternators (MA) or inspected them when

he was on Control Inspection, but did not perform modifications on them. Almarez confirmed that he received various trainings on the 2600s in order to perform his work.

Mr. Rafael Berovides, a Car Repairer with over 30 years' experience, testified that he was working at the Rosemont shop when the Series 2600s were under warranty. He worked the morning shift with about thirty other Car Repairers. He recalled working on a modification related to the Motor Alternators (MA), which converts DC to AC voltage. The Car Repairers removed and replaced them with a MA that was modified. Berovides described having to use a trolley with another Car Repairer to remove the part from the rail car, and estimated that it weighed 2,000 pounds. He did not perform any work on the part itself. He testified that he never witnessed anyone other than ATU 308 employees removing and replacing parts on the cars.

Bounsinh worked as an electronics technician for car builder Transit America (successor to Budd) from 1988 until 1991. He was one of two TA technicians who worked on CTA equipment. He had his own tools and performed his work in a trailer in front of the office at the Skokie shop. He testified that once in a while he would go out to the terminal facilities, but primarily he repaired electronic parts at Skokie.

Bounsinh said that when he went to the terminals, he saw ATU 308 Car Repairers removing and replacing parts, including the Motor Alternators (MA) system. He testified that Transit America personnel did not remove or replace the parts, but would provide support. He repaired the circuit boards on the MA System for the Series 2600s. When asked on cross-examination about the types of technical support Transit America provided to Car Repairers, he testified that they repaired the electronic components. On the MA system the vendor repaired the parts and sent them back to the terminals so that CTA employees could replace them on the rail cars.

G. Johnson testified that he was working at the 61st Street facility[10] when the Series 2600s were new and under warranty. He was a General Repairman doing troubleshooting work on the Series 2600s, while they were new, first on the afternoon shift and then on the day shift. There were 15-18 Car Repairers on the day shift.

Johnson said that he worked adjacent to the track where inspections of the Series 2600s were taking place. He said he never observed any non-308 employees conducting inspections of the new rail cars. If some sort of problem occurred on a train during inspection the Inspector would

[10] This location no longer has a working terminal.

fix it or, if they needed help, would call him to assist as the troubleshooter. There were three other Local 308 GBs on the second shift performing similar work.

Johnson recalled that there was one representative of the manufacturer at the shop, Garrett. If Johnson or another troubleshooter thought a part was bad, Garret would look at it and if he agreed, the part would be red-tagged and sent to Skokie. Johnson testified that Garrett spent time in the train room located upstairs, or in the office. There were no other vendor personnel in the shop on a frequent basis, according to Johnson.

Johnson testified that he received instructions from his foreman at the time, via bulletins, about modifications to be performed on the Series 2600 rail cars under warranty. One of the biggest modifications that he worked on was dropping the trucks and installing ground cables. As part of this job, CTA ATU 308 employees also cleaned off the paint on the trucks and installed brackets for the ground cables, he said. They worked all summer on overtime performing this work on all Series 2600 rail cars, Johnson said. There were four people at a time, some from other shops, who worked on this project. No vendor personnel were involved in performing this work, according to Johnson.

Johnson "picked" the Des Plaines shop in 1987 where he worked with about twenty or so Car Repairers, including those who were in the campaign pool. He worked on tracks A or B doing troubleshooting. Track A was for inspections, and he observed that the campaigns would take place on that track because it had room for six rail cars. He didn't remember doing any modifications on the Series 2600s at that shop when he worked there. However, he did not see vendor personnel perform work on modifications there either. He remembered seeing vendor representative Piantkowski at the Des Plaines shop once or twice.

Pugh testified that he first worked for the Authority in 1989 at the Des Plaines shop and was hired into the campaign pool, doing modifications and warranty work on Series 2600 rail cars. There was a total of four or six Car Repairers in the campaign pool, Pugh said. He recalled one campaign where the Car Repairers were changing out all the calipers, dropping all the HPCU pumps (brake control unit), emptying all the fluid and adding a new filter. He also recalled another campaign to add an isolation valve to the rail cars. Pugh related that, during this campaign, someone from a vendor, possibly named "Hart," showed them how to do the first one, and CTA employees did the rest of them. He also recalled that Goralczyk and Criollo were vendor representatives. He testified that vendor personnel were not in the shop every day when he started

at Des Plaines and they did not work alongside the Car Repairers doing modifications. He said that he saw them only once or twice a month in the shop.

According to Pugh, another campaign involved removing washers from the rotors and replacing them on the entire fleet of Series 2600 rail cars. He believed that this campaign was warranty work. On cross-examination, Pugh acknowledged that the campaign might have been after the Series 2600s were rehabbed.

Pugh described another campaign at Des Plaines in which the Car Repairers in the pool were dropping the AC units, then installing a new unit and testing it. They did this work at night. There was another crew there that he believed was from the Skokie shop, who were rebuilding the units. He was not sure, however, if the rail cars were the Series 2400s or the Series 2600s. Pugh believed this project was warranty work, but acknowledged that campaigns could also involve non-warranty work.

Pugh also described doing a parts change-out of the brake calipers. He testified that he and other Car Repairers took the brake calipers down and they were shipped to the vendor for modification. The vendor then shipped them back to the shop and they were reinstalled by Car Repairers after the modification, according to Pugh. The Car Repairers would complete a form that indicated this was a warrantied item, red-tag the part, and then it would be sent to Skokie or to the vendor. Pugh testified that other parts change-outs involved replacing a part with an identical part that was not modified but was under warranty. According to Pugh, he was never told that doing modifications or warranty work was not the work of 308 Car Repairers.

Kielba was called by the CTA to provide rebuttal testimony regarding the Union's testimony on the work performed on the Series 2600 car series. Generally he disputed that work performed by the bargaining unit was performed under warranty. He disputed, for example, that the HPCU campaign described by Pugh was a vendor modification. Kielba explained that a vendor modification would be on the vendor's letterhead, and a CTA-initiated MUP would be on CTA letterhead. He presented a CTA MUP from June 1989 that he said involved the installation of filtration manifolds, and said that the Series 2600 rail cars would most likely have been out of warranty at this time.

Kielba also challenged Pugh's testimony that the washer replacement on the rotors on the Series 2600s was a vendor modification. He produced a document entitled, "Rail Assistance & Information Letter," again on CTA letterhead, that described "Brake Rotor Fastening System

Retrofit" that was approved by CTA's Supervisor of Technical Services on March 31, 1989. The instruction was to remove and replace the New York Air Brake washers on the brake rotors on the Series 2600 and the Series 2400 rail cars. He testified that the Series 2400 rail cars were certainly out of warranty at that time, and that the Series 2600s had just come out of warranty.

Kielba produced another document to rebut Pugh's testimony about the campaign that replaced the isolation valves. This document, a Rail Modification Bulletin on CTA letterhead dated February 2, 1988, referred to the work as "Hydraulic Isolation Valve Installation Procedure" for the Series 2600s. He conceded that this document indicated that it applied to "Skokie shops" only, and that Car Repairers did not work at that location. However, he stated that the Skokie shops most likely would have been modifying the HPCU then putting it into inventory to be installed by Car Repairers in the shops. He admitted, though, that the document was not dispositive of what work occurred in the light rail shops. Kielba testified further that most of the Series 2600 vehicles would have been out of warranty at that time. Under questioning from the Union he said that it was possible, however, that some Series 2600 rail cars would have still been under warranty in 1988 and 1989 but couldn't be sure without seeing the delivery dates of specific rail cars.

Goralczyk currently works for the CTA as a Rail Maintenance Manager. From 1983 though 1988 he worked as a Service Representative for Budd at the CTA. He testified that he worked on the new Series 2600s doing warranty work such as modifications, and that he generally worked throughout the terminals, five days a week, eight hours a day. When he first arrived at CTA, the Series 2600s had already been deployed to Des Plaines and 54th Street for service on the Blue Line. He testified that there were as many as ten to twelve other Budd representatives, at different times. However, later in his testimony he accounted for only six Budd Field Service Representatives, and one in Skokie, doing car acceptance. His boss at the time, Mr. Don Childers,[11] was working in the office.

Goralczyk was assigned to the Des Plaines shop, where he said there were two Budd representatives on days and two others, including himself, on nights, working an 8:00 pm to 4:30 am shift. He said that he worked with the other Budd representative on his shift, doing testing of the white light circuitry and performing modifications. Goralczyk testified that Car Repairers and not Budd representatives, were doing the troubleshooting. He said he worked side by side with the Car Repairers at the Des Plaines shop.

[11] Childers was later replaced as site manager by Lone.

Later he worked the day shift at Des Plaines for a couple of months, and then went to the Harlem shop on the day shift, where he was the only Budd representative present. He testified that he was there to document CTA warranty work, and do modifications and not to provide technical support to Car Repairers, stating,

> "CTA did all of the work as far as the warranty work and replacement of the components and whatever. We took care of the warranty end of it, where we made sure it was documented correctly and that type of stuff for sending the parts back to the manufacturer."

Goralczyk described this process. He said that a Car Repairer would remove a failed part from a car, tag it with a red tag and put it in a bin. The clerk would fill out a document about the part, including its serial number, and then Goralczyk would have to sign off that everything was correct. That documentation went back with the part to Skokie, and Skokie personnel checked it again, then sent it to Budd. With the part went a warranty claim, and CTA's labor was part of that claim. There was a charge-back provision that permitted CTA to use its labor and bill Budd for that labor while the cars were under warranty. Goralczyk testified that CTA had invoked that provision on the Series 2600s, and billed Budd for labor of ATU 308 employees.

Goralczyk testified that Car Repairers would only remove defective parts and replace them with an identical part that had no defects. He called that a repair, not a modification. Goralczyk contrasted a repair with the modifications type of work he performed and provided an example. As a Budd Field Service Representative, he took a part off the PA amplifier system as part of a modification. It was still functioning properly, but it wasn't up to standard. It went to another review level where they added a resistor or another part that made it function better. He then replaced the original part with the compliant part, he testified.

Goralczyk agreed that there were different ways a part could be modified: while it was in place, at some other location in the shop, at the Skokie shop, or it could be sent back to the manufacturer to make the modification. The FMI (Field Modification Instruction) would describe the process of removing the part and reinstalling it with a modified part. He testified that to his knowledge ATU 308 Car Repairers did not do modifications.

Goralczyk recalled the campaign that involved replacement of brake calipers that Pugh testified took place at Harlem. He remembered that it involved the first sixty rail cars of the Series 2600s and that the caliper was not a modified caliper. Instead, it was the same caliper but from a different manufacturer. He explained that New York Air Brake lost the contract to the new

manufacturer. However, he did not remember who did the work and agreed it could have been done by ATU 308 Car Repairers.

After Harlem, Goralczyk went to the Rosemont shop. There were a number of Budd representatives at that location because they had a massive modification that involved replacing the chimney ducts inside the door pockets. That project took a couple of months, according to Goralczyk.

Goralczyk also went to the Howard shop where he was the only Budd representative present, working on the day shift doing modifications. When he left Howard, he went to the 61st Street facility where he worked several months on modifications. He left 61st Street shop and went to the Wilson shop, where he was one of three or four Budd representatives. They worked on a modification where they were changing out the windows on the Series 2600 rail cars, he said.

Goralczyk testified that wherever he was assigned, he was only doing modifications. He did not do troubleshooting or repairs. The Car Repairers were doing inspections and troubleshooting. If they found something wrong during an inspection they would fix it, according to Goralczyk.

Goralczyk also provided testimony about Budd's subcontractors on the Series 2600s. He recalled that there were two representatives at CTA for Trane Company, a subcontractor that did the HVAC system. He would call them to come to the terminals if there was an issue with the HVAC system. If the Trane representatives had a modification to do, they stayed on CTA property until it was complete. He remembered representatives from Vapor being on CTA property and testified that Mr. Al Zamcus, a Vapor representative, was there all the time. Zamcus did work on the door control boxes and different components of the door system. After Zamcus left, Goralczyk said that Piantkowski took over.

According to Goralczyk, WabCo, which bought out Ohio Brass, took care of the coupler systems. Goralczyk testified that WabCo did a major modification on that system, using three to four of their employees, for a long period of time. WabCo was also responsible for the brake system, after they took over from New York Air Brake.

New York Air Brake was onsite at the beginning. They had two people who were removing the brake calipers and replacing them, according to Goralczyk. Teleweld was another vendor and its representative was McKey. Goralczyk remembered that he helped McKey with changing out some components for the signs. Teleweld's presence was continuous when they had modifications

to do, but otherwise it was sporadic, according to Goralczyk. Goralczyk recalled another company named Midwest that came out to give technical advice to Goralczyk about changing out the PA system on the rail cars. According to Goralczyk, Budd representatives, including himself, did the work for Midwest.

Goralczyk said that GE was also onsite regularly with a trailer at Skokie where they worked on component parts. They were responsible for building the propulsion system on the rail cars. Goralczyk identified another company named Krupp that was at CTA on a regular basis and was responsible for the Motor Alternator system which had some extensive modifications. There was also a person for Krupp who was onsite for the pre-acceptance of the rail cars, making sure the rail cars were fine-tuned before they went into service. Any vendor that came on the premises had to be accompanied by a Budd representative before they could work on the rail cars, according to Goralczyk.

Mr. William Lone was a Service Representative for Budd from 1982 to 1993, initially with an office at the 54th Street shop in the tool room. He was the only Budd representative at the 54th Street shop, and he said that his job was to administer the warranty on the Series 2600 rail cars and to do modifications. He said that when he was on the shop floor, he was able to observe what the Car Repairers were doing, and saw them doing troubleshooting, inspections, making repairs during inspection, and changing out parts as part of their normal duties. The Car Repairers would also diagnose BO rail cars, and respond to blue lights. Lone testified that CTA employees would look at the BO rail cars first, and if they had a problem, they would seek his assistance.

In about 1983 Lone became Budd's Site Manager with an office in Skokie. He had two assistants at Skokie, Piantkowski and Eberhart. Lone identified other vendors on the site as GE, Knorr Brake, and Vapor. As part of his job of administering the warranty, he was aware that CTA had the option to use CTA's labor for warranty work and then bill back the Budd Company. He had to administer that part of the warranty when CTA availed itself of that option, which he said they did on the 2600 rail cars.

As Site Manager, Lone typically spent most of his time in his Skokie office. Eventually there was one Budd representative at 54th Street and one at each of the other CTA shops, according to Lone. Those representatives were doing modifications and at times supervising vendors when they did their work. He described a modification as a component that failed at the rate of 10%, which required an engineering change and modification, and said that was mainly the work his

employees were doing. When there was a part that needed to be modified, he said that one of his personnel or the vendor would remove and reinstall the part. They would also troubleshoot on occasion depending on the train system, if CTA personnel needed assistance. There were about 125 modifications done by Budd or its vendors on the Series 2600s, according to Lone.

Lone had as many as forty-two employees working for him at one point, during a period when they were changing out the glass windows on the rail cars due to bad rubber in the window seals. Lone stated that that project was done outside and in the CTA yards, not in the shops, and lasted about six months. The Budd employees were temporary employees, hired from a temporary agency. He said that there may have been other times when he had that many employees depending on the project they were working on, and that those were temporary employees who were not working in the CTA shops.

Piantkowski, formerly of CTA, was a Service Technician for Transit America (successor to Budd) from 1985 to 1987, before he went to Vapor/WabCo. Transit America had two or three technicians working at CTA during those years. Piantkowski testified that he spent about forty percent of his time in the field at CTA, split among the Skokie shop and the terminals (Des Plaines, Harlem and Lake, and Howard Street). He and the other technicians would travel back and forth to these locations and worked Mondays through Fridays, but no overtime. Lone was their Site Manager with an office in Skokie.

If there were a modification project, Piantkowski would be in one shop five days a week, eight hours a day. He recalled that the biggest project he worked on was the Motor Alternator. The MAs had to be removed, modified, then replaced and adjusted. He did not do any of the modifications, saying that they were done by someone in the shop.[12] He said that he and another Transit America technician removed the controller units, put in the replacement, and then adjusted them. This project involved about 200 rail cars and took about fifty days to complete, he said.

In the terminals, Piantkowski said he was familiar with Car Repairers' jobs because he had worked at CTA. He testified that Car Repairers inspected the rail cars, made repairs after inspections, and troubleshot the rail cars, including BO rail cars. Among the 308 Car Repairers there were truck shop personnel, inspectors, carbody personnel, brakemen, and HVAC personnel. He said that if there were a repeater problem, the Car Repairers would call on him for assistance.

[12] He did not specify who performed the modifications.

Piantkowski testified about an accident involving sixteen Series 2600 rail cars at the Rosemont terminal in approximately 1987. Two trains collided and there was extensive damage to the rail cars. Transit America's engineering staff came out and studied the damage and presented their findings. He designed some stops to be installed in the center of the door track to prevent the doors from going past the center point and jamming, and another part to stop the doors from locking up. Transit America also had to weaken the ends of car structures so they would collapse and not telescope over one another upon impact.

Transit America hired about ten to twelve temporary employees to assist with these modifications. Piantkowski did not personally do any of the physical labor. Piantkowski testified that the work was done mainly at the Rosemont shop and a couple of other shops. The project was done five days a week at night. The entire fleet had to be modified, which was 600 rail cars, and it took a few years to complete, according to Piantkowski.

Mr. Stephen Roberts was working as a Field Service Representative for car builder Morrison-Knudsen from 1985 to 1987. During that period of time, he worked on the rehab of forty-five of the Series 6000 rail cars. Roberts was working on these rail cars, along with three other field representatives, on behalf of Morrison-Knudsen. He had a trailer at Skokie but also worked at the Wilson, Howard, Linden and Kimball shops. While at those shops, he observed full crews of 308 Car Repairers, along with two or three Budd representatives, during the time the new Series 2600s were starting to arrive. He confirmed other witnesses' testimony that the 308 Car Repairers were inspecting the Series 2600 rail cars, doing repairs found during inspection, troubleshooting the rail cars, and changing parts on the rail cars while they were under warranty.

