

BEFORE THE FEDERAL MEDIATION AND CONCILIATION SERVICE
FMCS Case No. 250807-08607

In The Matter Of:

AMEREN ILLINOIS COMPANY
Company

and

LOCAL UNION NO. 702,
INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO
Union.

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***Arbitrator Edward B. Valverde**

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***Terra5 Subcontracting at**

*** the Marion**

***Northwest Substation (2025)**

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APPEARANCES:

For Employer: Brian P. Pezza, Attorney; 600 Washington Avenue, Suite 2500, St.
Louis, MO. 63101

For Union: Christopher N. Grant, Attorney; 555 Washington Ave. Suite 520, St.
Louis, MO 63101-1249

Place of Hearing: Mount Vernon, Illinois

Date of Hearing: December 10 - 11, 2025

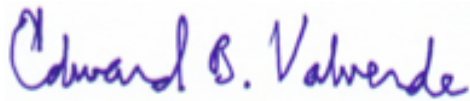
Date Hearing closed: February 13, 2026¹

Date of Award: May 7, 2026

Type of Grievance: Contract Interpretation

AWARD SUMMARY

A preponderance of the evidence establishes that the Company violated the terms of the CBA. The grievance is sustained.²



Edward B. Valverde, Esq. – Arbitrator

¹The record was closed upon receipt of the parties' briefs. The arbitrator thanks the parties for permitting extensions for issuing this award.

² Initials of witnesses will be used to maintain a degree of privacy.

STIPULATIONS

1. Ameren Illinois Company, the Employer, is an electrical utility and natural gas operation. It is a subsidiary of Ameren Corporation.
2. Local Union No. 702, International Brotherhood of Electrical Workers, AFL – CIO, the Union, represents employees of various employers in southern Illinois, southeastern Missouri, and southern Indiana, including employees employed by the Employer as well as employees working for manufacturing plants, public bodies, electrical cooperatives, inside electrical contractors, and outside electrical contractors.
3. Ameren Corporation was created in 1997 with the merger of Union Electric Company, based in St. Louis, Missouri, and Central Illinois Public Service Company, based in Springfield, Illinois.
4. Prior to the merger, the Union represented certain employees of Central Illinois Public Service Company and bargained and entered into labor agreements with it covering those employees. Following the merger, Ameren Corporation maintained Central Illinois Public Service Company as a subsidiary operating company doing business as AmerenCIPS, and the Union bargained and entered into labor agreements with AmerenCIPS covering the same unit of employees as before the merger.
5. In 2004, Ameren Corporation acquired Illinois Power Company. Prior to the acquisition, the Union represented certain employees of Illinois Power Company and bargained and entered into labor agreements with it. Following the acquisition, Ameren Corporation maintained Illinois Power Company as a subsidiary operating company, doing business as AmerenIP, and the Union bargained and entered into labor agreements with AmerenIP covering the same unit of employees as before the acquisition.
6. In 2010, Ameren Corporation merged its three Illinois operating companies –Ameren CIPS, AmerenIP, and a third known as Ameren CILCO –into Ameren Illinois Company. The merger resulted in a single operating company providing power to most of downstate Illinois.
7. The Union and the Employer negotiate three separate labor agreements covering the legacy AmerenCIPS Service territory. The agreements each cover a geographic division –Southern, Eastern, and Western. The parties also referred to those divisions by name and sometimes by former district number as follows:
 - a. Southern –Shawnee (or “Marion”) – Formally part of District No. 6.
 - b. Eastern –Illini (or “Mattoon”) – Formally part of district No. 4.
 - c. Western –Great Rivers (or “Beardstown”) – Formerly part of District #2.
8. A copy of the current 2022 –2026 CBA between the Union and Ameren