Series 2200R Rail Cars

Goralczyk provided testimony about work performed on the 142 Series 2200 rehabbed rail cars that started coming back to CTA around 1990. These rail cars had a two-year warranty. At that time, he was working for New York Rail Car as the Site Manager at the CTA. He had an office in Skokie and testified that he had a staff of about ten other employees. Two of that staff were accepting rail cars in Skokie, and there was one at the Rosemont shop, one at Des Plaines, and one at 54th Street. The other three staff did site visits with other vendors in the Chicago area but would help out at CTA if needed. Goralczyk identified subcontractors of New York Rail associated with

the project as GE, Vapor, and a company called TTA (heat panels). Sometimes TTA would do New York Rail work, as a subcontractor.

Goralczyk said that as the rehabbed rail cars came in, the New York Rail Car representatives did modifications and oversaw the removal of warrantied parts. ATU 308 Car Repairers removed the defective parts, tagged them and put them in a bin. The New York Rail Service Representative then tracked the documentation that went with the removed part. Car Repairers then reinstalled the new or rehabbed part and CTA would bill New York Rail Car for the labor, consistent with the warranty provisions. Goralczyk testified that this was warranty work routinely done by Car Repairers, but he did not consider it a modification, but rather replacement of a failed part.

Goralczyk testified that the manufacturer's Field Service Representatives would not troubleshoot the rail cars or do parts replacement, except if there were modifications. Goralczyk confirmed that troubleshooting the Series 2200Rs while under warranty and fixing BO rail cars was the job of the Car Repairers. Goralczyk also testified that GE did not routinely do troubleshooting, but would assist 308 employees if there were an issue with a blue light.

Series 3200 Rail Cars

Mr. Louis Criollo, currently a Quality Improvement Coordinator with the Authority, testified for the Authority. He was previously employed by GE and later Alstom Transportation at CTA. GE was a vendor for Morrison-Knudsen and was responsible for the propulsion group (the auxiliary power supply and inverters, and the traction motors and master controllers) installed on the Series 3200. Criollo's position with GE was Field Service Technician.

Criollo started with GE at the end of April 1992 when the Series 3200s were first being delivered to the Authority. He had a trade school background in electricity and electronics, with a degree in Electrical Maintenance. He was at CTA for seven years on behalf of GE. Criollo had one GE colleague in the field, Baum, and Criollo said that at times they were supplemented by temporary employees. Criollo testified that his job was to provide technical support to CTA about the GE propulsion system that was under warranty. He also said that he performed work under the warranty, doing modifications to improve the propulsion system.

Criollo spent time at Skokie during the acceptance of the new rail cars, a process which went on for about two years. His job was primarily to collect the serial numbers from all GE components of the new rail cars. Because the rail cars didn't come in every day, he was there one or two days a week. The remainder of time he spent in the terminals with Baum, who was covering both Midway and Kimball shops at the time. Criollo had no prior experience on rail cars, so he shadowed Baum at both terminals for about six months, while Criollo learned about the rail cars. As the number of incoming rail cars incoming increased, he spent more time at Skokie.

Between 1992 and 1994, the Kimball shop received a majority of the new Series 3200 rail cars. After acceptance of all the new rail cars, Criollo spent more time in the field. He was assigned to the Kimball shop and Baum was assigned to Midway.

Criollo testified that there were about twenty ATU 308 General Repairers, Inspectors, Truck Shop, and Carbody Repairers at Kimball. He was able to observe what the Car Repairers were doing, and described the four tracks at Kimball. Troubleshooting by 308 Car Repairers on BO Series 3200 rail cars took place on both ends of B track, he said, and Track C was used for heavier truck shop work. Car Repairers were doing "general repairs," which Criollo defined as working on blue lights, white lights, yellow parks and cars designated BO. Criollo said that he observed the 308 Car Repairers performing these troubleshooting and repair functions on the Series 3200s while they were under warranty throughout the entire time he remained at Kimball. According to Criollo, if the Car Repairers had the ability to fix things, they would fix them. He concurred that this was the mission of Car Repairers.

Criollo said that most of the Car Repairers were working on the inspection line. He remembered Martinez, who was a CTA Controls Inspector, inspecting the propulsion system, checking the computer to make sure that the sensors were working properly, checking the cam control (an optical encoder) to make sure it was adjusted properly, and replacing any burned tips. At the time, these parts were under warranty. He also recalled Cabrerra, who was performing inspections and repairs on AC systems on the 3200s.

Criollo recalled that the Car Repairers' tools were kept in large containers on wheels, but that Truck Shop Repairers also kept other large and heavy tools at the truck shop track. Troubleshooters would sometimes carry tools with them so they didn't have to wheel the large cart around. The CTA Control Inspectors had a laptop. He did not believe they worked with software, however, because generally only he had access to the software. He said that he believed that the

technical support Local 241 personnel, such as Hart and Kilstrom, also had access to software but only after the rail cars were out of warranty.

Criollo kept his tools in a carry-on case, like a briefcase. He had screwdrivers, a set of nut drivers, meters (including a volt meter), and jumpers. Criollo also had a laptop he kept with him to troubleshoot problems on the propulsion and inverter systems and to upgrade software.

Criollo spent much of his time at Kimball on B North, where the MK representatives also were stationed. Occasionally, other subcontractors' representatives were in that area. Morrison-Knudsen had one field service representative there providing technical support to Car Repairers, according to Criollo. WabCo would come in occasionally if there was a big issue with the braking system. Most of the time WabCo would be there at night so they wouldn't interfere with daytime operations. Criollo testified that WabCo representatives also had a shop in the basement where they modified parts. They did not work on the shop floor. He did not know who removed and replaced the parts they worked on. According to Criollo, Vapor did not have a representative in the shop and the Morrison-Knudsen representative took care of their work.

Criollo said that Car Repairers only worked in B North if they were assisting him, although some Skokie technicians, such as Hart, worked with him most of the time. If there was no space in the shop, Criollo might work in the temporary shop doing modifications.

Criollo could not estimate how many of the Series 3200 rail cars coming out of Kimball he personally worked on, but he said that he did every GE modification to the propulsion system and inverters. He testified that no else did modifications to the propulsion system except for him or other GE personnel. Criollo testified that a significant part of his responsibilities as a GE Field Service Technician involved performing software modifications (downloading software) on GE systems.

According to Criollo, while most of the time he worked on software modifications, he also troubleshot blue lights and white lights. He said that mostly the troubleshooting he did was on repeater rail cars, which CTA Car Repairers already had troubleshot. Sometimes he just had to reset the lights. The CTA shift manager would tell him that they had a problem train, and he would take his laptop to the train to assess the problem. Usually Local 241 Technicians would accompany him and sometimes 308 Car Repairers would assist. Car Repairers would do things like drop the covers so that he could access components, because he was not supposed to deal with mechanical issues on the train, which he identified as Car Repairer work. Car Repairers also would perform a

safety inspection to ensure the train was safe to go back into service after he completed his modifications.

At times the software modifications he did required him to change a part. He testified that he was the only one who removed and replaced parts on those modifications. He did not recall any ATU 308 Car Repairers who removed or replaced parts on any GE modification, although he conceded it might have occurred when he was not present. He testified that the only work in connection with modifications that ATU 308 Car Repairers would have been permitted to do for GE would be to drop the auxiliary converter or battery chargers. Criollo testified generally that if there were a new and improved part that had to be installed on a GE system while the car was under warranty, GE would do that work because they knew how to adjust and position the part.

Criollo testified about other tasks that he performed in connection with modifications on the Series 3200 rail cars that specifically involved parts removal or replacement. He testified that on one modification he took the inverter apart, took out the components and sealed them with epoxy. He then spliced the cables and put it back together, made a hole in the car body, and reinstalled the grilles, adding a filter. Criollo recounted that he once replaced a master controller on a Series 3200 rail car, though it may have been with the assistance of Local 241 technicians. He acknowledged that Car Repairers generally replace master controllers.

With respect to the Series 3200 rail cars at other shops, which he estimated at about ten in number, those rail cars were being worked on (inspections, troubleshooting, fixing blue lights) by ATU 308 Car Repairers, unless the rail cars needed modifications done. In the case of a repeater at another shop, the CTA shop manager would call him or Pfeifer to perform it.

Bounsinh worked on the Series 3200 rail cars when they were first delivered to Kimball. He was working day shift as a General Repairer at the time. He testified that he was trained on the rail cars when they first arrived, so he was able to work on them right away. He recalled two technicians working at Kimball but wasn't sure if they worked for the car builder or a vendor. He said that these representatives did not wear work clothes and did not have tools.

Bounsinh testified about the work performed by these representatives and by ATU 308 Car Repairers with regard to modifications, which he defined as "removing and replacing parts to modify to a better part." The representatives would support the Car Repairers in troubleshooting a BO train but did not do the repair. He said he would consult them for technical advice when troubleshooting and they would help resolve problems and suggest what to check on a BO train.

He said that he never saw the M-K or vendor representatives remove or replace parts. However, they would take parts removed by Car Repairers and supply the replacement part. He said that he never saw them do truck shop work or perform inspections on a Series 3200 rail car.

G. Johnson testified that he worked on the Series 3200 rail cars in October 1993 when they were new and under warranty. Johnson worked day shift at the Midway shop as a General Repairer. He testified that he troubleshot the new rail cars from the first day he arrived at the terminal. He diagnosed and fixed blue lights, white lights and yellow parks. He and a few other Car Repairers worked together on troubleshooting; when a BO car came in, he said, "we'd all jump on it," because they wanted to learn about the new train, especially the new inverter system. Johnson recalled that Baum from GE would help guide them with the troubleshooting if they had a problem, particularly on the inverters or sequencing the propulsion; however, Johnson testified, "we still did the work." Baum was only there during the day shift. Johnson also recalled seeing a representative from Morrison-Knudsen a few times after he was bumped to the afternoon shift, but saw no other vendor representatives.

In 1995, Johnson got bumped onto the midnight shift which only had about five people. He was working HVAC inspection. If he found a problem on inspection on a new 3200 series rail car, he would try to fix it. If he was unable to fix it, an ATU 308 troubleshooter would do it. If they didn't have time to fix it, they would leave it for the day shift. He said he was never told that he had to set aside certain work to be done by a vendor. There were no vendor personnel working on the rail cars on the midnight shift. He also testified that when he left his shift at 6:30 a.m., which overlapped with the start time of the day shift at 6:00 a.m., he did not see any vendor personnel on the day shift other than Baum. He recalled Criollo being in the office occasionally.

Roberts was the Morrison-Knudsen Field Services Manager when the 3200 Series cars were introduced. He said that there were seven other M-K Field Representatives at the terminals doing warranty repairs and field modifications. During the first year, two Morrison-Knudsen Field Representatives worked full-time at the Kimball shop, according to Roberts. He testified that they did field modifications under the warranty, and provided technical support to Car Repairers. Morrison-Knudsen field personnel had access to tools from a locker kept at their storefront office in Skokie. They would carry some tools in their vehicles, taking with them what they needed for the day. Roberts testified that as the Manager, he worked an average of 12 hours a day. He supervised his staff and did some hands-on repairs and modifications.

Roberts testified that he and his staff performed all of the modifications designated "MK" in Authority Ex. 18. He also identified other modifications done by him or his staff. Roberts testified about specific field modification instructions in A. Ex. 18 that involved removal and replacement of various parts such as door thresholds, trucks, heater guard panels, brackets, bolts and washers, covers (then installing cork tape and replacing the cover), door weather stripping, hoses, and washers. He said that these tasks, including replacing calipers, could have been done by 308 Car Repairers, but were done by his employees because they were part of field modifications performed under the warranty.

He denied that ATU 308 Car Repairers ever removed and replaced calipers as part of a modification, but acknowledged that in some cases, ATU 308 Car Repairers operated the jacks and brought the trucks down. Roberts testified, however, that he personally performed a modification on 112 trucks at the Kimball shop over a Thanksgiving weekend in 1992 or 1993.

Under questioning from the Union, Roberts acknowledged that Car Repairers routinely did inspections, general repairs, and troubleshooting, but not as part of modifications. He said that Car Repairers performed this work while the cars were new and under warranty. He was never told that Car Repairers could not fix a problem found on inspection and said that they were not limited to replacing consumables.

When asked whether ATU 308 personnel troubleshot blue light or white light problems, Roberts said that when he was at the Kimball shop, 308 Car Repairers were troubleshooting the rail cars on a daily basis. He agreed that CTA employees would ask Morrison-Knudsen or GE personnel for assistance if they could not fix the car. With regard to blue lights, he suggested that GE personnel might be doing troubleshooting from the yard, where they could electronically access the rail car before it got to the shop. He agreed, however, that if a BO train came in at midnight, there was no Morrison-Knudsen employee present, and a 308 Car Repairer would be used to troubleshoot any problem.

Piantkowski testified that he worked for Vapor (later WabCo) and did warranty work on the new Series 3200 rail cars. He identified the general contractor as Alstom (which took over from M-K) and its representative as Massey. Massey was affiliated with Alstom in regard to the rehabbed Series 2600s.

Piantkowski testified that he performed a modification on gearboxes in the late due to a period of extreme cold that interfered with the functioning of the emergency pull on the rail cars'

doors. He said that the work was done by himself and two other Vapor representatives on all 257 Series 3200 rail car. According to Piantkowski, the work took place during the day in the yard at Kimball and in the Midway shop and took about three or four weeks to complete.

Piantkowski testified that he was involved in another modification involving the switch covers at the key-access to the doors. Piantkowski devised something similar to a suction cup to waterproof the key switch cover. He said that he did this modification on all 257 Series 3200 rail cars by himself, at the Midway and Kimball shops.

There was a second modification Piantkowski said that he performed on the gearboxes due to a shimming problem. Piantkowski testified that he installed a modified part on all 257 Series 3200 rail cars that resolved the problem. Piantkowski also testified about an LSI switch on the doors that was inappropriately adjusted. He stated that he adjusted those switches himself, at Kimball and Midway shops, on all 257 Series 3200 rail cars under warranty.

Piantkowski testified that when he wasn't doing modifications, he visited the terminals and assisted the Car Repairers with troubleshooting repeaters. He testified that it was the job of the Car Repairers to diagnose and fix BO rail cars, and affirmed that he was never told that Car Repairers couldn't troubleshoot rail cars because the cars were under warranty.

Piantkowski said that he was aware from his work previously with Transit America that Car Repairers could perform tasks on new rail cars, usually during inspection, and that the contractor would be billed for their labor. Under questioning from the Union, Piantkowski said that that it was routine for a Car Repairer to fix something at inspection. He agreed that it wasn't unusual for a modification to be done during periodic inspections. He concurred that replacement of parts is something routinely done by Car Repairers whether the rail car was under warranty or not. He testified further that many of the tasks that he did on modifications were routinely done by Car Repairers as part of their daily job duties, including inspecting cables, putting in spacers and working on circuit breakers. He said that he would visit each terminal and fix something perhaps only once a week, and he generally went because of repeaters.

Series 2600R Rail Cars

Massey worked for Alstom as a Customer/Field Service Manager during the roll-out of the Series 2600Rs. He had an office in Skokie. Morgan took over for him when he left Alstom in December 2002 and finished out the last eighteen months on the project. Massey later became the Manager of the Bombardier project.

Massey testified that Alstom had seven people budgeted full-time on this project. He said that the Field Service Technicians worked at different terminal facilities, six days a week, eight hours a day, doing warranty work. According to Massey, the system was set up so that his staff would troubleshoot failed components to find the defective part and then replace or repair them. Massey identified Alstom's subcontractors as GE, WabTec, MerAk, and Vapor. He testified that these subcontractors did the same work as his employees on specific rail car component parts or systems.

Alstom started out with four staff at the Skokie shops where the rail cars were being delivered. They were getting used to the rail cars and fixing anything that was not perfect. The first rail cars put into service went to the Howard shop. Deliveries were scheduled for about sixteen rail cars per month. Criollo was the Alstom representative assigned to the Howard shop in approximately March or April of 1999. He was at the Howard shop more than Massey. Early in the project Alstom did a brake caliper modification, so there were also temporary employees at Harlem who worked there for two months. This was the largest modification Alstom did on the project. Massey said that there were very few MODS overall. After the Howard shop, the Series 2600R rail cars were sent to 98th Street (Red Line), then on to Des Plaines and 54th Street (Blue Line).

Massey travelled to the shops and was aware that they were staffed with CTA Car Repairers. According to Massey, if Alstom had a representative there, that representative would be the first to troubleshoot the rail car. If another hand was needed, the representative would ask the Shop Manager for assistance. Massey testified that he assisted his staff with troubleshooting occasionally. He testified that the Car Repairers were troubleshooting the older rail cars and sometimes troubleshooting the Series 2600Rs that were under warranty.

At 98th Street, the Alstom technician was only present as needed in the beginning. If there were a BO car and the shop needed assistance, Massey would send Field Representative Hoffman

to assist. Once they had a substantial number of rail cars at 98th St., Hoffman was assigned full-time to the shop on the day shift. Massey agreed that if a BO rail car came on the afternoon or night shift, when Hoffman was not present, an ATU 308 Car Repairer might troubleshoot it, or the car might be held until the following day. He acknowledged that one Alston representative could not perform troubleshooting on multiple cars at the same time or perform modifications and troubleshooting at the same time. He explained, however, that there were not a lot of failures on the Series 2600R project nor a lot of modifications, as this was a rehabbed, not a new series of cars, and under a limited warranty. He said that many of the modifications were related to installation of software. He said that there was never a need to staff the shops with multiple Alstom representatives if the system Alstom had in place was followed.

Massey testified that he was unaware of Alstom turning modifications over to CTA personnel. He said that Alstom may have asked CTA employees for help, but that Alstom never turned a modification over to CTA personnel to complete. He agreed, however, that ATU 308 Car Repairers, at times, did work on the Series 2600R rail cars under warranty. Massey acknowledged, for example, being aware of the warranty process of tagging parts that were sent back to the vendor.

Criollo was working for Alstom from April 1999 until 2006 and worked on CTA rail cars both in the terminals and in Skokie. Massey was his supervisor during this time. Criollo was there for the delivery of the Series 2600R prototypes in 1999. He spent most of his time at Skokie during the initial delivery of the rehabbed rail cars, but also went to the Howard shop terminal.

The Series 2600Rs were first directed to the Howard shop to be put into revenue service on the Red Line. Criollo estimated that about seventy-five two-car consists of the Series 2600R were sent to Howard. As production increased, Criollo worked only at Howard and was there through 2002. He said he worked five days a week year-round, and occasionally worked overtime in emergency situations. Criollo was the only Alstom representative at the Howard shop. There were four other full time Alstom employees. Alstom had five temporary employees who worked for brief periods of time when needed.

Criollo identified the other vendors for Alstom as GE, WabCo, MerAk, and Teleweld. He testified that vendor personnel worked on site only as needed and no vendors other than Alstom had a long-term presence at Howard. Rather, Alstom would call them in the event of a major failure. Criollo testified that GE relied on him for troubleshooting and to perform other GE warranty work because they did not have a representative at Howard and their operation was based

at the Skokie shop. He said that Teleweld was only on site once in the three-year period. Vapor/Waco's representative, Piantkowski, was available to give technical support to Car Repairers or do modifications if there were a failure, according to Criollo.

As more Series 2600Rs came to Howard, the older Series was phased out and by year 2000, there were only Series 2600Rs at the Howard terminal. Criollo stated that the Car Repairers did inspections, worked on controls, brakes, car bodies, and trucks, and did general repairs on the Series 2600Rs while they were under warranty. He testified further that ATU 308 Car Repairers at Howard diagnosed and troubleshot the rail cars and systems. If there were a blue light, white light failure or yellow park failure, 308 Car Repairers initially diagnosed the problem and tried to fix it. If unable to do so, they would ask Criollo for assistance or hold the car for him to assess if there were a more significant problem. The Howard shop had a full complement of more than 100 Car Repairers on three shifts and Criollo provided technical assistance to all of them. Criollo said that once Car Repairers had gone through the process of trying to fix a problem, and failing, he would then do it on his own.

According to Criollo, a car or a whole system such as the AC system would be designated BO by Car Repairers if there were a serious malfunction in a system or part. Alstom would then contact the vendor for replacements. Criollo explained that ATU 308 Car Repairers would drop the component, if it were a large component, and then it would be tagged for warranty purposes and shipped out to the vendor or to Skokie. There were skids and barrels for the larger items, and a bin for the smaller parts. Criollo was required to record and track, for warranty purposes, failures and parts that were replaced. If the part were already in inventory, such as GE contactors, ATU 308 Car Repairers would replace the part on the spot or would replace the modified part when it was returned from the vendor, according to Criollo.

Criollo described his work as warranty work, troubleshooting and doing field modifications on the Series 2600Rs. Criollo testified that he was also instructed to perform work on certain modifications for GE. The modifications for either GE or Alstom involved RC shunts, loose cams, cam switches, diodes and agate pins, battery temperatures sensors, train line diodes, inverter software installations, battery start panels, track tip plates, sign readout assemblies, door controllers washers, door hanger screws, HPCU pumps, interrupt contact resistors, caliper greasings, caliper guide pins, A-1 cards, inverter switches, auxiliary panels, cam controller groups,

cable brackets, side trip plates, temperature sensor capacitors, dead battery start panels, surge arrestors, and more.

Criollo testified that he performed modifications independent of ATU 308 Car Repairers with no assistance from them. Regarding parts replacement during modification, he made a distinction between when he was performing work for GE as opposed to Alstom. He said that he replaced the GE parts because he had to do adjustments when they were reinstalled. However, when performing work for Alstom, he said that that the practice was "a mixture," with some of the parts given to the Car Repairers to replace. Regarding one of the brake caliper modifications, Criollo testified that Alstom also used a temporary crew for about a two-week period to drop the calipers on about 100 rail cars, and then Alstom personnel performed the modifications to the calipers on the bench. Criollo confirmed that a written FMI would designate who was to perform the work, but that was not dispositive of who actually performed the modification. He said that when Alstom had ATU Local 308 personnel perform a modification for them while a car was under warranty, Alstom would be charged for the labor.

Criollo testified about several other modifications that were started by Alstom or GE, but were turned over to 308 Car Repairers to complete. The 308 Car Repairers did a fleet check of trolley shoes to make sure there were no lose components, and that the rivets were tight. Another involved the isolation mount for the AC. The rubber spacers were collapsing, so Alstom created a modified part and supplied it to CTA to install. Another modification involved the isolation amplifier. Alstom and GE installed a current sensor device for both Truck No. 1 and Truck No. 2 in a few cars, then gave the remainder to 308 Car Repairers to install. In another, the welds on the condenser were breaking when the filters were replaced. Alstom did a modification to the part that was breaking, installed a certain number of repairs, and then turned over the remainder to 308 employees to install the replacement during inspections. There were also run shunts and RC contactors that were turned over to ATU 308 Car Repairers, after Alstom did about ten rail cars, according to Criollo. The components were then replaced by 308 Car Repairers on an as-needed basis. Criollo testified that Alstom also turned over a draw bar modification to 308 Car Repairers because CTA's employees had more experience with the draw bars and had specialized knowledge and skills that made them better suited to perform that work. There was also a hydraulic pump modification that was turned over to 308 Car Repairers to replace filters during annual inspections when needed. Criollo explained that the part was not consistently failing.

One modification to the interior speaker system was done by either ATU Local 241 or 308 employees, but Criollo could not recall which. The speakers were supplied by Alstom, and CTA union personnel removed and replaced them. Criollo thought that another modification to the ATC system was performed by another local union's personnel.

Kinney was working as the Site Manager for GE, the subcontractor to Alstom for the propulsion system, when the Series 2600Rs were put into service. He worked on that project from 2002 until 2009. GE employed three temporary employees over the life of the project, including Baum.

In 2002 when the rail cars were first delivered, Kinney said he spent about thirty-six hours a week at the Skokie office, and the rest of his time at the terminal shops at Rosemont, Howard, Des Plaines and 98th Street where the rail cars were in service. Kinney said his work schedule was five days a week, eight hours a day. He testified that Baum was at Skokie perhaps ten hours a week, with the rest of his time spent at the terminal shops where he worked on the Series 2600Rs. If a shop needed assistance on blue lights, yellow dynamics or yellow parks, they would call Kinney and he would dispatch Baum to the location.

Kinney knew from going to the shops that housed the Series 2600Rs that there was a full complement of Car Repairers working at each of them. He testified that Car Repairers were inspecting and troubleshooting rail cars under warranty, and fixing problems if they found something wrong. Car Repairers did this on a daily basis because that was their job, their mission, according to Kinney. When Car Repairers needed assistance, it was usually on repeaters that they either could not diagnose or couldn't repair. GE employees were not stationed in the shops to address blue lights or BO rail cars, but when called upon they would perform an assessment.

Kinney testified that GE was there to take care of their warranty process. He testified that his work involved troubleshooting, doing modifications, and performing warranty repairs. If he found something wrong when troubleshooting a blue light, yellow dynamic, or yellow park, he would fix it by replacing a part or doing a repair. In this work he said that he removed and replaced parts.

Baum was released in 2003 due to work performance issues and was not replaced. That left only Kinney working for GE.[13] Thereafter, Kinney dealt with repeater issues on behalf of GE until

[13] Polansky oriented Kinney to the position, then retired and Kinney replaced him. Pfeifer retired prior to Kinney's arrival.

the warranty ran out, but he was not in the shops daily. Kinney testified that in 2003 or 2004 he had to hire two temporary employees to do a modification at Howard and Rosemont that involved gluing loose cams on the cam controller and the switches. This modification took a year to complete because they could only do one car at a time at night when the car was out of the service because the glue had to cure for eight hours. The temporary employees were let go after the modification was completed.

Kinney was aware of and observed the warranty process for tagging parts that would be returned to the vendor: Car Repairers would tag the part and place it in a bin. Kinney testified that a modification was totally different than a warranty of parts, however. He testified that 308 Car Repairers never performed modifications for GE. According to Kinney, GE preferred not to pay for the labor of CTA because GE had their own personnel onsite, and their contract was with the car builder, not CTA.

In 1995, Piantkowski was working for Vapor/WabCo, but continued to work on CTA vehicles. He said that he spent approximately forty percent of his time working at CTA, and eighty percent of that time working in the shops during the 20 years he worked for the vendor. According to Piantkowski, he did modifications on the Series 2600Rs while they were under warranty. He testified that one of those modifications involved work on wiring harnesses in about 150 rail cars. He explained that he had to take the old terminals off and reconnect them using proper tooling, then test the equipment to make sure it functioned properly. He testified that he performed this modification himself. He placed this modification as during the period when the cars were being delivered.

G. Johnson testified that he worked on the Series 2600Rs when they were newly rehabbed. He was a General Repairer doing troubleshooting at the time. He said that he was never told that he could not work on the Series 2600Rs while they were under warranty.

Changes in the Technology of Rail Cars

Throughout the hearing witnesses provided testimony about changes in rail car technology as one series of cars after another has been introduced to the CTA over time. They also presented testimony about how Car Repairers reacted and adapted to those changes.

When Regester was asked how different the Series 2400 rail cars were from the earlier Series 6000 rail cars, he said, "How different? Everything was different." He said that he received training from vendors on how to do modifications on the 2400s.

Almarez had worked on older rail cars as well. He described the difference between the Series 6000s and the Series 2600s this way:

> "The 6000s are the older trains. They're the big green ones. The components were different. They had an accelerator, which was a round part that – under the train. They didn't have an AC unit on them. And besides that, they had a motor generator, not a motor alternator…[the 2600] was a modern version, yes, more modern…[2600 had a] control group [that] controls the propulsion of the train…It's like hybrid because it's half electromechanical and half electronic controlled."

G. Johnson testified about the differences between the Series 2200 and Series 2600 rail cars compared to the Series 3200s:

> "Q: And the 3200s, the technology on the 3200s was different than it was on the 2600s, right?
> A: Very -- my opinion was they were very – from 2000s, 2200s, 24s, 26s, the 32s were updated with, instead of switches controlling the propulsion, you know, the KM it's called, it was done by an optical encoder. So, I mean, it still had the same, when you went in to power it, the KM, or also known as a cam, went to position 20. It still had the same types of switches, contactors that carried the 600 [volts]. It still had the same type of grid resistors, you know, the same motors. The motors were different, but yet still were 600-volt motors with the same brushes. You know, they still had the seam P Switches. So even though they were different, they were still…They were still the same. I mean, they were still – it was just how it did it was just with an optical coder…
> Q: And, but the technological differences didn't stop you from being able to do the work?
> A: No."

Bounsinh compared the Series 2600s and the Series 3200s:

> "Q: Now, how were the 3200s different from the 2600s?
> A: They are similar.
> Q: They are similar, but were there some difference between them?
> A: The 3200 had the laptop.
> Q: It had a laptop?
> A: Yes, to troubleshoot.
> Q: So you would actually connect the laptop to the train?
> A: Yes."

Berovides also testified about the technology of the Series 3200s:

> "Q: Now, the 3200's, do they have any electronic features on them?
> A. Yes

Q: Do they have features that are controlled by computer?
A: Yes.
Q: And what are those controlled by – in what way? In other words, how does a computer communicate with the 3200s?
A: Well, the 3200 has a rack, and they have the train cars. They have digital and analog cars that control – that communicate with the master controller and send signals back and forth, so it is controlled by a computer.
Q: Okay. When you worked on the 3200s is there – what type of computer is used?
A: We use a laptop, yeah, to assess the information on the car rack, on the PTU."

The Authority provided a series of photographs to demonstrate the difference in technology between the Series 5000 rail cars and earlier series of rail cars focusing primarily on the propulsion, hydraulic suspension system, and the communications systems using the ethernet. Witnesses were asked about the differences between the 5000 Series and earlier series of rail cars. When asked to compare the Series 5000 rail cars with other rail cars he had worked on, Goralczyk stated:

"The 5000's a very more technical vehicle versus the 3200. [The] 3200 still has a lot of electromechanical parts versus the – what I would call the 5000s [is] a computer on wheels."

B. Johnson testified that the Series 2200s, Series 2400s, Series 2600s and the Series 3200s all had electronic equipment. He and Bounsinh testified that they weren't knowledgeable about how to add a ferrite bead to an ethernet cable on the Series 5000 rail cars. Johnson testified further,

"Q: And what kind of training does a person have to get in order to understand that ethernet system?
A: You have to have probably pretty much basics in computers and networking.
Q: But is there a CTA class on that topic?
A: Yes.
Q: What is that class called?
A: Train Control Management System."

Later on he testified that,

"...when it comes to electrical, electrical and mechanical, the principles stay the same. The principles are same on – from here to China...Ohms Law is Ohms Law...a principle is a principle, regardless of what training is utilized. A nut is a nut no matter what training you utilize. And if I'm changing the same nut on a 2600 you may find on a 5000, so when I look at a 5000, I know how to change a 5000 nut because I've changed it on the 2600, so you use your past experience."
...
Q: And are many of the same principles, general principles that apply to being a train mechanic on a 3200, 2600, do they also apply to a 5000 series?
A: Yes, ma'am.

Q: If that wasn't the case, would be possible for any 308 mechanic to ever do any work on a 5000?
A: No."

Pugh also commented on differences between the 5000 and other series rail cars:

"Q: Okay, do the 2600s and the 5000s have the same basic technology?
A: No.
Q: Could you describe the differences?
A: The 5000s are mainly all internet now, where the 2600s didn't really have any internet.
Q: Can you compare the 5000s and the 3200s?
A: Same thing. The 5000s is a totally different animal than the 26 and the 3200s. The trucks are pretty much all the same; but as far as the propulsion and the suspension system, we didn't have on any of them. That's completely different. And, but all the propulsion's all internet now."

Pugh testified that he stopped acting as a K580 because of the breakdowns on the Series 5000 cars, saying that he did not want to climb the el structure anymore when they broke down. When asked whether, as a Leader, he thought that experienced 308 Car Repairers at the 54th St. terminal were capable of doing the work on the 5000s when Bombardier left that location in 2013 he said yes, even though there was a new suspension system, adding:

"There is new everything and everywhere, you know. People that are mechanics, you have a new car every year, you know. You have to have the basics; once you have the basics, you know, you might have to go to a book, you know. You might have to talk to somebody, but you will figure it out."

As a Technician, a top-level troubleshooter, G. Johnson also testified about the technology of the Series 5000 rail cars and whether 308 Car Repairers could repair them. He commented,

"...we figure it out...these trains are different than any other series, the 2000s to the 2600s. ...The motors were DC and still had the same type of brushes and grid resistors; and the groups, even though they are different, yet were, the same. In these trains, the propulsion system is completely different...it takes repetition to really understand them. More computer usage...they are tougher, but we still get them fixed."

Almarez was asked if he knew what it meant install ferrite beads on the APS ethernet wire. He said he did not and would have to look at the schematics and would usually be able to figure out what it means. He testified that even before the Series 5000s, there were times he had to look

at schematics and said, "It's like our Bible." He compared the Series 5000 rail car to its predecessor Series 2600s this way:

> "They all have motors. They all have wheels. They all have side trips. AC units. And a lot of the controlling parts of them are the same:..Except the 5000s have hydraulic systems on them."

Kinney testified that he didn't receive any special training before troubleshooting the Series 5000 rail cars or any formal training at all on the 5000 Series. About training he said:

> "Read the schematic and read the spec, and that's pretty much it, maintenance manual."

Although he had experience on the propulsion system from working for GE, he said that he received no training when he worked for Bombardier fixing other systems on the cars. According to Kinney,

> "It's pretty much common sense. As long as you can read the schematic and the maintenance manual, you should be able to do it."

Massey provided his perspective on the work performed on the Series 5000 cars, compared to the 2600Rs:

> "Well, there's been, yeah, considerably more mods, but there's also a lot of new technology on the cars that we've had to correct, so...And there's always the difference between a brand new car and a rehabbed car...More untested components..."

Position of the Union

- Section 2.7 of the parties' Agreement contains an explicit direction, "The Authority shall not subcontract or assign to others work which is normally and regularly performed by employees within the collective bargaining unit." The Authority violated that Section of the Agreement by assigning work that is "normally and regularly performed" by bargaining unit employees to Bombardier personnel on the Series 5000 rail cars.

- The clear and unambiguous language of the collective bargaining agreement must be honored.

- Pursuant to the Car Repairers job descriptions, their normal and regular work includes inspection and repair of all components of rail vehicles, including the testing and diagnosis of malfunctioning rail vehicle components, "troubleshooting" (diagnosing and repairing rail cars that are having problems), and inspecting rail cars and repairing defects found on inspection. Performing "modifications" (removing and replacing parts that have been changed in some way) and doing "parts change-outs" (replacing parts with new parts that have not been changed) are included in the Car Repairers' job description.

- No evidence was introduced of any emergency that would permit the subcontracting out of Car Repairer work under an exception to Section 2.7.

- The Authority cannot evade restrictions on subcontracting in Section 2.7 by contracting with a third party to perform work covered by that provision. The Authority is responsible for the work assignments it makes whether directly or through an intermediary. See, *Amalgamated Transit Union Local 241 and Chicago Transit Authority, Acevedo, Grv. 09-0649 (Neilsen, Arb. 2013); Amalgamated Transit Union Local 241 v. Chicago Transit Authority, Fionda, Grv. 08-0894 (Torosian, Arb. 2013); Amalgamated Transit Union Local 241 v. Chicago Transit Authority, Fionda, Grv.08-0239 (Newman, Arb. 2010); Amalgamated Transit Union Local 241 v. Chicago Transit Authority, Little, Grv. 09-0072 (Perkovich, Arb. 2013).*

- The Car Repairers' jobs do not change depending on whether the car is old or new, or in or out of warranty. Witness testimony proves that, prior to introduction of the Series 5000 rail cars, Car Repairs performed their normal and regular work on all prior Series rail cars (2200, 2600, 3200, 2600R) while they were under warranty.