- Illinois Company covering the Shawnee (Southern) division is marked as a Joint Exhibit 1.
9. A copy of the current 2022 –2026 CBA between the Union and Ameren Illinois Company covering the Illini (Eastern) division is marked as Joint Exhibit 2.
 10. A copy of the current 2022 – 2020 CBA between the Union and American Illinois Company covering the Great Rivers (Western) division is marked as Joint Exhibit 3.
 11. A copy of a map showing Ameren Illinois Electric regions (not the same as divisions and not exactly coextensive with the geographic areas covered by the CBAs) is marked as joint exhibit 4A. A copy of a map showing the jurisdictional areas of the various Ameren Illinois/IBEW CBAs, including the geographic areas covered by the Shawnee (Southern), Illini (Eastern), and Great Rivers (Western) CBAs with Local 702, is marked as joint Exhibit 4B.
 12. The Union’s grievance in this case involves the Employer’s use of a contractor, Terra5 Construction, to perform work in 2025 in the Marion Northwest Substation, which is in the Shawnee (Southern) Division. The work performed by Terra5 Construction was scheduled by the Employer in advance and, while time-sensitive, was not “an emergency situation” as that phrase is used in section 1.03B in parentheses of the Shawnee CBA.
 13. A copy of the Union's grievance is marked as joint Exhibit 5.
 14. A copy of the Employer’s May 20, 2025, response to the grievance is marked as Joint Exhibit 6.
 15. A copy of the Employer’s July 14, 2025, response to the grievance, following a meeting between the parties, is marked as Joint Exhibit 7.
 16. A copy of the Union's demand for arbitration is marked as Joint Exhibit 8.
 17. In advance of the hearing in this case, the Union served a subpoena duces tecum on Terra5 Construction requesting certain records relating to work performed at the Marion Northwest Substation and the compensation and benefits paid to the Terra5 employees performing that work. A copy of the subpoena, and documents provided in response, and a certificate of authenticity for those documents as business records is marked as Joint Exhibit 9.
 18. A chart summarizing the hours worked by Terra5 Construction employees at the Marion Northwest Substation is marked as Joint Exhibit 10. Names have been replaced with unique identifiers indicating the classification of the employee – e.g., “Employer 136 – Carpenter.” The Terra5 Construction employees classified as Carpenters were represented by and worked under an agreement with the Mid–America Carpenters Regional

- Council. The Terra5 Construction employees classified as Operators were represented by and worked under an agreement with the International Union of Operating Engineers Local 520, an affiliate of the AFL–CIO. The information in this chart is derived from the documents and Joint Exhibit 9.
19. Without admitting that the work at issue is normally performed by unit employees under the Shawnee CBA, Ameren stipulates that the Terra5 Construction employees working on the Marion Northwest Substation job did not receive an amount at least equivalent to the wages and benefits of the classifications of Substation Foreman, Assistant Substation Foreman, Substation Electrician Troublemaker, Substation Electrician, and Apprentice Substation Electrician under the Shawnee CBA.
 20. A copy of the 1996–1999 CBA between the Union and Central Illinois Public Service Company covering the southern (Shawnee) Division, is attached as Joint Exhibit 11.
 21. A copy of the 1999 –2002 CBA between the Union and Central Illinois Public Service Company covering the southern (Shawnee) Division, is attached as Joint Exhibit 12.
 22. A copy of the 2003–2007 CBA between the Union and AmerenCIPS covering the Shawnee (Southern) Division is attached as Joint Exhibit 13.
 23. A copy of the 2007–2012 CBA between the Union and AmerenCIPS covering the Shawnee (Southern) Division is attached as Joint Exhibit 14.
 24. A copy of the 2012–2017 CBA between the Union and Ameren Illinois Company covering the Shawnee (Southern) Division is attached as Joint Exhibit 15.
 25. A copy of the 2017–2020 CBA between the Union and Ameren Illinois covering the Shawnee (Southern) Division is attached as Joint Exhibit 16. The parties agreed to two successive one-year extensions of the CBA. A copy of those extension agreements are marked as Joint Exhibits 17 and 18.
 26. Dating back to 1996, the parties have negotiated the 3 AmerenCIPS labor agreements (Southern, Eastern, and Western) jointly at the same time.
 27. Dating back to 1996, each of the AmerenCIPS labor agreements (Southern Eastern and Western) in effect at the time have contained the same language on the contracting of work, or a change to a job classification, including section 1.03 and side letters to the CBA's. When a change was negotiated to language on the contracting of work or a change in a job classification, the same change was made in each of the “AmerenCIPS” labor agreements.
 28. Not outstanding the fact that the grievance arises under the Shawnee CBA,

- and without waving its position that practices under the Shawnee, Illini, and Great Rivers CBA's can and do differ, Ameren agrees that, dating back to 1996, each of the AmerenCIPS CBA's (Shawnee (South) Division, Illini (Eastern) Division, and Great Rivers (Western) Division) in effect at the time have included the same job classifications of Substation Foreman, Assistant Substation Foreman, Substation Electrician Troublemaker, Substation Electrician, and Apprentice Substation Electrician, with each respective classification in all three CBA's having the same wage rate.
29. A copy of the Specification No. EC-10689 for Foundation Construction Marion NW Substation (S64) with drawings has been marked as Joint Exhibit 19.
 30. A copy of the Release for Construction Marion NW Substation has been marked as Joint Exhibit 20.

ISSUE STATEMENTS

The Union proposed the issues as follows:

Did the Company violate the Shawnee CBA, including Section 1.03B, when it contracted concrete and foundation work at the Marion NW Substation to Terra5 Construction, when the Carpenters-represented employees of the contractor, performing such work, received less than an amount equivalent to the wages and benefits of Local 702-represented Ameren Substation Electrician classifications and the work was not covered by a separate IBEW or AFL-CIO Agreement?

Did the Company violate the Shawnee CBA, including Section 1.03B, when it failed to notify the Union of Terra5 Construction performing work at Marion NW Substation in late April/early May 2025 before bringing Terra5 on Company property?

If yes to either or both questions, what is the appropriate remedy? (Tr. 13-14.)

The Employer proposed the following issue:

Did the Employer violate the Shawnee labor agreement when it contracted with Terra5 to perform work in connection with the 2025

replacement of transformer No. 1 and a recloser at the Marion Northwest Substation? If so, what is the remedy? (Tr. 15-16.)

**RELEVANT CONTRACT LANGUAGE
FROM THE SHAWNEE 2022-2026 CBA (J-EX. 1)
ARTICLE 1 - SCOPE OF AGREEMENT AND UNION SECURITY**

SEC. 1.01. The Company recognizes Local Union No. 702 of the International Brotherhood of Electrical Workers as the exclusive bargaining agent and representative of its employees covered under the Shawnee Operation Labor Agreement within the classifications of work and/or employees covered by this Agreement.

SEC. 1.02. This Agreement shall have effect only on the properties of the Company known as its **Shawnee Division** and shall govern all work thereon coming under the jurisdiction of the Brotherhood as usually performed by employees of the Company listed in the employee classifications of Article 4 of this Agreement. (Refer to the Jurisdictional Document dated November 14, 2007 and amended on 8-2-12 for exceptions to this section.)

SEC. 1.03

A. In the event the Company may find it necessary to contract work covered under this Agreement, it is mutually agreed between the parties hereto that no such work shall be contracted, except major projects customarily contracted for, if such contracting would (1) result in laying off regular employees; (2) require an employee to permanently move to another reporting headquarters; (3) result in an employee being forced to accept a lower rate of pay ; (4) no such work shall be contracted if in the last six (6) months employees normally performing that work have been laid off or forced to accept a lower paying job as a result of layoff.

B. The Company agrees that *it will not contract out work covered under this Agreement* unless the employees performing such work receive an amount at least equivalent to the wages and benefits of the classification *normally performing the work under this Agreement*, unless such work is covered by a separate IBEW or AFL-CIO Agreement. While not detracting from the provisions of Section 1.03, *it is not the intent of the parties to reduce or restrict the type of work currently being subcontracted* nor increase the costs to the Company for such work.

Except in emergency situations, before bringing contractors on the property, the Company shall notify the union of the name of the contractor, the location the work is being performed and the scope of the project.

C. *****

D. The above provisions of this Section 1.03 do not apply to the following:

1. When emergency conditions exist (refer to attached side letter).
2. Janitorial work, building and grounds maintenance, leak surveys of distribution and transmission lines (excluding business district surveys), residential gas meter testing, spraying, post-construction restoration, painting, locating, conduit installation, line inspections, right of way clearing (excluding line clearance tree trimming).
3. The following work associated with conduit installation:
 - a. Customer required and/or elected installation of conduit.
 - b. When a developer, if permitted by the ICC, installs their own infrastructure in a subdivision. All work performed under this provision shall be inspected by a qualified bargaining unit employee.
4. Any work associated with Automated Meter Reading/Advanced Metering Infrastructure, except:
 - a. Manual reads for billing except raw meter reads once a route has been converted and turned over to the vendor
 - b. Initial electric and gas meter/module installation – Commercial and Industrial
 - c. Post-deployment electric and gas meter exchange
 - d. Replacement of gas modules

FROM THE AMEREN ILLINI 2022-2026 CBA (J Ex. 2)

Article 1

Sec.1.01 The Company recognizes Local Union No 702 of the International Brotherhood of Electrical Workers as the exclusive bargaining agent and representative of its employees covered under the **Illini** Operating Labor Agreement within the classifications of work and/or employees covered by this Agreement.

Sec. 1.02. This Agreement shall have effect only on the properties of the Company known as its **Illini Division** and shall govern all work thereon coming under the jurisdiction of the Brotherhood as usually performed by employees of the Company listed in the employee classification of Article

4 of this Agreement. (Refer to the Jurisdictional Document dated November 14, 2007 and amended on 8-2012 for exceptions to this section).