- Witness testimony confirms that Car Repairers were excluded from doing nearly every aspect of their normal and customary work on the Series 5000 rail cars. They were instead limited to doing basic tasks like changing "consumables" and later doing inspections without performing necessary repairs.

- During delivery of the Series 5000 rail cars, Authority managers told Local 308 personnel that they could not touch the Series 5000 rail cars nor do any work on them.

- Numerous Bombardier personnel were, on a daily basis, observed working on the Series 5000 rail cars, performing Car Repairers' work.

- Regardless of whether its equipment is under warranty or not, if the Authority contracts out work "normally and regularly performed" by Union personnel to manufacturers or vendors, the Union has established a *prima facie* violation of Section 2.7 of the collective bargaining agreement. The burden then shifts to the Authority to prove an exception.

- There is no exception under Section 2.7 which would allow CTA to contract away work "normally and regularly" performed by Car Repairers due to a warranty provision with a manufacturer or vendor.

- The Authority's reliance on "warranty administration" as a "present practice" to justify its removal of bargaining unit work fails. Testimony that warranty considerations such as manpower, liability and expertise drove the decision is an after-the-fact justification. The CTA's witness had no knowledge whether the warranty played any role in CTA's decision, made prior to the delivery of the first production cars, to disallow Car Repairers from performing almost all work on the trains.

- There was no evidence introduced of a manpower shortage, nor evidence that ATU Local 308 personnel had caused a "blown warranty" by doing faulty work. As to expertise, many of the Bombardier employees were hired from temporary agencies and had no prior experience or training in rail car work of any type.

- There was no testimony establishing that Car Repairers lacked the ability to perform the work. Training on the new series was initially withheld from CTA's Car Repairers deliberately, although later they were permitted to work on the 5000 series trains without training.

- The Authority failed to meet its burden to prove a "present practice" exception. A "present practice" must be viewed in light of when the Agreement was consummated. *Act Container Co.*, 78 LA 912 (1982). Section 2.7 became part of the Agreement in 1985, and it is reasonable to interpret the phrase "present practice" as meaning the practice at that time.

- The record evidence established that, as of 1985, when a new series of rail cars was delivered and put into service, those rail cars were worked on by a full crew of Car Repairers, troubleshooting, diagnosing and fixing blue lights, yellow parks, and white lights, inspecting the rail cars to fix defects found on inspection, changing out parts, and doing modifications and rescues, if qualified.

- Even if "present practice" is interpreted to mean "past practice," it must meet the criteria of being unequivocal, clearly enunciated, and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties.

- The Union does not need to prove, to prevail, that the work was "exclusively" performed in the past by ATU Local 308 employees. Section 2.7 does not contain such a requirement. See, *Amalgamated Transit Union Local 241 v. Chicago Transit Authority, McBride, Grv. 12-0054)(Nielsen, Arb. 2015).*

- The Authority failed to establish that its decision to severely limit the work done by Car Repairers was akin to anything that had previously occurred. The fact that vendor personnel, in the past, provided technical support and did discrete tasks does not establish a binding past practice that justifies the Authority's actions. These tasks were done within the limited role of providing technical assistance.

- Where the Authority has failed to prove a past practice, the "present practice" exception under Section 2.7 has been rejected by arbitrators in other subcontracting cases. *Amalgamated Transit Union Local 241 v. Chicago Transit Authority, Fionda, Grv.08-0239 (Newman, Arb. 2010); Amalgamated Transit Union Local 241 v. Chicago Transit Authority, Little, Grv. 09-0072 (Perkovich, Arb. 2013).* To the extent the Authority relies on cases where a discrete task was subcontracted, those cases have no application to the facts in this case.

- Arbitrator Crystal interpreted the same section of this same Agreement on a fact record that is very similar and closely related to the facts in this case. *Chicago Transit Authority v. Amalgamated Transit Union Local 308*, Grvs. 513-35/613-16, 1111-23 (Crystal, Arb. 2018). Unless clearly erroneous, the Arbitrator should follow this award, in which he found that CTA

had violated the Agreement by failing to use Local 308 instructors to conduct training on the 5000 Series rail cars. In doing so he rejected CTA's "mixed practice" argument.

- ATU Local 241's proposal made and withdrawn during negotiations for the 2004 – 2006 to add a provision that "all warranty work must be performed by bus repairmen" has no bearing on this case. It is parol evidence and the language of Section 2.7 is clear and unambiguous.

- The Union's proposal would be germane only if Local 308 were asserting that all warranty work must be performed by Car Repairers. However, the Union acknowledges that when new series trains have been introduced, vendor personnel were on the property to perform technical support.

- If bargaining history is relevant, the most salient aspect of that history is the fact that in 2012 the Authority tried and failed to remove Section 2.7 from the Agreement.

- The Authority's actions were driven by its desire to eliminate the Car Repairers and replace them permanently with Bombardier personnel. Its decision to limit the Car Repairers' duties was made at a time the Authority was considering permanently subcontracting all Car Repairer work and using an exclusively non-union workforce to do maintenance and repair on the 5000s Series rail cars.

- An Authority witness admitted that, when the Authority hired some of Bombardier's employees, they were no longer permitted to do the identical work on the Series 5000 rail cars because they were now ATU Local 308 employees.

- Had the Authority acted consistently with the practice with regard to every earlier delivery of a new series of trains, and allowed Car Repairers to work on the new trains, it would have found it difficult to justify its scheme of subcontracting all maintenance work on the 5000 Series to Bombardier.

- Having boxed itself into its restricted view of work the Car Repairers' duties, the Authority has attempted to justify its actions by citing the warranty.

- The Authority's assertion that a delay in receipt of training materials from Bombardier was responsible for the Authority not permitting Car Repairers to perform work on the Series 5000 rail cars was belied by the testimony of its witness that it would not have made sense to train Car Repairers because they were not going to be working on the rail cars.

- The CTA's breach of the Agreement was not de minimis or unintentional. Assigning its employees to perform some inspections and replace consumables, while preventing them from doing most of their regular repair and other duties on the Series 5000 cars cannot be viewed as a de minimis violation.

- The arbitrator has broad remedial powers to provide redress for the Authority's violation. The bargaining unit should be compensated for each lost hour of work that was done by

Bombardier. Such remedies, including lost overtime hours or other methods of determining lost work opportunities, are appropriate in subcontracting cases. *Simi Valley Unified School District*, 103 LA 862 (1994), *Champion International Corporation*, 91 LA 246 (1988); *Sea Land Freight Service*, 87 LA 633 (D'Spain, 1986).

- Extraordinary remedies are appropriate to compensate the bargaining unit and to deter future conduct, including an award of interest. *Greyhound Lines and Amalgamated Council of Greyhound Local Unions (Rentfro, 1990); Detroit Board of Education, 101 LA 1199 (1993); Amalgamated Transit Union Local 241 v. Chicago Transit Authority Gresham, Gr-87-320 (Elson, Arb. 1988).*

Position of the Authority

- The joint bargaining proposal of ATU Locals 308 and 241 in March 2005 to add a provision that "all warranty work must be performed by bus repairmen," which was withdrawn, is a tacit admission by the Union that the Authority has the right to subcontract warranty work under Section 2.7.

- The Arbitrator should deny the grievance on the basis of this bargaining history alone.

- The Union must establish by probative evidence that the work at issue is "work which is normally and regularly performed by" ATU Local 308 employees.

- Work which is different and requires different knowledge and skills that ATU Local 308 employees do not possess is not work "normally and regularly" performed by them.

- That ATU 308 employees might eventually acquire such knowledge and skills through training is irrelevant, because to impose such a requirement on the first sentence of Section 2.7 would eviscerate the meaning of that sentence.

- CTA at all times had a practice of contracting out the work at issue, regardless of how one defines the work.

- CTA may contract out work which is normally and regularly performed by members of the bargaining unit if CTA also has a practice of subcontracting that type of work. The two conditions are not mutually exclusive.

- The testimony of the Union's witnesses regarding the scope and type of work performed by bargaining unit employees and vendors was inadequate as a matter of proof. The witness testimony was conclusory; not based upon personal knowledge; not specific and was unsupported by documentation.

- The Union's witnesses confused work performed under warranty and work involving changes initiated by CTA (MUP's) that were not under warranty, and therefore were typically performed by CTA personnel.

- Substantial amounts of the work at issue on the Series 5000 cars required skills and knowledge which ATU Local 308 Car Repairers did not have.

- The Series 5000 rail cars substituted sophisticated computer technology for the previous electromechanical technology. The new rails cars have a new hydraulic suspension and propulsion system, an Ethernet system, and a change from DC to AC motors. Therefore, the work was not work that was "normally and regularly performed" by bargaining unit employees. See, *Chicago Transit Authority and Amalgamated Transit Union Local 241, Grv. 096-120,096-210,096-257*(Meyers, Arb. 2002).

- The Union has failed to prove a *prima facie* case that ATU Local 308 employees have normally and regularly performed the work at issue in this case.

- The Union failed to meet its burden to prove that manufacturers or their vendors performed inspection or maintenance work on Series 5000 rail cars. MMIS reports established that bargaining unit employees performed inspections and maintenance work on the Series 5000 rail cars.

- Bombardier employees performed warranty work pursuant to its contract with CTA. That warranty obligated Bombardier to "promptly remove and replace with new parts, or if agreed to by the Engineer, remove, repair and replace (or repair in place) all parts which fail under the terms of" the warranty.

- "Repair work" encompasses troubleshooting, which subcontractors and vendors have done for CTA rail cars under warranty for decades. Repair work also involves removing a part, repairing or modifying it, and replacing the part. ATU's definition of repair work is flawed, because it leaves out the middle step in the process, as well as troubleshooting.

- Modifications of parts have historically been done by the manufacturers of rail cars or their vendors pursuant to their warranties. The Arbitrator should reject any attempt by the Union to break down modifications to "minute tasks" such as changing washers, removing screws, or applying Loctite. The evidence reveals that contractors always performed such tasks in the past as part of the warranty work.

- The evidence supports a conclusion that under the warranties the manufacturers and their subcontractors have always had primary responsibility for removing and replacing defective or worn out parts and for removing parts in need of modification and replacing them with modified parts.

- CTA in its discretion could and often did use its own employees to remove and replace individually defective or worn out warrantied parts but this was an optional and secondary

feature of the warranties. Such conduct risked loss of warranty protection if the work was not done right but avoided transit delays if the CTA had the parts on hand.

- In view of the continuous presence of certain contractors, such as GE, for years on site at the CTA, there is no reason to doubt that they performed modifications including part removals and replacements. The modifications records placed in evidence by the CTA constitute irrefutable evidence of this practice, along with the testimony of CTA witnesses. This evidence demonstrates that the CTA had a practice of contracting out the work at issue here.

- The Arbitrator should ignore the claims of CTA employees that they did not see contractor employees performing work in the various terminal shops. CTA employees had their own work to perform and the testimony of CTA witnesses who performed the work must be credited.

- It is not relevant that the Authority considered, but rejected, contracting out all inspections, maintenance and repair functions to Bombardier. The Authority rejected this idea shortly after delivery began of the Series 5000 rail cars.

- The testimony by Union witnesses that they were told they could not "touch" the Series 5000 rail cars is not credible. MMIS reports reflect that ATU Local 308 members performed work on the Series 5000 rail cars. And while the Authority had the discretion under the Warranty for its own employees to remove and replace defective parts, this was optional, a secondary feature of the warranty, and risked the loss of warranty coverage if the work was faulty.

- The Arbitrator should ignore the Union's argument about the large number of Bombardier employees, as this number was consistent with the number of Series 5000 rail cars, higher than any previous series.

- It is not relevant that Bombardier utilized staff from employment agencies. This is standard practice in the industry.

- The Authority had a decades-long "mixed practice" of contracting out to manufacturers or vendors work such as troubleshooting, part removal and replacement, and modifications, during the warranty period of new or rehabbed rail cars. Witness testimony proved that the Authority's manufacturers and vendors had historically performed this work alongside bargaining unit employees on Authority property. Therefore, the Authority was privileged to continue contracting out such work by the language of Section 2.7, that it had a "present practice of contracting work of the nature and type contracted out in the past." See, *Amalgamated Transit Union 241 v. Chicago Transit Authority, Fionda, Grv. No. 08-0894 (Torosian, Arb. 2013)*.

- This history was recently confirmed in a related case decided by Arbitrator Crystal. *Chicago Transit Authority v. Amalgamated Transit Union Local 308*, Grvs. 513-35/613-16, 1111-23 (Crystal, Arb. 2018). He found that for many decades, without objection by ATU Local 308, inspection, maintenance, repairs, and modifications, during the warranty period for new series of rail cars, were accomplished by car manufacturers and their subcontractors. His core finding of historical fact supports the CTA's position in this grievance.

- To the extent that the Union relies on the arbitration decision of Arbitrator Perkovich in *Chicago Transit Authority and Amalgamated Transit Union, Local 241 (Little),* the rationale of Arbitrator Perkovich in reaching his decision was faulty. The decision has been criticized by the Cook County Circuit Court, the Appellate Court, First Judicial District and has not been followed as arbitral precedent. See, *Chicago Transit Authority v. Amalgamated Transit Union, Local 241, Case No. 13-CH 21062 (Circuit Court of Cook County); Chicago Transit Authority v. Amalgamated Transit Union, Local 241, 20 IL App (1st) No. 152050 U (2016); and Amalgamated Transit Union, Local 241 v. Chicago Transit Authority, Acevedo, Grv. 09-0649 Nielsen, Arb. 2013.*

- The grievance should be denied entirely.

Findings and Decision

In this grievance the Union claims that the CTA has engaged in a serious violation of Article 2.7, by contracting out large amounts of bargaining unit work on the Series 5000 rail cars. The Union argues that after the Series 5000 cars were introduced, the CTA consistently denied ATU Local 308 employees bargaining unit work assignments on these rail cars for several years, and permitted that work instead to be performed by employees of the cars' manufacturer, Bombardier, and other vendors. The CTA argues that the Union has not demonstrated that work normally and regularly performed by the bargaining unit was contracted out. In addition, the Authority contends that CTA was continuing the past practices of assigning work, and therefore, did not violate the Agreement.

The Contract Language

Section 2.7 begins with a general prohibition against contracting out bargaining unit work. It states,

> "The Authority shall not subcontract or assign to others work which is normally and regularly performed by employees within the collective bargaining unit of Local 241 or of Local 308…"

The language then sets out two exceptions which permit CTA to contract out work normally performed by the bargaining unit: 1) in emergencies "when the work or service required cannot be performed by the available complement of unit members;" or 2) when CTA is continuing a present practice of contracting out "work of the nature and type contracted out in the past." Thus, in Section 2.7 the parties have agreed to a broad prohibition against contracting out work normally performed by the bargaining unit. They also have agreed to several significant exceptions to that prohibition.

The Authority has not relied upon the emergency exception in this case. Instead the Authority relies upon the exception that permits it to continue a practice of contracting out work as it has done in the past. It is customary to refer to work normally and regularly performed by the bargaining unit as "bargaining unit work." However, if the CTA can show in this case that certain work "of the same nature and type" has been contracted out in the past, then that work is not reserved to the bargaining unit. Such work falls outside the protection of the general prohibition, and contracting it out does not violate the Agreement. As the Authority argues, the two primary clauses within Section 2.7 – the general prohibition and the exceptions -- need not be interpreted as mutually exclusive. It is possible that some portion of the broad category of work which is normally and regularly performed by bargaining unit members also falls under one of the exceptions in Section 2.7, under certain circumstances. *Amalgamated Transit Union 241 v. Chicago Transit Authority, Fionda, Grv. No. 08-0894 (Torosian, Arb. 2013*).

Thus, in order to establish a violation of Article 2.7, the Union must first establish that the work in issue in this grievance is "normally and regularly performed" by bargaining unit employees. The Union also must establish that CTA permitted such work to be performed by contractors. If the Union establishes these facts, then the burden shifts to the CTA to show that the exception applies. *Chicago Transit Authority v. Amalgamated Transit Union Local 241, Fionda, Grv. No. 08-0239 (Newman, Arb. 2010).*

The Union argues that because the language of Section 2.7 refers to continuing a "present practice" it should be interpreted to mean the present practice as it existed when the language was first added to the Agreement in 1985. The language was added as part of an interest arbitration at that time and therefore, there is no bargaining history over its meaning. However, the parties have negotiated subsequent CBAs since this language was added, and have re-adopted this language with each new contract. In the absence of any evidence to the contrary, the Arbitrator concludes

that the meaning of a "present" practice must be determined as part of the Agreement under which a grievance is filed. Thus, the "present practice" language in this case applies either to the date of the adoption of the CBA under which this grievance was filed or the date on which the CTA contracted out the work complained of in the grievance. That distinction is not important here because all of the evidence of past practice relied upon by the parties in this case occurred before either date. Therefore, the Arbitrator will consider the Authority's contracting out practices occurring after the dates of the practices in place when the language was first added to the Agreement in 1985.

Is the Disputed Work Normally and Regularly Performed by the Bargaining Unit?

The Scope of the Grievance

Many contracting out disputes, including past CTA arbitration awards, involve a discrete task, a group of related tasks or a single project. The hearing in this case consisted of 17 days of detailed testimony about many, many tasks performed by CTA and contractors' employees, on every rail car series introduced at the CTA over more than forty years. Both parties presented testimony about a very wide variety of tasks performed on every operating system of the rail cars, and on the car bodies, comparing them to the work performed on the Series 5000 cars.