Sec. 1.03

- A. In the event the Company may find it necessary to *contract work covered under this Agreement*, it is mutually agreed between the parties hereto that no such work shall be contracted, except major projects customarily contracted for, if such contracting would (1) result in laying off regular employees; (2) require an employee to permanently move to another reporting headquarters; (3) result in an employee being forced to accept a lower rate of pay ; (4) no such work shall be contracted if in the last six (6) months employees normally performing that work have been laid off or forced to accept a lower paying job as a result of layoff.
- B. The Company agrees that *it will not contract out work covered under this Agreement* unless the employees performing such work receive an amount at least equivalent to the wages and benefits of the classification *normally performing the work under this Agreement*, unless such work is covered by a separate IBEW or AFL-CIO Agreement. While not detracting from the provisions of Section 1.03, *it is not the intent of the parties to reduce or restrict the type of work currently being subcontracted* nor increase the costs to the Company for such work.

Except in emergency situations, before bringing contractors on the property, the Company shall notify the union of the name of the contractor, the location the work is being performed and the scope of the project.

FROM THE GREAT RIVERS 2022-2026 CBA (J EX. 3)

Article 1

Sec.1.01 The Company recognizes Local Union No 702 of the International Brotherhood of Electrical Workers as the exclusive bargaining agent and representative of its employees covered under the **Great Rivers** Operating Labor Agreement within the classifications of work and/or employees covered by this Agreement.

Sec. 1.02 This Agreement shall have effect only on the properties of the Company known as its **Great Rivers Division** and shall govern all work thereon coming under the jurisdiction of the Brotherhood as usually performed by employees of the Company listed in the employee

classification of Article 4 of this Agreement. (Refer to the Jurisdictional Document dated November 14, 2007 and amended on 8-2012 for exceptions to this section).

Sec. 1.03

C. In the event the Company may find it necessary to contract work covered under this Agreement, it is mutually agreed between the parties hereto that no such work shall be contracted, except major projects customarily contracted for, if such contracting would (1) result in laying off regular employees; (2) require an employee to permanently move to another reporting headquarters; (3) result in an employee being forced to accept a lower rate of pay ; (4) no such work shall be contracted if in the last six (6) months employees normally performing that work have been laid off or forced to accept a lower paying job as a result of layoff.

D. The Company agrees that it will not contract out work covered under this Agreement unless the employees performing such work receive an amount at least equivalent to the wages and benefits of the classification normally performing the work under this Agreement, unless such work is covered by a separate IBEW or AFL-CIO Agreement. While not detracting from the provisions of Section 1.03, it is not the intent of the parties to reduce or restrict the type of work currently being subcontracted nor increase the costs to the Company for such work.

Except in emergency situations, before bringing contractors on the property, the Company shall notify the union of the name of the contractor, the location the work is being performed and the scope of the project.

FROM THE 1996-1999 SOUTHERN DIVISION CBA (J. Ex. 11)

Art. 1. Sec. 1.02

This Agreement shall have effect only on the properties of the Company known as its Southern Division and shall govern all work thereon coming under the jurisdiction of the Brotherhood as usually performed by employees of the Company listed in the employee classifications of Article 4 of this Agreement.

Art. 1 Sec. 1.03. 5.

The Company agrees that it will not contract out work covered under this agreement unless the employees performing such work receive an amount at

least equivalent to the wages and benefits of the classification normally performing the work under this agreement, unless such work is covered by separate AFL-CIO agreement.

SOUTHERN DIVISION CBA -1999- 2002 (J Ex. 12)

Sec. 1.01. The Company recognizes Local Union No. 702 of the [IBEW] as the exclusive bargaining agent and representative of its Southern Division employees within the classifications of work and/or employees covered by this agreement.

Sec. 1.02. This Agreement shall have effect only on the properties of the Company known as the Southern Division and shall govern all work thereon coming under the jurisdiction of the Brotherhood as usually performed by employees of the Company listed in the employee classifications of Article 4 of this agreement.

Sec. 1.03 E. The Company agrees that it will not contract out work covered under this agreement unless the employees performing such work receive an amount at least equivalent to the wages, and benefits, of the classification normally performing the work under this agreement, unless such work is covered by separate AFL-CIO agreement. While not detracting from the provisions of section 1.03, it is not the intent of the parties to reduce or restrict the type of work currently being subcontracted nor increase the cost to the Company for such work.

From the Shawnee Division CBA - 2003 - 2007, (J Ex. 13) Article 1:

Sec. 1.02. This Agreement shall have effect only on the properties of the Company known as its Shawnee Division and shall govern all work thereon coming under the jurisdiction of the Brotherhood as usually performed by employees of the Company listed in the employee classifications of Article 4 of this Agreement.

Section 1.03 B. ...“It is not the intent of the parties for the workforce to be reduced through attrition to allow for the expansion of subcontracting.”