The reason for the difference in this case is found in the broad scope of the Union's grievance. As stated by the Union, the issue in this case is "whether the CTA violated Section 2.7 by subcontracting the 'inspection, maintenance and repair work' on the Series 5000 rail cars." The Union asserts in this grievance that for a period of several years the CTA contracted out virtually all of the work on the Series 5000 rail cars that is "normally and regularly" performed by Local 308 Car Repairers, other than conducting periodic inspections and replacing consumable items, like filters. As the testimony progressed, it became clear that the work which the Union claims here generally falls into these categories:

- Repairs to problems found during inspections, in addition to the replacement of consumables;
- Troubleshooting and performing routine general repairs, usually in response to white lights; blue lights; yellow parks and cars designated as BO (Bad Order);
- Removing and replacing defective parts, including those covered under warranty;
- Work done as part of modifications, including removal and reinstallation of parts, but not the repair or modification of the parts themselves.

There are many individual tasks which were raised and discussed at the hearing which the Union claims fall under these categories.

The CTA objects to the definition of the disputed work proposed by the Union. According to the CTA there is no real dispute over "inspection" or "maintenance" work because Union employees have performed virtually all of that work on the Series 5000 rail cars, except during a very short period of time when the cars were first introduced. The CTA argues therefore, that the only work that could possibly be in issue in this case is repair work.

The CTA argues that the terms "warranty work" or "modifications" should be substituted as definitions of the repair work addressed in this grievance. The Authority argues that all of the disputed work should be considered "warranty work" because the manufacturer's warranty provided the reason for the CTA contracting out all of this work. The CTA points to the warranty language in its contract with Bombardier, and argues that under this language, it had the right to require Bombardier to perform all of the work which the Union claims here as bargaining unit work, and therefore, the Union cannot claim it. The warranty language states,

> "During the respective periods of the guarantee, the Engineer will promptly notify the Contractor in writing of each claim and the Contractor shall promptly remove the items that are the subject of a claim and replace same with new parts, or if agreed to by the Engineer, remove, repair and replace (or repair in place) all parts which fail...including parts damaged as a result of defect in, or malfunction of other Car parts, all without any expense to the Authority."

The evidence demonstrates that under this warranty clause the CTA also retained to option to assign work covered by the warranty to its own employees and "charge back" Bombardier for the cost of that work.

CTA argues that its actions were simply intended to maximize its rights under the warranty clause with Bombardier, which it argues was a good business decision. CTA's contract with Bombardier does not control the resolution of this contracting out grievance, however. This grievance was filed by the Union under the collective bargaining agreement between the CTA and ATU Local 308. The parties to this dispute are the CTA and the Union. Neither Bombardier nor any other manufacturers or vendors are parties in this dispute. The Arbitrator's authority is limited to interpreting the CBA.

The existence of a manufacturer's warranty clause in its contract with CTA would be more relevant to this dispute if the parties had agreed to include warranty work as an exception to the general prohibition in the CBA against sending work out of the bargaining unit. However, Section 2.7 does not include warranty work as an exception. Where the parties have agreed to a general prohibition, with only two exceptions, the Arbitrator cannot add another exception to the contract language. Section 17.3 of the CBA states that the arbitrator "shall have no authority or jurisdiction directly or indirectly to add to, subtract from or amend any of the specific terms of this Agreement…" Therefore, the Arbitrator does not have the authority to add a warranty exception to Section 2.7, where none exists.

Work challenged under this grievance may fall under the definition of warranty work under CTA's contract with Bombardier, but that does not determine whether it is protected bargaining unit work under the collective bargaining agreement. As the arbitrator ruled in *Amalgamated Transit Union 241 v. Chicago Transit Authority, Acevedo, Grv. No. 09-0649 (Nielsen, Arb. 2013)*, "the fact that [the disputed work] was covered by a warranty does not, in and of itself, remove it from the scope of Section 2.7." If the Union establishes that certain work is normally and regularly performed by the bargaining unit, the CTA can remove such work from the unit only if it can establish that it has been contracted out under a clear past practice. This is true regardless of whether that work is warranty work as defined by CTA's contract with a manufacturer or vendor.[14]

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[14] The CTA relies upon statements from two judicial decisions about CTA contracting out warranty work to support its position that the warranty language should control the resolution of this grievance: "It makes perfect sense to me that… the manufacturer should be responsible to correct any design defects…" "We agree with the CTA that it makes sense for a manufacturer to perform certain warranty repairs." The Union objected to the introduction of these decisions as attachments to the CTA's post-hearing brief. However, as the decisions are judicial appeals of the arbitration award in *Chicago Transit Authority v. ATU Local 241, Little, Grv. No. 09-0072 (Percovich, Arb. 2013)*, cited by the Union in its post-hearing brief, the Arbitrator has considered them. However, because the judges upheld the arbitration award, the judges' comments supporting CTA's warranty position here are merely *dicta* and not controlling. The dispute here must be decided solely on the basis of the collective bargaining agreement under which this grievance arises, and not on these warranty considerations, especially since the controlling contract language in

Recent contract negotiations do not alter this conclusion. During joint contract negotiations with Local 308's sister ATU Local 241, that Local proposed language that would have reserved warranty work on CTA's buses to be performed by bargaining unit members. The language was not accepted by the parties or incorporated into the Agreement. The Authority suggests that by proposing this language the Union recognized that warranty work is excluded from protection under the current contract language. As discussed above, Section 2.7 does not mention warranty work and has never included it as one of the two exceptions to the general prohibition against contracting out work normally and regularly performed by the bargaining unit. Therefore, the Arbitrator cannot conclude that by introducing this contract proposal, the Union was conceding that all repair work performed under a warranty is currently excluded from the protection of the existing language of Section 2.7.

The Authority also introduced its own proposal to remove Section 2.7 from the Agreement entirely during contract negotiations with Local 308 which occurred during the pendency of this grievance. Eliminating Section 2.7 would have eliminated the Agreement's explicit protection of bargaining unit work. The parties did not accept this proposal either. By rejecting this proposal the parties demonstrated their continuing commitment to the current language of the Agreement, and the bargain it describes in Section 2.7: a general prohibition against contracting out work normally done by the bargaining unit, which is limited by two exceptions. This language has remained unchanged for many years, through successive renegotiations of the Agreement.

The CTA also considers the term "modifications" as an appropriate description of the work at issue here. The CTA objects to the Union breaking down modifications and other repair work into separate tasks, such as troubleshooting; removal of faulty components, modifying or repairing the parts and then reinstalling them; or even smaller tasks, such as changing washers, applying Loctite, or removing screws. According to the CTA, this is not how one normally thinks of subcontracting. This "slicing and dicing" of repair work into smaller tasks therefore, does not comport with the language of Section 2.7, according to the Authority.

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this dispute does not contain a warranty exception, and arbitration awards between the parties have found no support for excepting work from the general prohibition included in Section 2.7 solely on the basis that it was performed under a warranty.

As discussed below, not all of the work at issue here falls under the category of "modifications," as that term has been used by the parties in this arbitration. To the extent that the CTA's argument is intended to apply to all of the repair work at issue here, the Arbitrator notes that the party filing a grievance typically establishes the scope of the grievance. Here the wording of the grievance is broad and does not specifically define repair work. In contracting out grievances at the CTA, the parties and arbitrators generally have focused on the actual tasks performed, as well as past practices regarding the assignment of such work. Thus, in determining what work had normally and regularly been performed by the bargaining unit, in *Chicago Transit Authority v. Amalgamated Transit Local 241, Grv. Nos. 096-120, 096210 and 096-257 (Meyers, Arb. 2002)*, Arbitrator Meyers focused on the specific duties involved. He concluded that the bargaining unit normally performed basic landscaping work, such as mowing grass, pulling weeds and cleaning up debris. He found, however, that they had not typically performed more skilled landscaping duties such as installing trees and bushes; pruning plants; monitoring plants for disease or insect infestation; weed removal within plant beds, and turf core aeration, and he ruled that the CTA did not violate the Agreement by contracting out this work.

In considering whether the Union's descriptions of the claimed work are appropriate, the Arbitrator has considered whether they are a meaningful reflection of how the work has typically been assigned and performed at the CTA. The evidence discussed below demonstrates that in many cases, repair jobs have been broken down into smaller tasks performed by different people, depending upon the circumstances. Therefore, considering the earlier arbitration awards, and the past practices between the parties, the Arbitrator cannot conclude that the parties intended to exclude tasks from the definition of "work" protected under Section 2.7, only because they are part of a larger repair job. The Arbitrator therefore rejects the arguments that the Union has completely failed to state a claim for "work" that may be protected under Sec. 2.7, or that such work can only be defined in the ways proposed by the Authority.

Exclusivity

In determining whether certain work has been "normally and regularly" performed by the bargaining unit, the Union need not show that the bargaining unit has *exclusively* performed the work. The CTA made this argument in *Chicago Transit Authority v. Amalgamated Transit Union Local 241, McBride, Grv. No. 12-0054 (Nielsen, Arb. 2015),* and Arbitrator Nielsen rejected it, ruling,

> "First, as CTA acknowledges in its post-hearing brief, the word 'exclusively' simply does not appear anywhere in Section 2.7. Instead, the general prohibition on sending work out of the unit contained in the first sentence extends to any work 'normally and regularly performed' by unit employees; there is no additional requirement that, to fall within the protection of Section 2.7, the work must be performed exclusively by unit employees. Had the parties intended such an additional condition, they could easily have added the word 'exclusively.' They did not. As the Union correctly points out, it is beyond my authority to add such a term to the parties' agreement in this award, and there is otherwise no basis in the clear language of 2.7 for inferring a mutual intent by the parties to impose the exclusivity condition urged by CTA."

Therefore, the Union need not show that the work at issue here was performed solely and exclusively by the bargaining unit, in order to establish its *prima facie* case that the work was normally and regularly performed by them.

Work Normally and Regularly Performed by the Bargaining Unit

As the CTA argues, the evidence demonstrates that during the relevant time period the bargaining unit performed nearly all of the required periodic inspections on the Series 5000 rail cars, except for a few inspections shortly after the cars were first introduced. The CTA also identifies a small amount of work it identifies as "maintenance work," such as lubrication of components; general cleaning of rail cars; and graffiti removal, which was performed by the bargaining unit. During the hearings over this grievance, the parties did not generally use the term "maintenance" work. However, the bargaining unit's cleaning of cars and replacing consumables performed during periodic inspections of the Series 5000 cars may be considered maintenance work. There is not convincing evidence in the record that this work was contracted out.

Therefore, the truly disputed work in this grievance involves repair work, including troubleshooting and diagnosing problems and either conducting repairs and/or or replacing defective components and parts. In determining the work that bargaining unit employees regularly and normally perform, the position descriptions developed by the Authority are relevant because they set forth the basic duties and describe the work of the positions. The position description for a Car Repairer, the primary position involved in this grievance, states that the Car Repairer "Inspects, maintains and repairs rail vehicles." The "Primary Responsibilities" of the position include,

> "1. Inspects and repairs various components of rail vehicles, such as parking and emergency brakes, inverter, converter and motor generator, electrical systems, acceleration and braking control system, auxiliary system, ventilation heating and air conditioning.
>
> 2. Tests and determines cause of malfunction of rail vehicle components, using knowledge, instruments and gauges.
>
> 3. Removes and replaces various components of rail vehicles.
>
> 4. Adjusts and repairs various components of rail vehicles."

The maintenance and repair work performed by Car Repairers is sufficiently complex that sub-specialty positions have been created in addition to the general Car Repairer position. These position descriptions list a variety of additional tasks and duties associated with each specialty. The position description for Rail Carbody Inspector, for example, states that the position,

> "Performs the Annual and Periodic Inspection of all components accessed through the Carbody of CTA Rail Vehicles. Inspects, adjusts, gauges, replaces and/or repairs all components found on related systems such as Automatic Announcement Systems, Passenger Door Systems, Destination Sign Systems and other Carbody components. Uses shop testing equipment to diagnose systems and components for proper operation. Performs repairs and/or change-outs of defective components..."

Another specialty is that of Rail Technician, whose position description states,

> "Performs the troubleshooting repair of all components and subcomponents found on CTA Rail Vehicles. Inspects, adjusts, gauges and repairs all components and subcomponents found on sub-systems. Uses shop testing equipment to change-out, adjust and gauge rail car components and diagnoses the repeaters and complex defects on rail cars."

According to the position description for the Rail Truck Shop Repairer, the employee in this position,

> "Performs the replacement of major components on CTA Rail Vehicles. Uses shop jacks, hoist systems and powered industrial trucks. Replaces, adjusts, tests and gauges rail car components per CTA bulletins and standards…"

The basic responsibility of the Car Repairer position is to "inspect[s] and repair[s] various components of rail vehicles," which broadly covers all of the work claimed by the Union in this grievance. Specific duties presented in the Union's evidence are also included in the position descriptions of the specialized positions. The troubleshooting work claimed by the Union in this grievance involves determining the cause of a malfunction in a rail car component or system. A basic responsibility of the Car Repairer is "tests and determines cause of malfunction of rail vehicle components." Witnesses testified that Rail Technicians perform a more complex form of troubleshooting when GB Car Repairer employees cannot determine the cause of a problem, and this testimony is supported by the Rail Technician job description. The "troubleshooting repair of all components and subcomponents found on CTA Rail Vehicles" is their basic job duty, and their position description includes "diagnoses the repeaters and complex defects on rail cars." The Carbody Inspector position also performs troubleshooting, requiring the Inspector to "diagnose systems and components for proper operation."

In addition, the job descriptions also support the view that changing out defective parts is part of the job duties of Car Repairers. The job description for the Car Repairer states that the employee "removes and replaces various components of rail vehicles." Under the Carbody Inspector job, "change-outs of defective components" is described as part of the job. In addition, the Rail Technician "Uses shop testing equipment to change-out, adjust and gauge rail car components" under their job description. The Truck Shop Repairer "Performs the replacement of major components on CTA Rail Vehicles."

In addition to troubleshooting problems and changing out defective parts, the job descriptions also include performing repairs on the rail cars. The basic Car Repairer job description states as one of the position's basic responsibilities that the employee, "Adjusts and repairs various components of rail vehicles." The Rail Carbody Inspector "replaces and/or repairs all components found on related systems" and "performs repairs and/or change-outs of defective components." The Rail Technician performs the "troubleshooting repair of all components and subcomponents."

The job descriptions therefore support the Union's position that the work claimed by the Union here is the normal and regular work performed by bargaining unit Car Repairers. These are not secondary or minor duties appearing in a job description that are performed only rarely. Rather, the disputed work are fundamental job responsibilities of the Car Repairer positions, or their "mission," as several witnesses testified. Witnesses from both parties testified that the bargaining unit typically performs the work in each of the categories claimed by the Union on a daily basis.

The work is performed as part of established procedures used by the CTA in the operation of its maintenance and repair facilities. Thus, rail cars go through periodic inspections, conducted by CTA Local 308 employees. During the course of those inspections, Car Repairers may identify worn or faulty components which need to be replaced or repaired. The evidence establishes that Car Repairers then typically replace or repair whatever they can fix.

The evidence also demonstrates that Car Repairers regularly respond to lights and signals indicating malfunctioning systems on rail cars. Car Repairers are the persons who typically respond to blue and white lights, yellow parks and BO cars. In the regular course of their daily duties, Car Repairers troubleshoot the problems signaled by these lights, and make repairs, if they can. Both inspections and troubleshooting warning lights and signals may require a Car Repairer to remove a defective component and replace it with a good part.

If GB Car Repairers cannot diagnose or repair a problem, a Local 308 Rail Technician may be called to assist. As witness testimony and their job description makes clear, Rail Technicians troubleshoot more complex problems, assisting with "repeaters," cars which demonstrate a repeated problem with the same component or system. Rail Technicians typically troubleshoot and repair repeaters.

After repeated failures of a particular component, it may become clear that a modification, a change in the part, is necessary. At that point the component is removed, a modification is made to the component, and the part is reinstalled. The Union does not claim that the work of actually modifying or changing the component is normally and regularly performed by the bargaining unit. However, the Union lays claim to other work in connection with modifications which its members have regularly performed in the past, including removing faulty parts and reinstalling the modified part.

The CTA argues that the Union relies upon conclusory statements by its witnesses that all of this work was normally and regularly performed by the bargaining unit. Many of the Union

witnesses had decades of experience as Car Repairers, and their testimony about their normal job duties is convincing. In addition, many of the CTA's witnesses also testified that the work described has been regularly performed by Local 308. The disputed work described here as regular bargaining unit work was done before the Series 5000 cars were introduced. Therefore, it is discussed in more detail in the next section concerning the past practice of the parties.

The Arbitrator concludes that the Union has established that the work described above and claimed in this grievance has been normally and regularly performed by the bargaining unit. This includes repairing problems discovered during inspections, and responding to blue or white lights, yellow parks, and cars designated as BO by troubleshooting and diagnosing problems and making general repairs. The bargaining unit also has removed and replaced defective parts, and performed work on modifications as part of their regular duties.

Furthermore, the fact that contractors may have performed some of these same tasks does not, in itself, remove the work from the classification of work that the bargaining unit has regularly and normally performed. As discussed above, the work need not be done exclusively by the bargaining unit, as long as it is part of the normal and regular work they perform, in order to meet the Union's burden. Considering both the job descriptions introduced by the Union and the testimony of both parties' witnesses, the Arbitrator concludes that the Union has met its initial burden to establish a *prima facie* case that the work claimed in this grievance is normally and regularly performed by the bargaining unit.

The Authority argues, however, that the troubleshooting and repair work in dispute in this grievance was not regularly and normally performed by the bargaining unit because the Series 5000 cars were fundamentally different and more complex than earlier rail car series. One witness stated that the 5000 Series rail car is a "computer on wheels." The Authority pointed to three major changes in the technology of the cars: a complete change in the propulsion system; a new hydraulic suspension system; and the introduction of the ethernet communications system. According to the CTA these changes were so fundamental that the work on the new rail cars cannot be considered the same work as that normally performed by the bargaining unit up until that point in time.

The evidence establishes that there are significant differences between the Series 5000 cars and the earlier series of cars. However, the evidence also shows that there have been significant technological changes in other new CTA rail car series. One Car Repairer witness described how the Series 2600s was very different from earlier series: it was the first series with an AC unit, and

had a motor alternator, and a control group that was "a hybrid…half electromechanical and half electronic controlled." The Series 3200s was the first series where Car Repairers communicated with the rail car systems through a computer. They also had a new inverter system. The evidence establishes that in the past Car Repairers were trained on new features of each car series as it was introduced. They acknowledged that at times they were required to consult books, schematics, or someone with more knowledge of the systems, in order to effectively troubleshoot and repair problems on a new series of cars. They consistently testified that they were able to adjust and learn to perform their regular duties on each new series of cars, however, and there is no evidence in the record to the contrary.

The evidence of the repair history of the Series 5000 cars does not support a conclusion that the rail cars were so different that work on them falls outside work that Car Repairers normally and regularly perform. Bombardier hired many of the employees who worked on the Series 5000 cars in the first several years from temporary employment agencies, and trained them on the job. The Authority argues that this is standard industry practice, and there is no evidence to the contrary in the record. However, the evidence that the vendors' employees had very limited or no prior rail car experience and received limited training before working on the Series 5000 cars seriously undermines the Authority's argument that work on the cars was so complex that it did not fall within the work regularly performed by the bargaining unit.

Furthermore, the evidence does not demonstrate that when the work was transferred to the bargaining unit, they were not able to perform it. When Bombardier employees left a shift at the 54th St. shop in 2013, the bargaining unit took over their normal duties of troubleshooting and making repairs, even though they had not received full classification training by that point in time. Bargaining unit employees at other shops took over the repair duties from Bombardier employees later, even though they may not have received full training on all the systems when they began. While some CTA employees acknowledged that there were particular complexities with this series of cars, there is no persuasive evidence in the record that they were unable to perform the work, once given the opportunity to do so.[15]

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[15] The CTA argues that one Car Repairer (Pugh) gave up his position as a K580 rescuing stuck rail cars because the work on the 5000 Series cars was too difficult. He did not testify that he left the position because the work was too complex but rather said that there were a lot of breakdowns with the Series 5000 cars and he got tired of climbing the el structures to rescue them.

Work Performed by Contractors on the Series 5000 Cars

During the period after the Series 5000 cars were introduced, the evidence demonstrates that work regularly performed by the bargaining unit was performed by contractors. Although the Authority questions whether employees were told not to touch the cars, the testimony of both Union and CTA witnesses and documents of work assignments establishes that CTA employees were not assigned or permitted to perform their usual duties on the new rail cars when they were introduced. There was convincing testimony that when Car Repairers discovered something in need of repair during an inspection, they were told to set it aside for Bombardier to repair. Witnesses from both parties testified that the bargaining unit was not permitted to respond to white or blue lights or yellow parks, or to perform work on BO rail cars, when the Series 5000 cars were introduced, which is all normal and customary work for Car Repairers. They did not troubleshoot these problems, or make general repairs, also part of their normal job duties. They were not assigned or permitted to do change-outs of defective parts. They did not perform work on modifications. Nearly all of this work that was normally performed by the bargaining unit was performed instead by employees of Bombardier, for at least the first several years after the Series 5000 cars were introduced.[16] Bombardier employees who had been working on the Series 5000 cars were told to stop working on them if they went to work directly for the CTA as Car Repairers. The work records of individual rail cars presented at arbitration supports the testimony of the witnesses that Bombardier performed virtually all of the troubleshooting and repair work on the Series 5000 into at least late 2013. The large numbers of Bombardier employees assigned to perform routine troubleshooting and repairs, at all of the CTA's terminal shops, also supports this conclusion. The Authority does not seriously dispute that this was the practice, arguing instead that it was reasonable to pursue this method of assigning work during the warranty period.

Thus, the Union has established that the work in issue in this grievance is work normally and regularly performed by the bargaining unit. The Union also has established that the work was assigned to Bombardier employees during the period at issue. The record is sometimes unclear about who exactly made individual assignments. However, CTA cannot escape its obligations

[16] The Authority argues that the assignment practices challenged here existed only through the warranty period and only covered warranty work. The Union presented evidence indicating that Bombardier performed work that was not covered by warranty.

under the CBA by claiming that CTA managers did not make assignments of the work directly to Bombardier employees. CTA is responsible for fulfilling its obligations under Section 2.7, and cannot escape those obligations through its warranty agreements with a manufacturer. *Amalgamated Transit Union Local 241 v. Chicago Transit Authority, Acevedo, Grv. No. 09-0649 (Nielsen, Arb. 2013; Chicago Transit Authority v. Amalgamated Transit Union Local 241, Little, Grv. No. 09-0072 Percovich, Arb. 2013).*

Continuation of a Past Practice

As discussed above, certain work which is performed by Car Repairers as part of their regular duties may be contracted out if the Authority has a past practice of doing so. Because the Union has established that work normally and regularly performed by the bargaining unit has been contracted out by the CTA, the burden shifts to the Authority to establish that it was "continuing a practice of contracting out certain work of the nature and type contracted out in the past." The Union has claimed several types of repair work here, and this analysis of past practice will follow these categories.

Repair Work Performed in Connection with Inspections

Witnesses from both parties testified that in the past bargaining unit employees routinely repaired items which were found to be faulty during inspections. For example, Mr. Regester testified that he began working on the Series 2400 cars as soon as they were introduced, and fixed problems that he found on inspection. As for the Series 2600 rail cars, both Union and Authority witnesses testified that CTA employees made repairs to items found during inspections. Mr. G. Johnson testified that 308 Car Repairers inspected the cars and fixed problems they found on inspection, or called him to assist as the troubleshooter. CTA Witness Goralczyk, who worked for the rail car manufacturer Budd on the 2600 Series, testified that wherever he was assigned, Car Repairers were doing inspections and troubleshooting. If they found something wrong during an inspection they would fix it. Mr. William Lone was a Service Representative for Budd from 1982

to 1993, said that when he was on the shop floor, he was able to observe what the Car Repairers were doing, and saw them doing inspections, and making repairs during inspection.

Similarly Mr. Piantkowski was a Service Technician for Transit America (successor to Budd) from 1985 to 1987, while the 2600 Series was still being introduced. He was familiar with Car Repairer jobs because he had worked at CTA before going to work for its vendor. He testified that he observed Car Repairers inspecting rail cars and making repairs after inspections on the Series 2600 cars while he was working for Transit America.

Mr. Roberts was working as a Field Service Representative for car builder Morrison-Knudsen. While working on a rehab project of the older Series 6000 cars, Roberts worked at the Wilson, Howard, Linden and Kimball shops. While at those shops, he said that he observed the work of full crews of ATU 308 Car Repairers, during the time the new Series 2600s were starting to arrive in the shops. He confirmed other witnesses' testimony that the 308 Car Repairers were inspecting the rail cars, and doing repairs found during inspection. None of these witnesses testified that CTA employees were required to set aside the new 2600 cars if they found a problem during inspection, because they were under warranty. None of them testified that CTA employees were limited to performing their work only on older series cars.

There is similar convincing evidence in the record concerning the practice of repairing problems discovered on inspection when other series of rail cars were introduced as well. Mr. Criollo worked for GE as a Field Service Technician on the 3200 Series cars, responsible for the propulsion group components. He reported that most of the Car Repairers were working on the Inspection line and he was able to observe what they were doing. He remembered two CTA Inspectors by name, Martinez, who made adjustments during inspections and replaced burned parts, which were under warranty, and Cabrerra, whom Criollo said was performing inspections and repairs on AC systems on the 3200s. According to Criollo, if Car Repairers could repair a problem they found upon inspection, they would, with the exception of software work.

Roberts was the Morrison-Knudsen Field Services Manager when the first Series 3200 prototype rail cars were delivered to CTA in 1991 at the Kimball shop. He testified that the day shift had about 20 Local 308 Car Repairers who did inspections, and performed repairs on inspection. They performed this work while the rail cars were new and under warranty, working on the Series 3200 rail cars on a daily basis. He said he was never told that the Local 308 Car Repairers could not fix a problem discovered on inspection, and they were not limited to replacing

consumables. He agreed that it would be "kind of silly" for the person inspecting a car not to fix a problem found on inspection if they could fix it. He said that he was never told that Car Repairers could not do any type of work on a train because it was under warranty.

Piantkowski also worked on the 3200 Series. He said that he was aware from his work previously with Transit America that Car Repairers could perform repairs on new rail cars, usually during inspection, and that the contractor would be billed for their labor. Under questioning from the Union, Piantkowski said that that it was routine for a Car Repairer to fix something at inspection.

In 1995, Mr. B. Johnson was working HVAC inspection on the midnight shift when at least some of the 3200 cars remained under warranty. He testified that if he found a problem on inspection he would try to fix it, and if he were unable to do so, an ATU 308 troubleshooter would do it. He said he was never told that he had to set aside certain work to be done by a vendor. There were no vendor personnel working on the rail cars on the midnight shift.

Criollo stated that the Car Repairers did inspections, worked on controls, brakes, car bodies, and trucks, and did general repairs on the Series 2600Rs while they were under warranty at the Howard shop. Mr. Kinney testified that he knew from going to the shops that housed the Series 2600Rs that there was a full complement of Car Repairers working at each of them. He testified that Car Repairers were inspecting and troubleshooting rail cars under warranty, and fixing problems if they found something wrong. Car Repairers did this on a daily basis because that was their job, their mission, according to Kinney.

There is not convincing evidence in the record that in the past CTA contracted out repairs that were discovered during routine inspections. Both Union and CTA witnesses testified that employees worked on earlier series of rail cars as soon as they were introduced; that they conducted regular periodic inspections; and that they routinely repaired problems found during inspections. They were never told that if they found a problem on inspection, they should put it aside for a contractor employee to repair, as they were told to do and did on the Series 5000 cars. Contractor representatives would not have known about repairs that became apparent during inspections conducted by CTA employees unless the Car Repairers were told to put the cars aside for contractors to repair.

Local 308 employees were never told in the past that they could not repair the cars because they were under warranty. When they encountered problems they could not fix, they consulted

CTA troubleshooters, and may have consulted vendor representatives as well. However, the evidence does not establish that there was a past practice of vendor employees performing repairs found during inspections which CTA employees were able to repair. Therefore, contracting out this work on the Series 5000 cars violated Section 2.7 of the Agreement.

Change-outs of Parts

Multiple witnesses testified that in the past CTA employees have routinely changed out defective parts with new parts.[17] If this work was done while the cars were still under warranty, the part would be tagged and returned to the vendor so that CTA would get credit for it. Keevil testified that change-outs of defective parts were routinely performed by bargaining unit employees throughout his tenure as CTA Engineer.

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G. Johnson recalled in regard to the 2600 Series cars, that if he or another troubleshooter thought a part was bad, they would present it to Manufacturer's Field Representative Garret, who was administering the warranty. Garret would examine it and if he agreed the part was bad, the part would be red-tagged and sent to Skokie. Pugh testified to the same practice with regard to the 2600s. According to Pugh, he was never told that doing warranty work was not the work of ATU Local 308 Car Repairers.

CTA Witness Goralczyk described the same process when he worked as a manufacturer's representative on the 2600's. He testified,

> "CTA did all of the work as far as the warranty work and replacement of the components and whatever. We took care of the warranty end of it, where we made sure it was documented correctly and that type of stuff for sending the parts back to the manufacturer."

According to Goralczyk, a warranty claim accompanied the return of the part, and CTA's labor in removing and replacing the part was part of that claim.

CTA Witness Lone also testified that part of his job as a manufacturer's field representative was to administer the warranty on the Series 2600 rail cars. He said that when he was on the shop

[17] Parts change-outs could occur as a result of problems found on inspections or as a result of regular troubleshooting, which is addressed in the next section. This section does not address parts which were modified. Modifications are addressed in a later section of this Award.

floor, he was able to observe what the Car Repairers were doing, and he saw them changing out parts as part of their normal duties. Roberts also confirmed that he witnessed CTA employees changing out parts on the Series 2600 rail cars while they were under warranty.

Goralczyk testified that on the 2200 R cars, ATU 308 Car Repairers removed defective parts, tagged them and put them in a bin. Car Repairers then reinstalled the new or rehabbed part and CTA would bill New York Rail Car for the labor, consistent with the warranty provisions. Goralczyk testified that this was warranty work routinely done by Car Repairers, and he distinguished it from work on modifications, describing this work as simply the replacement of a failed part with a good one. In contrast, he said, modifications involve a change in the part, and he did a lot of that work. As was true with other series of cars, one of the primary tasks of the field representatives for the vendors was to complete the documentation for the replacement of these warrantied parts, according to Goralczyk.

On the 3200 Series, Piantkowski said that he was aware from his work with Transit America that Car Repairers could perform work on new rail cars, usually during inspection, and that the contractor would be billed for their labor. Under questioning from the Union, Piantkowski concurred that replacement of parts was something routinely done by Car Repairers whether or not the rail car was under warranty.

As for the 2600Rs, according to Massey, his staff would troubleshoot failed components to find the defective part and then replace or repair them, as well as doing modifications. He agreed, however, that ATU 308 Car Repairers tagged parts that were sent back to the vendor, indicating that they were still under warranty. Criollo, who worked onsite in the shops during this period, testified that ATU 308 Car Repairers replaced defective parts on the 2600Rs. They placed the parts on skids and barrels for the larger items, and in a bin for the smaller parts. As a field service representative Criollo reported doing the same work as other manufacturer's representatives reported doing on earlier car series: recording and tracking, for warranty purposes, parts that were replaced. If the parts were already in inventory, such as GE contactors, 308 Car Repairers would replace the part immediately.

Kinney also testified about parts replacement for the 2600R's. He said that he was aware of and observed the warranty process for tagging parts that would be returned to the vendor: Car Repairers would tag the part and place it in a bin. Kinney testified that a modification was totally different than a warranty of parts.

Therefore, there is persuasive evidence in this record that in the past CTA's Car Repairers routinely did parts change-outs, removing a faulty part and replacing it with a good part, when modifications were not involved. The evidence demonstrates that this work began when new series of rail cars were first introduced and continued throughout the warranty periods. CTA and the vendors established procedures for CTA employees in order to aid in tracking these parts when they were still under warranty, so that CTA could receive credit for the part – and the labor of ATU 308 Car Repairers. There was evidence that the role of manufacturers' field representatives during the warranty period was to check the parts to certify that they were defective, and to document CTA's claim for warranty credit for the faulty parts and the CTA labor to replace them.

There was not convincing evidence on this record that there was a past practice of contractor employees removing and tagging bad parts, placing them in bins, or installing good replacement parts. Of both parties' witnesses, the only one to suggest that contractors may have done this work was Mr. Massey, who testified about the 2600R's. His testimony was not based upon the kind of daily onsite observation of the terminal shops provided by CTA Witnesses Criollo or Kinney, who testified that it was the bargaining unit who performed this work on a routine daily basis in the past.[18] The Arbitrator concludes that the weight of the evidence does not support the existence of a past practice of contractors performing routine parts change-outs when modifications were not required.[19] Therefore, contracting out this work on the Series 5000 rail cars violated Section 2.7.

Troubleshooting Blue and White Lights, Yellow Parks and BO Trains and Making General Repairs

Troubleshooting or diagnosing a problem with a rail car system is a fundamental job duty for Car Repairers. It is an integral initial part of the repair process, necessary for determining what repair must be performed. The blue and white lights, and yellow parks serve as warning signals that components of the propulsion, inverter and braking systems may be malfunctioning. Multiple

[18] Massey's testimony is discussed in more depth in the following section.

[19] Keevil testified that if there were a change-out of a large system, CTA employees would obtain assistance from manufacturer's representatives, especially in the period soon after the introduction of a new rail car series. It is not clear whether he was referring to work performed under a modification, discussed below. However, the fact that CTA employees may have needed extra assistance on one or a few very large projects does not alter the conclusion that there was not a consistent past practice of using contractors to change out parts on a routine daily basis. In addition, an argument based upon unavailability of CTA forces to perform a particular large project is more appropriate for an argument under the emergency exception.

witnesses testified at arbitration that initially responding to these warning signals and BO trains has been work consistently performed by the bargaining unit. The work is specifically mentioned in the various job descriptions for Car Repairer positions.

Former CTA Engineer Keevil testified that he was generally familiar with the work of CTA Car Repairers and described it as to inspect, troubleshoot, maintain, and repair rail cars. He was asked specifically about diagnosing and fixing blue lights, yellow parks and white lights and said that this was typical work for Car Repairers.

Goralczyk confirmed this general testimony. He testified that Car Repairers in the past took care of blue lights, white lights and yellow parks, troubleshooting the systems and performing general repairs. He confirmed that this was the practice when the earlier series of cars were under warranty and beyond. He also stated that with the introduction of the Series 5000 cars, the "mission" of Car Repairers changed and moved away from this past practice.

With regard to the 2400 Series, Regester said that he began working on the Series immediately after they were delivered and while under warranty. He described his basic job duties as troubleshooting and repairing rail cars, including those brought to his attention because of blue lights, white lights, or yellow parks. He testified that he was never told there were tasks that he could not perform on the Series 2400 rail cars because they were new and under warranty.

Regester testified that he was told only to set aside cars with recurring problems, "repeaters." He testified that, "If we had an issue we couldn't take care of, if we had something we couldn't – didn't know how to repair, we would ask them [vendors' field service representatives] for technical support." Boeing representatives, usually with a Car Repairman, would try to fix the repeaters, according to Regester. He did not recall Boeing personnel ever spending an entire day troubleshooting Series 2400 rail cars. Although one or two Boeing representatives were present in the shop daily, he did not see additional Boeing representatives coming or leaving on the other shifts. Representatives from other vendors were present in the shop even less frequently, he said .