Shawnee Division CBA - 2007 - 2012, (J Ex 14) Article 1 Sec. 1.03. A. speaks about contracting out covered work. It states, ...“It is not the intent of the parties for the workforce to be reduced through attrition to allow for the expansion of subcontracting.”

Shawnee Division CBA 2012 - 2017 (J Ex. 15. Article 1 Sec. 1.03. A. addresses the subcontracting of bargaining unit work. ...“It is not the intent of the parties for the workforce to be reduced through attrition to allow for the expansion of subcontracting.”

Shawnee Division CBA - 2017 - 2020 (J Ex. 16) Art. 1, Section 1.03. Addresses the company’s right to subcontract. Sec. 1.03A ...“It is not the intent of the parties for the workforce to be reduced through attrition to allow for the expansion of subcontracting.”

Section 1.03 B “The Company agrees that it will not contract out work covered under this Agreement unless the employees performing such work receive an amount at least equivalent to the wage and benefits of the classification normally performing the work under this agreement.... [I]t is not the intent of the parties to reduce or restrict the type of work currently being subcontracted nor increase the cost to the company for such work.”

Factual Summary

On May 5, 2025, JW, Business Representative, filed a grievance with the company, charging that it was violating the CBA by contracting out bargaining unit work at a substation covered by the CBA to Terra5, a contractor whose employees performed that work and received less than equivalent wages and benefits to those of the classification of employees who normally performed that work.³ (J Ex. 5) On May 20, 2024⁴, RAZ, Director, Labor Relations, issued the company’s response denying the grievance on the following bases: (1) it had “contracted civil work including concrete and foundation work in the past and Local 702 did not claim the work or challenge the contracting out despite its knowledge of the work; and, (2) using Terra5 to perform civil work at the Marion Substation was permitted under Article 1, Section 1.03 that related to “work covered under this Agreement” that does not include civil work such as concrete or foundation work. Additionally, (3) Terra5 and other contractors have performed work not covered under the CBA for the employer for many years. (J. Ex. 6) Further, the employer had no obligation to revise the CBA to move the work or assign this work to the Union. The Union appealed the

³ A request for information was included in the grievance but will not be further addressed for matters related thereto are not an issue in this case.

⁴ The year “2024” appears to be an inadvertent error for neither party disputed that this was the response to the May 5, 2025 grievance.

grievance to the next level, and a meeting was held with union and management representatives on July 2, 2025, at the Marion Operating Center.

By letter dated July 14, 2025, JT, Labor Relations Supervisor, issued management's response, essentially restating the positions previously mentioned in the May 20, 2025 letter; i.e., denying any violation of the CBA; that the work performed by Terra5 was civil work that included removal and installation of concrete foundations and soft dig support; and asserting that civil type of work had historically not been covered under the labor agreement and as such was not subject to the notification requirements set forth in Article 1, Section 1.03 of the CBA. (J Ex. 7) The grievance was denied. By email dated July 25, 2025, the Union notified the employer that it would appeal the grievance to arbitration. Thereafter, this arbitrator was selected to hear and decide the matter.

Evidence developed at the Hearing

Background Summary⁵

Ameren Illinois Company (Company), a subsidiary of Ameren Corporation, is an electric utility and natural gas operator. International Brotherhood of Electrical Workers (IBEW), AFL-CIO, Local Union No. 702 ("Union" hereafter) represents various Ameren Illinois employees across three geographic areas in southern, western, and eastern Illinois. That collective bargaining relationship has existed since at least 1996 and has continued through various reiterations. The current Company was formed when the three predecessor companies AmerenCIPS, AmerenIP, and AmerenCILCO merged in about 2010.

Historically, the Company and the Union have entered into separate labor agreements for its different regions: the Shawnee CBA (Southern), the Great Rivers CBA (Western), and the Illini CBA (Eastern). Although individual agreements exist

⁵ This summary only includes facts the arbitrator deems most relevant.

for each region, they are negotiated jointly and include similar language across all three regions. For example, all CBAs contain similar, if not identical, subcontracting restrictions, have many of the same job titles and identify employment levels (i.e., the number of employees in each job classification for the respective bargaining units). Additionally, employees in the same job classification receive the same pay under each CBA.

Over 1,000 substations are operated on AmerenCIPS property. Substations primarily step down voltage from transmission lines for local distribution and perform switching operations to protect circuits. Each substation contains a transformer that reduces voltage and includes breakers and reclosers, known as Vipers, which safeguard the circuits. Equipment is mounted on concrete pads on the ground, with pad size and depth tailored to each piece. Pads help prevent equipment from sinking or vibrating excessively, protecting the equipment and maintaining substation integrity to ensure continuous power distribution. Substation crews consist of three to six workers (foreman, journeyman, and apprentice electricians) who operate within substations during scheduled maintenance or as needed. The crew primarily performs tasks within the substation fence, including replacing transformers and reclosers, constructing new bays, performing preventive maintenance, and commissioning new equipment. Journeymen and apprentice electricians maintain and build substations, including replacing Oil Circuit Reclosers, overhauling oil and vacuum circuit breakers, troubleshooting control circuits, diagnosing voltage regulator issues, testing and maintaining AC battery systems, repairing or replacing faulty equipment, and constructing new substations. Training for new/apprentice substation employees includes concrete and foundation work, where they learn: (a) the fundamentals of rebar and concrete (e.g., reading prints for pads, assembling and installing forms) and (b) pouring and leveling concrete (e.g., operating equipment such as vibrators, backhoes, and skid steers).

Although all substation employees receive the same training, including in concrete and foundations, those covered by the Shawnee CBAs have not performed concrete and foundation work for about the past 10 years. Prior to that, those Shawnee-covered substation employees did perform concrete and foundation work, and Illini-covered substation employees continue to perform those tasks.

Article 1, Sec. 1.03 contains the provisions related to subcontracting. Sec. 1.03A states that work covered by the CBA cannot be contracted out except major projects “customarily contracted for” if said contracting:

“would (1) result in laying off regular employees; (2) require an employee to permanently move to another reporting headquarters; (3) result in an employee being forced to accept a lower rate of pay; (4) no such work shall be contracted if in the last six (6) months employees normally performing that work have been laid off or forced to accept a lower paying job as a result off a layoff...It is not the intent of the parties for the work force to be reduced through attrition to allow for the expansion of subcontracting. Therefore, except for major projects customarily contracted for, if the number of employees, by division, employed in the classification being considered for subcontracting falls below the employment levels as indicated in Section C below, it will be a violation of this agreement to undertake additional until jobs are posted and/or filled and the staffing level is at or above the level in the appropriate positions.”

Sec.1.03B of Article 1 contains language that permits subcontracting of bargaining unit work only when those subcontracted employees receive equivalent wages and benefits and meet the following conditions:

“...unless the employees doing that work are paid an amount equivalent to the wages and benefits of the classification normally performing the work under this Agreement, unless such work is covered by a separate IBEW or AFL-CIO Agreement.

Except in emergency situation, before bringing contractors on the property, the Company shall notify the union of the name of the contractor, the location the work is being performed and the scope of the project.”

Since 2007, the Company has been obligated to inform the Union whenever it contracts out work at substations within the bargaining unit, in accordance with the procedures outlined in Section 1.03 of each CBA. Between 2020 and late March 2025, these notices were sent weekly via email to business representative BB. (E Ex. 1; U Ex. 2.) Each email typically covered all three CBAs and included a chart listing each substation, contractor names, crew sizes, job types, and descriptions. For instance, an email dated 6/10/2024 noted that Terra5 would perform foundation work for a Viper Upgrade at the Herrin substation. (Er. Ex. 1 at AIC 000169.) These weekly notices encompassed both IBEW and non-IBEW contractors. These companies employ Local 702-represented linemen, apprentices, operators, and groundmen. Non-IBEW contractors include Terra5 and Schomburg.

Additional Facts Developed at the hearing:

1. None of the CBAs contains the term “Civil Work”.
2. No evidence was presented that, during collective bargaining negotiations, the term “Civil Work” was discussed or sought to be defined.
3. Civil work depends on how the Company writes the contract with the contractor performing that work. (Tr. 380-381)
4. Since 2007, the subcontracting language in Section 1.03B – for contractors paying equivalent wages and benefits – has remained unchanged.
5. Since the 2007 negotiations, the Company has not sought to add additional exclusions, such as civil work, fence installation, or concrete work (Tr. 88-89).
6. In late April or early May 2025, the Union discovered that Terra5 Construction was performing concrete and foundation work at a Marion NW substation. Specifically, Terra5 was contracted to remove two existing concrete pads and install new foundations for a transformer and a Viper, a

type of recloser. The Union also learned that Terra5 was using Carpenters-represented workers for these tasks.