With regard to the Series 2600 cars, Johnson testified that he "picked" the Des Plaines shop in 1987 where he worked with about twenty or so Car Repairers, including those who were in the campaign pool. He worked on tracks A or B troubleshooting 2600 rail cars. He said that when they found something wrong, they fixed it.

From 1983 though 1988 Goralczyk worked as a service representative for Budd at the CTA on the 2600 Series cars. Goralczyk also was assigned to the Des Plaines shop, where he said there

were two Budd representatives on days and two others, including himself, on nights. Goralczyk said that he worked side by side with the Car Repairers at the Des Plaines shop, and testified that Car Repairers and not Budd representatives, were doing the troubleshooting. He testified that he was there to perform modifications, and did no troubleshooting. According to Goralczyk, he did not even provide technical advice to CTA employees at that point, in part because he said that they knew more about the cars than he did and he was shadowing them.

Goralczyk testified later that wherever he was assigned as a vendor field service representative, he was only doing modifications. He said he did not do troubleshooting or general repairs. According to Goralczyk, Car Repairers were doing inspections and troubleshooting and if they found something wrong while troubleshooting, they would fix it.

Lone was a Service Representative for Budd from 1982 to 1993, initially with an office at the 54th Street shop in the tool room. He was the only Budd representative at the 54th Street shop, and he said that his job was to administer the warranty on the Series 2600 rail cars and to do modifications. He said that when he was on the shop floor, he was able to observe what the Car Repairers were doing, and saw them doing troubleshooting as part of their normal duties. According to Lone, he observed Car Repairers diagnosing BO rail cars, including blue lights. Lone testified that if they had a problem, they would seek his assistance but that CTA employees would look at the BO rail cars first. He said that his employees also would troubleshoot on occasion, when CTA employees needed their assistance.

Piantkowski testified that he was familiar with CTA Car Repairer's jobs because he had worked at CTA. He testified that Car Repairers troubleshot rail cars, including BO cars. As a manufacturer's field service representative he said that he assisted ATU Local 308 Car Repairers with troubleshooting repeaters on the 2600 Series. Roberts also testified that while he was working as a field representative for Morrison-Knudsen he observed the Car Repairers during the period when the new Series 2600 cars were beginning to arrive. He confirmed other witnesses' testimony that the 308 Car Repairers were troubleshooting the rail cars during this early period while they were still under warranty.

Goralczyk confirmed that troubleshooting the Series 2200Rs while under warranty as well as repairing BO rail cars was the job of the Car Repairers. He testified further that GE did not routinely do troubleshooting, but would assist ATU 308 employees if there were an issue with a blue light.

With regard to the 3200 Series, Criollo testified that there were about twenty ATU 308 General Repairers, Inspectors, Truck Shop, and Carbody Repairers at Kimball when he worked there. As noted above, he said that most of the Car Repairers were doing inspections. He also stated, however, that others were doing general repair, which he defined as troubleshooting blue lights, yellow parks, BO trains or any other failures on the rail cars. Criollo described the four tracks at Kimball. Troubleshooting by 308 Car Repairers on BO Series 3200 rail cars took place on both ends of B track, he said, and Track C was used for heavier truck shop work. Criollo said that he observed the ATU 308 Car Repairers performing these troubleshooting and repair functions on the Series 3200s while they were under warranty throughout the entire time he remained at Kimball. According to Criollo, if the Car Repairers had the ability to fix things, they would fix them. He concurred that this was the mission of Car Repairers.

According to Criollo, while most of the time he worked on software modifications for the Series 3200 cars, he also occasionally troubleshot blue lights and white lights. He said that generally the troubleshooting he did was on repeater rail cars, which CTA Car Repairers already had tried to diagnose. The CTA shift manager would tell him that they had a problem train, and he would take his laptop to the train to assess the problem. Usually Local 241 Technicians would accompany him and sometimes 308 Car Repairers would assist as well. With respect to the Series 3200 rail cars at shops other than Kimball, Criollo testified that ATU 308 Car Repairers were troubleshooting, including fixing blue lights on these cars, unless the rail cars needed modifications done. If there were a "repeater" at one of these shops, the CTA shop manager would call him or the other field representative Pfiefer, to travel to that shop and look at it.

Bounsinh testified that vendor representatives would support the Car Repairers in troubleshooting a BO train when the Car Repairers could not determine how to fix a problem, but added that the vendor representatives did not do the repair. He said he would consult them for technical advice when troubleshooting and they would help resolve problems and suggest what to check on a BO train. He stated that he never saw the M-K or vendor representatives remove or replace parts.

G. Johnson testified that he worked on the Series 3200 rail cars when they were new and under warranty. He testified that he troubleshot the new rail cars from the first day he arrived at the terminal. He said that he diagnosed and fixed blue lights, white lights and yellow parks. He and a few other Car Repairers worked together on troubleshooting; when a BO came in, he said,

"we'd all jump on it," because they wanted to learn about the new train, especially the new inverter system. Johnson recalled that Baum from GE would help guide them with the troubleshooting if they had a problem, particularly on the inverters or sequencing the propulsion; however, Johnson testified, "we still did the work." Baum was only there during the day shift. Johnson also recalled seeing a representative from Morrison-Knudsen a few times after he was bumped to the afternoon shift, but saw no other vendor representatives.

In 1995, Johnson got bumped onto the midnight shift which only had about five people. There were no vendor field representatives working on the rail cars on the midnight shift. He also testified that when he left his shift at 6:30 a.m., which overlapped with the start time of the day shift, he did not see any vendor personnel on the day shift other than Baum. He recalled Criollo being in the office occasionally. Car Repairers were doing all the troubleshooting and general repairs on those shifts.

Roberts testified that 308 personnel troubleshot blue light or white light problems on the Series 3200s. He said that when he was at the Kimball shop, 308 Car Repairers were troubleshooting the rail cars on a daily basis, but that they might ask Morrison-Knudsen personnel or GE personnel for assistance if they could not fix a problem. GE employees could troubleshoot blue lights from the yard, but it's not clear under what circumstances they may have done so. He agreed that if a BO train came in at midnight, there was no Morrison-Knudsen employee present, and a 308 Car Repairer would be required to troubleshoot any problem on their own.

Massey testified that Alstom had seven people budgeted full-time on the 2600R Series cars. He said that the field service technicians worked at different terminal facilities, six days a week, eight hours a day, doing warranty work.

Massey testified that the system was set up so that Alstom representatives were supposed to perform the troubleshooting on the 2600R series cars. He said that if Alstom had a representative there, that representative would be the first to troubleshoot the rail car. He acknowledged that Car Repairers sometimes did some troubleshooting on the 2600Rs, since there was not a manufacturer's representative present at all times when a BO car came into one of the shops. He explained that there were not a lot of failures on the Series 2600R project nor a lot of modifications, however, largely because these were rehabbed vehicles, not an entirely new car series. Therefore, he said that there was never a need to staff the shops with multiple Alstom representatives. Massey

testified that subcontractor vendors did the same work as his employees on specific rail car component parts or systems.

Criollo was working out in the shops as a vendor field service representative for Alstom on the 2600Rs, while Massey spent most of his time in the office. Criollo testified that Local 308 Car Repairers at Howard diagnosed and troubleshot the rail cars and systems. If there were a blue light, white light or yellow park failure, Car Repairers initially diagnosed the problem and tried to fix it. He said that Car Repairers worked on controls, brakes, car bodies, and trucks, and did general repairs on the Series 2600-Rs while they were under warranty.

Criollo testified that if Car Repairers were unable to diagnose or perform a repair, they would ask him for assistance or hold the car for him to assess if there were a more significant problem. Criollo said that once Car Repairers had gone through the process of trying to fix a problem, and failing, he would then diagnose it and repair it on his own. The Howard shop had a full complement of more than 100 Car Repairers on three shifts and Criollo said he alone provided technical assistance to all of them. He described his work as warranty work, technical assistance, troubleshooting and performing field modifications on the Series 2600Rs.

Kinney testified that he knew from going to the shops that housed the Series 2600Rs that there was a full complement of Car Repairers working on them at each shop. He testified that Car Repairers were inspecting and troubleshooting rail cars under warranty, and fixing problems if they found something wrong. Car Repairers did this on a daily basis because that was their job, their mission, according to Kinney. When Car Repairers needed assistance from vendor field representatives, it was usually on repeaters that they either could not diagnose or couldn't repair, according to Kinney. He said that in those cases he did perform troubleshooting, and did repairs and modifications.

Kinney testified that GE employees were not stationed in the shops to address blue lights or BO rail cars, but when called upon they would perform an assessment. When Baum was released in 2003 due to work performance issues and was not replaced, that left only Kinney working for GE. Kinney said he dealt with repeater issues on behalf of GE until the warranty ran out, and that he was not in the shops daily.

G. Johnson testified that he worked on the Series 2600Rs when they were newly rehabbed. He was a General Repairer doing troubleshooting at the time. He said that he was never told that he could not work on the Series 2600Rs while they were under warranty.

The evidence on the record thus establishes that troubleshooting and general repair work, including responding to blue and white lights, yellow parks and BO trains, is clearly work that is normally and regularly performed by the bargaining unit. The evidence also demonstrates that vendor representatives have performed work on CTA rail cars that falls under the broad categories of troubleshooting and general repair.[20] Therefore the Arbitrator must examine whether the work that was contracted out on the Series 5000 cars was of the same "nature and type" as work contracted out in the past.

In addressing this question, the Arbitrator has considered past arbitration awards between the parties. As discussed above, Arbitrator Nielsen ruled that the bargaining unit need not prove that they have performed disputed work exclusively in order to prove that they normally and regularly perform the work. See, *Chicago Transit Authority v. Amalgamated Transit Union Local 241, McBride, Grv. No. 12-0054 (Nielsen, Arb. 2015).* See also, *Chicago Transit Authority v. Amalgamated Transit Union Local 308*, Grvs. 513-35/613-16, 1111-23 (Crystal, Arb. 2018). In examining the exception at issue here, Arbitrator Torosian found that although the work in question in his case was regularly performed by the bargaining unit, there was also evidence of a widespread practice of contractors performing such work. He concluded that this "mixed practice" meant that the work was not reserved to the bargaining unit. *Amalgamated Transit Union 241 v. Chicago Transit Authority, Fionda, Grv. No. 08-0894 (Torosian, Arb. 2013).*

Arbitrator Crystal's case also arose from the introduction of the Series 5000 cars, and involves the same exception raised here by the CTA. He stated that he was "not convinced that this Section 2.7 issue can be disposed of by a simple labeling of existing practices relative to the assignment of work as 'mixed.'" He went on to say,

> "Indeed, this Arbitrator views Section 2.7 as an agreement to lock in place whatever practices have developed with respect to the assignment of work within and outside the relevant bargaining unit. Where a practice is "mixed," to use Arbitrator Torosian's terminology, the problem becomes one of determining whether existing practices have any discernible parameters and, if so, whether the assignment of the work which is at issue in a particular case do or do not fall within those parameters."

Arbitrator Crystal concluded that although there was a past practice of vendors providing training to bargaining unit Terminal Instructors and Car Repairers, the practice had been to eventually turn over the work of training Car Repairers to Terminal Instructors, once the Terminal Instructors had

[20] This category does not include work performed on modifications, which is addressed in the following section.

been trained. He found that CTA's failure to turn over the training on the 5000 Series cars to the bargaining unit by 2013 violated Section 2.7.

The evidence in this case establishes that in the past, bargaining unit employees have consistently handled the initial responses to warning signals and BO cars. When a warning light, a yellow park or a BO designation came up, CTA employees troubleshot the problems, and then conducted any necessary repairs they were able to do. If they ran into a repeat problem with a rail car and/or could not determine the cause of a malfunction, they sometimes consulted manufacturers' field representatives. Contractor representatives were assigned to assist with "repeaters," cars which kept returning to the shop with the same malfunctioning component, or to assist in other situations when CTA employees could not determine the reason for a malfunction.[21]

The evidence further establishes that in some cases field service representatives provided only technical advice to bargaining unit personnel, explaining systems and consulting about problems, with the bargaining unit then performing the repairs. There is also evidence, however, that in other cases, the contractors went further and conducted more active hands-on troubleshooting and repair -- but again only after the bargaining unit had first attempted to diagnose and repair the problems. There is not convincing evidence, however, that in the past CTA used contractors to take over from Car Repairers the routine primary work of initially troubleshooting blue and white lights, yellow parks, BO trains and making necessary general repairs. Even when a new series of cars were introduced, and for the period when the cars were under warranty, these duties were performed by the bargaining unit. The work performed by contractors was consulting, providing technical advice and conducting troubleshooting and repair on "repeaters" or more difficult problems on which the Car Repairers needed assistance. In contrast, on the Series 5000 rail cars, contractors performed all of the daily routine initial troubleshooting, responding to the warning systems and performing all the general repairs. This work was not work of the same nature and type as the work performed by contractors in the past.

In reaching this conclusion the Arbitrator has considered the testimony of CTA Witness Massey that the repair procedure for the 2600Rs was set up so that Alstom employees were the first to perform troubleshooting on these cars and perform repairs, if an Alstom representative were present. However, Criollo, a field representative who actually worked in the shops on the 2600Rs,

[21] The evidence also demonstrates that Car Repairers regularly called on CTA's own higher-level troubleshooters, Rail Technicians, to fix repeaters, before the manufacturer's field representatives were consulted.

testified that if there were a blue light, white light or yellow park failure, Local 308 Car Repairers initially diagnosed the problem and tried to fix it. He testified that most of his work, other than certain software work, was done on repeaters. At one point Criollo was the only field service representative providing technical assistance to 100 Car Repairers on three shifts. He testified that even if FMI instructions indicated that work was to be done by a vendor, that did not mean that vendor employees, rather than CTA employees, actually performed the work.[22] Criollo's testimony from his daily experience in the shops is more detailed and convincing than Massey's more general testimony, and is also supported by Kinney's testimony.

Even if the Arbitrator accepted Massey's testimony as credible, his testimony covers only one series of rehabbed rail cars. As he testified, there were not many modifications or repairs needed when these rehabbed models were first introduced, as compared with a new series of cars. The grievance before the Arbitrator applies to the rollout of a new series of cars, where there are typically more problems requiring troubleshooting and repair. Therefore, the Arbitrator concludes that the testimony from multiple witnesses concerning the past practices regarding the introduction of several series of new rail cars is much more relevant to this grievance than the testimony from a single witness about one series of rehabbed cars.[23] There is not convincing evidence on this record that contractors have performed initial troubleshooting and general repair of new series of rail cars, even during warranty periods.

CTA argues that the use of contractors with the Series 5000 rail cars was motivated by a desire to take full advantage of the warranty provisions of its agreement with the manufacturer, and have Bombardier perform all of the troubleshooting and repair during the warranty period. The Authority argues further that there was a good reason for the work to be done by contractors because the manufacturer's representatives knew more than bargaining unit employees about the rail cars, especially when they were first introduced, and therefore understood better how to repair them. The evidence in this case does not establish that Car Repairers did not have the skill or ability

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[22] With its post-hearing brief the CTA submitted an additional affidavit by Massey claiming that when FMI's designated "Skokie Field Service" to perform work on the 2600Rs, that meant Alstom employees. The Union objected to the introduction of this affidavit with the post-hearing brief. Mr. Massey testified during the hearing, and there was no reasonable explanation for why CTA failed to present this evidence during the 17 days of hearing in this case. The submission of this affidavit after the evidentiary portion of the hearing, without requesting permission or providing the Union with the opportunity to examine Massey about its contents, argues for its exclusion. In addition, Criollo's testimony contradicts the assertion that the statement in an FMI of who was to perform the work accurately indicates who did perform the work.

[23] In addition, Goralczyk testified that it was Local 308 employees who performed this work, as well as parts change-outs, for the rehabbed 2200R Series cars.

to perform this work, however, once they received training on the new cars, as they had when earlier series were introduced. They have successfully performed repairs on the Series 5000 cars, once they were permitted to work on them. In addition, the evidence does not establish that Bombardier's field representatives had superior knowledge of the rail cars. As discussed above, the evidence shows that many of Bombardier's employees were hired from temporary agencies and had considerably less knowledge and/or experience regarding rail cars than did bargaining unit employees, when they began working on the 5000 Series.

CTA Witness Kielba testified that much of the diagnostic and repair work performed by Bombardier on Car No. 5015 involved problems that were eventually identified as design defects covered by the warranty. He was testifying from hindsight, however. In this case the bargaining unit was prohibited from responding to any warning lights and repair problems and conducting the repairs they could complete, even though there was no past practice of contractors performing this routine daily work on any other series of rail cars as they were introduced. After repeated malfunctions in a component, the fact that a problem is identified as a design defect or triggers a modification does not remove the initial troubleshooting and repair work from the bargaining unit. If it became clear that CTA's labor for a particular repair was related to a design defect covered by the warranty, the Authority had recourse to recoup its repair costs, as they had done in the past.

The CTA also has raised the issue that the warranty on a component of the Series 5000 cars could have been invalidated if CTA employees performed a bad repair on the part. However, several CTA witnesses, including Kielba and Keevil, acknowledged that there is no evidence that any work performed under warranty by CTA employees had ever led to an invalidation of the warranty on a part, even though similar provisions were included in earlier warranties.

Most importantly, arguments about whether it was reasonable for the Authority to contract out this work under CTA's warranty agreement with its manufacturer are not ultimately relevant to the resolution of this grievance.[24] This case arises under the collective bargaining agreement, not CTA's warranty agreement with Bombardier, and there is no exception for warranty work under Section 2.7 of the collective bargaining agreement. The question before the Arbitrator arises

[24] In addition, the CTA argues that the Authority needed Car Repairers to continue to work on the older series of rail cars. There was no evidence introduced demonstrating that there were not sufficient CTA personnel to do the routine troubleshooting and general repairs on the Series 5000 cars. When earlier car series were introduced, CTA employees have been able to continue to perform work on older car series as well as the new cars. A lack of available employees to perform work is more relevant to the emergency exception, which was not raised in relation to this grievance.

solely under Section 2.7 and is: whether permitting contractors to perform all of the troubleshooting and general repair of the new 5000 Series of cars continues a past practice of contractors performing this work. The evidence on this record does not establish such a past practice. Therefore, until the point at which manufacturer's field representatives are consulted for assistance, this daily, routine work remains the work of the bargaining unit.

The evidence also establishes, however, that in the past contractor employees have in many cases taken over troubleshooting when Car Repairers came to them with "repeaters" or because they could not otherwise determine the reason for a problem. There is also convincing evidence in the record that in some of these cases, once the contractors took over the troubleshooting work they also completed the repairs as well, sometimes with the assistance of CTA personnel. There was also evidence that the bargaining unit completed some of these repairs on their own after consulting with the manufacturers' representatives.

Thus, the evidence establishes that that there has been a mixed practice of contractors and bargaining unit employees conducting troubleshooting and completing repair work once contractors were requested to provide assistance -- but only after Car Repairers had done the initial troubleshooting and repair. The Authority contracted out work of this nature and type in the past, under the same circumstances, with knowledge and acceptance by the Union. Thus, the practice for this portion of the work is more like the work in Arbitrator Torosian's case. The bargaining unit does not have exclusive jurisdiction over this work and contracting it out when the 5000 Series cars were introduced did not violate Section 2.7.

However, there is not a similar past practice covering initial routine troubleshooting and general repair work, before manufacturers' field representatives are consulted for help. This work is reserved to the bargaining unit. Contracting out this work, therefore, on the Series 5000 cars violated Section 2.7.

Work on Modifications

Much of the testimony from both parties over many days of hearings on this grievance involved work performed in the past on field modifications (MODs), under Field Modification Instructions (FMIs). The CTA takes the position that contractors have performed substantial work

on modifications during the warranty periods for every series of rail cars that has been introduced, and that this same work was contracted out here as a continuation of that practice.

The Union presented substantial testimony from its members that they have worked on field modifications in the past, including during warranty periods. The parties agree, as CTA Witness Keevil testified, that it is not the mission (or the work) of Car Repairers to redesign and modify parts. However, there is other work performed as part of field modifications, including the removal of a part and its reinstallation after the part is modified, which the Union contends bargaining unit employees have consistently performed in the past.

Multiple Union witnesses testified about work on modifications performed by Local 308 employees. Witness Regester testified about modifications he performed on the Series 2400 cars, involving A-frames on the trolley beams; changes to the signal brackets and cleat blocks; and work on motor bellows. Witnesses Almarez, Berovides, Bounsinh, G. Johnson and Pugh all testified about work that CTA employees performed on modifications on the Series 2600 cars, including work on the motor alternators; removing and replacing faulty brake calipers; adding isolation valves; and replacement of HPCU units. Witnesses Criollo, Bounsinh and Piantkowski also testified that ATU Local 308 Car Repairers performed work on modifications on the 3200 Series cars when they were new.

The CTA argues that some of the Union's witnesses demonstrated that they did not know the difference between MODs, which involve modifications undertaken under a warranty with a manufacturer or vendor, and MUPs, which are changes to components initiated by CTA's Engineering Department. According to the CTA, MUPs are not performed by vendors' employees because CTA cannot charge the vendor for the work. The Arbitrator concludes that in some cases Union Witnesses may have been confused – or not known -- whether work they performed in the past was done under a MOD or a MUP. In addition, there is evidence in the record that some of the work described by Union witnesses most likely was conducted outside of the warranty period. CTA had to assume the costs of the work, and is not claiming this as part of the past practice it seeks to enforce here.

Even considering these qualifications on the evidence, there is substantial evidence in the record that CTA employees have performed work on modifications in the past, and that some of this work was performed while rail cars were still under warranty. CTA Witness Criollo provided testimony about a number of projects where there was a mixture of CTA and manufacturers'

employees performing work on modifications while the cars were under warranty. In some cases the manufacturer provided a modified part for the bargaining unit to install. In other modifications the manufacturer performed a repair on a limited number of cars, showed the bargaining unit how to do the repairs, and then passed the remainder of the work to CTA employees to complete. Criollo testified that a draw bar modification was passed from Alstom to the bargaining unit because CTA's employees were better skilled at those repairs. Others were turned over to the bargaining unit to perform during annual inspections.

There is also substantial evidence in the record that manufacturers' field representatives performed a significant amount of work on modifications during the warranty periods of earlier car series. Witnesses Goralczyk, Lone and Piantkowski testified that they and other vendors performed modifications on the Series 2600s, replacing chimney ducts inside door pockets; removing and replacing brake calipers; changing out windows; replacing the motor alternators; and installing new safety stops. On the 3200 Series, Piantkowski testified that he performed a large modification on the gearboxes. Roberts testified that he replaced calipers and various parts of the door thresholds as part of modifications. Criollo described MODs he performed on the inverters.

Criollo testified that he performed all the modifications for GE on the 3200 series. He testified that for Alstom, there was a mixed practice of using the manufacturer's and CTA employees to perform modifications. Manufacturers and vendors hired temporary workers, some of whom worked for months or years, to perform certain fleet-wide modifications, or other very large projects.

Thus, there is substantial evidence in the record that the CTA relied upon manufacturers' and vendors' employees to perform field modifications on earlier series of CTA rail cars while they were under warranty. Several CTA witnesses acknowledged that some of the tasks they performed, such as the removal and replacement of components, involve tasks that are regularly performed by the bargaining unit. The Arbitrator has considered whether the evidence supports a conclusion that this work is reserved to the bargaining unit, with contractors performing only the modifications to the part done in between its removal and replacement. In some cases in the past the work on modifications was split up and assigned in this way. However, there is also substantial evidence in the record that for a significant number of MODs, manufacturers' field representatives performed the entire FMI, including the removal and the reinstallation of the components. Goralczyk, Lone and Piantkowski testified that they did so on modifications on the 2600 Series;

for example New York Air Brake representatives removed and replaced brake calipers. Criollo, Roberts, Kinney and Piantkowski all testified that they removed components, and in some cases performed adjustments as they reinstalled them, as part of many modifications they performed on the 3200 Series.

Therefore, the evidence demonstrates that in the past contractors performed a significant amount of work on modifications during warranty periods. CTA used its own employees on some MODs. However, the work on many other modifications was contracted out during the warranty periods. As Arbitrator Torosian concluded with regard to a similar pattern of contractor work on CTA buses,

> "This type of work was subcontracted out dating back at least 20 years. CTA did not do so exclusively, but it did so numerous times with full knowledge and acceptance (prior to the NABI buses) by the Union. The nature and type of work was the same as before. The Arbitrator finds the Union's desire to protect unit work to the fullest extent to be understandable, but the Union does not have exclusive jurisdiction of work that is a present practice of the Employer."

The same rationale applies to work on modifications addressed by this grievance. Work on modifications was contracted out in the past, during warranty periods, going back many years. The Union has not grieved the contracting out of that earlier work, even though some of the tasks involved in the MODs were tasks regularly and normally performed by the bargaining unit. Like Arbitrator Torosian, I can understand the Union's desire to protect unit work to the fullest extent, especially given the other work here which the evidence shows was contracted out in violation of Section 2.7. However, the CTA has established that in contracting out the work on modifications on the Series 5000, the Authority was continuing a present practice of contracting out work of the same nature and type as work contracted out in the past. Under the language of Section 2.7, the Union does not have exclusive jurisdiction over such work.[25]

Remedy

Considering the entire record of evidence presented in these hearings, the Arbitrator concludes that there has been a substantial violation of Section 2.7. The evidence does not support a conclusion that all of the work contracted out by CTA and claimed by the Union here violated

[25] The CTA claims that this past work by contractors occurred only on modifications during the warranty periods. Therefore, this ruling does not affect work performed outside of the warranty period.

the Agreement, as described above. However, a substantial amount of work was contracted out in violation of Section 2.7. The question then is, what is the appropriate remedy.

The purpose of a remedy is to place the Grievants in the position they would have occupied – or as close to that position as possible – if there had been no violation of the collective bargaining agreement. In this case the Arbitrator has concluded that if the Authority had not violated the Agreement, the bargaining unit would have routinely performed repairs found upon inspection on the Series 5000 rail cars during the first several years after they were introduced. They would have done routine change-outs of defective parts. In addition, the record supports a conclusion that Car Repairers would have conducted routine initial troubleshooting when trains came into the shops with blue or white lights, yellow parks or were designated as BO. Furthermore, CTA personnel would have performed general repairs on a regular basis in relation to these warning signals, if the Authority had followed the prior practice of work assignments. The bargaining unit was prohibited from performing any of the work it normally and regularly performed on the Series 5000 cars, other than inspections and replacement of consumables, for a period of several years. All of these actions constituted violations of the Agreement.

Work of this nature comprises a significant portion of the regular daily work of the bargaining unit. Although the bargaining unit was also working on older cars as well during this period, witnesses testified and the repair records indicate that a significant number of problems were found on the Series 5000 cars during the early years after their introduction. This work represents a large number of work orders and therefore, multiple violations of Section 2.7, throughout all of CTA's shops.

Because the CTA's contracting out violations were so widespread in this case, it would be extremely difficult to try to recreate each incident where improper contracting out occurred. Other factors also work against awarding a remedy based upon an attempted calculation of the hours of work involved in each violation. The length of time that the violations continued varied from one garage to another, and even from one shift to another.

There are other considerations that do not support a remedy based upon individual work orders. There is no evidence in the record of layoffs of the bargaining unit during the period of the contracting out of this work. The Union argues, however, that even if the bargaining unit were fully-employed during this period, they could have performed the work in question on overtime. It is not clear from the record how much overtime employees were working at the time. There is

some evidence in the record that CTA was willing to underutilize the Car Repairers, rather than to make full use of their services and assign them work on the new series of rail cars. Therefore, at this point it would be impossible to determine which tasks would have been done during an employee's regular work hours and which on overtime, although it is likely that some portion of this large amount of work would have been performed on overtime.

It would also be very difficult to determine which employees would have accepted overtime work, had this work been assigned on overtime. Car Repairers who were employed when the violations occurred may have retired or otherwise left the CTA during the long pendency of this grievance. All of these factors make it difficult to fashion an award based upon a precise number of hours of work lost due to the repeated breaches of the Agreement, or to determine which employees would have performed the work and suffered the loss.

The difficulty of calculating a remedy, however, does not mean that no remedy is appropriate for this extensive series of violations. Rather, these considerations argue in favor of a single large payment made to the Union. The payment is intended as compensation for the lost work orders, and also to deter future violations of this magnitude.

Even if there were no layoffs, and the bargaining unit had worked some overtime during the applicable period, the Arbitrator cannot conclude that there would have been no impact on the bargaining unit from these violations. In *Chicago Transit Authority v. Amalgamated Transit Union Local 241, Gresham, Grv. No. 87-320, (Elson, Arb. 1988)* the Arbitrator concluded that a monetary remedy was appropriate in that situation. Arbitrator Elson ruled,

> "The purpose of the subcontracting bar is to enhance the job security of the bargaining unit. It does not follow that because the employees in the bargaining unit have suffered no loss of jobs and have worked some overtime that no remedy should be awarded the Union because of the breach of the agreement.
>
> There are a number of reasons to make an award of damages even though there has been no showing of monetary loss to any employee. First, unless management is sanctioned it will feel free to violate the subcontracting bar whenever there is full employment of the unit. No such exception is written into the agreement. Second, if the employer had complied with the agreement and assigned the work to the bargaining unit, additional overtime would have been assigned, and accordingly it follows the members of the bargaining unit suffered a loss. Finally, an unremedied violation of the agreement is injurious to the standing of the Union in the eyes of the members of the bargaining unit and to that extent the Union has been injured in its reputation, particularly in its effectiveness in policing the contract. In the last analysis the primary rationale for the subcontracting bar is to enhance the job security."

Arbitrator Elson awarded a payment to the Union. This Arbitrator concludes in this case that a monetary remedy is appropriate, partly for the reasons set forth in Arbitrator Elson's award. The parties have agreed to a general prohibition against contracting out work that is normally and regularly performed by the bargaining unit. The CTA in this case contracted out a large amount of such work when the Series 5000 cars were introduced, even though that was not work that had been contracted out in the past. Removing large portions of work from the bargaining unit without any consequences is likely to lead to erosion of the bargaining unit, seriously diluting and undermining the job security bargain the Union has negotiated in Section 2.7.

Therefore, a significant monetary remedy is appropriate in this case, reflecting the large scope of this violation, covering thousands of tasks normally performed by the bargaining unit, and to deter further violations of this type. In awarding this remedy the Arbitrator has considered the way in which the practices which led to this grievance arose. Here the Authority determined that the bargaining unit would not perform any meaningful troubleshooting or repair work on the Series 5000 cars for several years after their introduction, at least the entire term of the warranty period, even though there was no practice of contractors taking over this work entirely from the Car Repairers during the warranty periods of earlier series of CTA rail cars. The Union argues that the contract violations in this case flowed from the Authority's initial decision to assign all of the repair work on the Series 5000 rail cars to contractors when they were first introduced, as part of the Authority's serious consideration of a decision to permanently contract out all of this work. As CTA witnesses acknowledged, it made no sense to train or permit Car Repairers to begin working on a new series of cars, while the CTA was considering this permanent shift in work out of the bargaining unit.

The CTA does not deny that this plan was being discussed at the highest levels of the Authority for several years, but argues that it was abandoned not long after the first Series 5000 cars were introduced. Those who made the decisions about this plan did not testify, and so it is not entirely clear from the record when the plan was abandoned. However, from the evidence presented here it is clear that the plan was under serious consideration when the cars were introduced into service. It is likely that this consideration affected the decision to contract out the inspection and repair work which was beginning on the new 5000 car series. More importantly, the practices regarding the assigning of work which were begun when the plan was still under consideration did not change after the Authority says the plan was dropped, but rather continued

for several years. Car Repairers did not receive the training normally provided when a new series of cars is introduced, and were not permitted to perform their regular duties of troubleshooting and repair on the Series 5000 cars during this period.

Other CTA contracting out decisions have concluded that the Authority's actions were not intended to threaten the "lifeblood" of the bargaining unit's work in fashioning a remedy. The Authority has taken the position throughout this case that by contracting out this work, the CTA was simply making the most efficient use of its resources, taking full advantage of its rights under its warranty agreements to have Bombardier and the vendors perform this work. CTA has the authority under Section 2.6 of the Agreement to operate the property according to its best judgment. However, in making these decisions, the Authority must honor its obligations to the bargaining unit under Section 2.7 of the CBA. The Authority acted as if there were a warranty exception to Section 2.7, permitting it to freely contract out a very substantial portion of the regular work of the Car Repairers on the Series 5000 cars while they were under warranty. The CTA has not negotiated a warranty exception in Section 2.7, however, and none exists.

Under these circumstances, the Arbitrator concludes that an amount of $75,000 is to be awarded to the Union. The award is intended as compensation for the multiple violations of the Agreement, extending over many work orders and several years. In addition, the Award is intended to deter future major violations of the contracting out provisions of the Agreement. A monetary award was also issued in the CTA Gresham case, above, even though in that case Arbitrator Elson concluded that the CTA had not set out to deliberately violate the Agreement or undermine the Union in that case. The remedy here is intended to reflect the magnitude of the violation of the Agreement, and the Authority's deliberate failure to fulfill its obligations to the bargaining unit when it decided to maximize its rights under a manufacturer's warranty agreement. Protecting the work and jobs of members of the bargaining unit is one of the fundamental purposes of the collective bargaining agreement, as expressed in provisions like Section 2.7. This award is intended to recompense the violations of the Agreement in a way that will recompense the violations and protect the important interests represented in Section 2.7.

Arbitrators have imposed many different types of remedies for violations of collecting bargaining agreements involving the contracting out of protected bargaining unit work. See, How Arbitration Works, Elkouri & Elkouri, 8th Ed., Sec. 18.5. These remedies look backwards to remedy the violation and forwards to deter future violations, where appropriate, while recognizing

any limitations on job security which have been negotiated between the parties. The Arbitrator has fashioned this remedy to meet the interests of these parties as reflected in Section 2.7. However, the parties may conclude that there is an alternative remedy for this grievance that better reflects their interests. Therefore, the parties will be afforded a period of 60 days to decide on an alternative remedy, if they wish to do so. If the parties are not able to reach agreement on a different remedy, this remedy will take effect.

AWARD

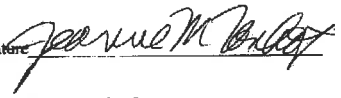
The grievance is sustained in part.

The CTA violated Article 2.7 of the Agreement by contracting out, for a period of several years, a substantial amount of work on the Series 5000 rail cars which is normally and regularly performed by the bargaining unit, and for which there was not a past practice of contractors performing this work. The work claimed by this grievance which was contracted out in violation of Section 2.7 is described in the Findings and Decision section, which is fully incorporated into this Award. The Authority shall cease and desist from further contracting out work of this nature and type.

For other work claimed by the Union, the Authority established that it was continuing a past practice of contracting out work of the nature and type contracted out in the past. The Authority did not violate the Agreement when it contracted out this work on the Series 5000 cars. This work is also described in the Findings and Decision section of this Award.

A total sum of $75,000 is awarded for the multiple violations of the collective bargaining agreement.

The parties will be afforded 60 days to negotiate an alternative remedy, if they conclude that an alternative remedy is more appropriate. If the parties do not agree on an alternative remedy, this remedy will go into effect. The Arbitrator will retain jurisdiction solely over the remedy portion of this Award.

Signature 

Jeanne M. Vonhof
Labor Arbitrator

Decided this 17th day of November 2020.