7. The Company did not provide advance notice that it had hired Terra5 to perform this work.
8. By letter dated March 20, 2025, the Company, in its response to the grievance, notified the Union that the CBA does not include “civil work such as concrete or foundation work” (J. Ex. 6).
9. By letter dated July 14, 2025, the Company notified the Union that “civil work, including the removal and installation of concrete foundations” has not historically been covered by the CBA (J Ex. 7)
10. Union-represented contractors notified the Union that the Company was “carving out” certain work from projects – e.g., installing culverts, laying rock, and pouring pads – and awarding those jobs to non-IBEW signatory contractors (Tr. 47-48). This work was being identified as “civil work.”
11. Notwithstanding that the Company identified “civil work” as non-bargaining-unit work during the grievance process, union-affiliated contractors continued to receive these contracts and perform that work before the Union filed the grievance. (U Ex. 2, p. 35; C Ex. 1)
12. Before the grievance was filed, the Union received weekly notices that work was being contracted out to contractors, including “site/civil” work. Among the contractors identified was Terra5. (U Ex. 2, p. 51; C Ex. 1)
13. After the grievance was filed, the Company ceased including contractors performing site/civil work in the weekly notices. (U Ex. 3, p. 13-14)
14. Employees covered by the Illini CBA continue to perform the same work as Terra5. (Tr. 315, 317-320; J Ex. 9, p. T5C 092 - T5C116). The Company confirmed this. (Tr. 412-413)

15. On or about June 27, 2025, the Company notified the Union that lists of contractors working on Company property would no longer identify those performing civil work. (Tr. 182-186; U Ex. 3, p. 13-15).

ARGUMENTS⁶

Both the Union and the Company argue that this case should be decided based on whether the work in dispute is bargaining unit work.

Union

The Union contends that Sec. 1.03B is broadly worded and does not exclude concrete and foundation work, and that all bargaining unit work is subject to the restrictions stated therein. For years, Union-covered employees have performed concrete and foundation work. Shawnee substation employees performed that work in the past, although admittedly not in the past ten (10) years. Illini-covered employees continue to perform that work. All new substation employees covered by the three union contracts continue to receive training that includes concrete and foundation work. Over the years, management has complied with the notice provisions in Sec. 1.03B, regularly notifying the Union of contractors on Company property performing that work. Further, during past bargaining sessions, the Company unsuccessfully sought to exclude concrete work as non-core construction work.

Union argues that it is irrelevant that this work has been contracted out in the past. By agreement, the Company may subcontract bargaining unit work to outside companies, provided it complies with the restrictions in the CBA to which it is a party. The Terra5 Carpenters employees who performed concrete and foundation work at the Marion NW substation did not receive wages and benefits comparable to those of other substation workers, and their work was not covered by an IBEW or

⁶ All arguments made by the parties have been duly considered but may not be specifically referenced herein. If not specifically addressed, they should be considered rejected.

AFL-CIO Agreement. Thus, the Company violated the CBA by contracting with Terra5. Further, the Company failed to provide prior notice that it was contracting out this substation work.

Union argues that the arbitrator should rely not only on the contract language but also on the purpose of the contract provisions, the parties' conduct, and their bargaining history. Substation electricians perform a wide range of tasks within a substation. For example, the job description for an Apprentice substation electrician 1st generally states that the candidate performs substation maintenance and construction project activities; repairs or replaces failed substation apparatus; and constructs new substations (J Ex. 21). The position is described as covered by the IBEW bargaining agreement. Substation workers are trained in concrete and foundation work (U Ex. 4, Lesson 1.C.106, p. 1; U Ex. 5, Lesson 1C-106, p. 1).

Union argues that a rule of contract interpretation is that when specific items are listed without broader terms, unlisted items are excluded. "Thus, contracts that specify certain exceptions imply that there are not other exceptions." *Elkouri & Elkouri, How Arbitration Works*, (8th ed. 2020) at p. 467-468. Here, Sec. 1.03D does not contain an exception for concrete and foundation work or any civil work. Additionally, the evidence regarding bargaining history reveals management's unsuccessful attempts to have concrete work excluded. So, concrete and foundation work must be included within the meaning of Sec. 1.03B.

Union argues that although the Company has subcontracted concrete and foundation work, it has been able to do so because of the restrictions contained in Sec. 1.03B. Specifically, the requirement to pay "equivalent wages and benefits" was chosen to protect bargaining unit employees from erosion of their wages and benefits:

"A union has a legitimate interest in preventing the undermining of the work opportunities and standards of employees in a contractual bargaining unit by

subcontractors who do not meet the prevailing wage scales and employee benefits covered by the contract. Therefore, its contract with an employer may require the employer, if it subcontracts, to subcontract to another employer who agrees to observe ‘the equivalent of union wages, hours, and the like’ provided for in the bargaining agreement.” *Gen. Teamsters Local 386*, 198 NLRB 1038, 1038 (1972)

In summary, the Union argues that the evidence establishes that the Company violated Article 1, Section 1.03B by contracting with Terra5 for the concrete and foundation work at the Marion NW Substation, which did not meet the CBA's criteria. Further, the Union requests that the Company be ordered to stop contracting for concrete and foundation work that is not in compliance with the CBA, to comply with the CBA's notice provisions, and to award a monetary remedy to the Union for the violation(s) found.

Company Arguments

The Company argues that Sec. 1.03 does not apply to the work performed by Terra5 because it is civil foundation work not covered by the CBA. It further argues that bargaining unit employees have not performed civil foundation work since May 2015. It also argues that the Marion shop lacks the civil construction capability required for large foundation work, has no machine shop, no rebar bender, and no concrete forms available for substation crews. Additionally, it argues that the contract language “normally performing the work” in Sec. 1.03B explicitly removes civil foundation work from the bargaining unit, as substation crews have not performed that work for years. Further, the distribution of work on these substations is that bargaining unit electricians perform the electrical substation work, and civil contractors perform civil excavation and foundation work.

The Company also argues that past practice favors its position in this matter, i.e., that civil work is not covered by the CBA. Specifically, the Union – through

notices issued – has stated that civil contractors, including Terra5, have been performing site/civil and foundation work for years. During that period, the Union did not file any timely grievances challenging these decisions.

The Company argues that Sec. 1.03D's exclusions do not apply to all contracted work by default. That provision applies only to work covered by the CBA and to the "classification normally performing the work under this Agreement." Sec. 1.02 also limits the Agreement's scope to "...all work thereon coming under the jurisdiction of the Brotherhood as usually performed by employees of the Company listed in the employee classifications of Article 4." The Company asserts that the proper interpretive sequence should be (a) determine whether the disputed work is covered bargaining unit work as usually performed under the Agreement; if so, (b) determine whether any Section 1.03 conditions apply; and then (3) consider whether a listed exclusion in Sec. 1.03D removes the work from Section 1.03's operation.

The Company further argues that Sec. 1.03D is a set of carve-outs from the wage conditions in Sec. 1.03B and is not an affirmative work-jurisdiction clause. It contends that the absence of a concrete exclusion does not convert civil foundation work into bargaining unit work, because foundation work was never bargaining unit work. Accordingly, Sec. 1.03B should not apply to civil/foundation work, as it is not work covered by the CBA and is not work normally performed by bargaining unit employees.

DISCUSSION

In contract interpretation cases, the burden of proof rests with the Union. The standard burden of proof is a preponderance of the evidence. Thus, the Union bears that burden in this case. The arbitrator's primary task in these cases is to determine the parties' mutual intent as expressed in the contract's language. If the language is clear and unambiguous, the arbitrator will interpret the contract according to its plain

meaning. A term is ambiguous if plausible contentions support conflicting interpretations of the language in dispute. Here, the provisions of the current CBA at issue concern the subcontracting of bargaining unit work.

The arbitrator finds that the contract language is not clear and unambiguous for the following reasons. Beginning with the recognition clause, the Company recognizes the Union as the exclusive representative of employees within the *classifications of work and/or employees covered* by the Shawnee CBA. Thus, represented employees can be identified by either the work they perform or their job classifications (Sec. 1.01). The CBA applies to all work thereon coming under the jurisdiction of the [Union] “as usually performed by employees of the Company listed in the employee classifications” (in the CBA). The Union argues that it has jurisdiction over the work that subcontractors (specifically Terra5) perform for represented employees, as those subcontractors clearly have the skills and ability to do the work. The Company argues that “usually performed” limits the scope of work to what substation employees have been performing, and that because they have not been performing that work, it should be excluded from the bargaining unit. The Company further argues that the “equivalent wage” requirement applies only if the subcontracted work has been “normally performed” by bargaining unit classified employees, while the Union contends that the phrase simply identifies the job classification by which equivalent wage is measured in a particular case. Because each party has made plausible arguments, the arbitrator finds the applicable contract language ambiguous. Thus, the arbitrator has decided to consider whether the principle of past practice should be applied to determine the parties’ intent regarding their contractual provisions.⁷

⁷ The issue here is not whether bargaining unit employees should be performing this work, its whether the Company contracted the work in accordance with the provisions in the CBA.

Past practice is an established technique used by arbitrators to interpret contract provisions. To enforce a past practice, it must be long-standing and relied upon by the parties; unequivocal; and readily ascertainable over a reasonable period of time as a fixed and established practice that is accepted by both parties and not waived or abandoned by the party seeking to enforce it.

The bargaining history shows that, at least since 1996, the parties' collective bargaining agreements have included subcontracting provisions. As a result, the Union has sought work preservation language in these contracts. Since about 2007, subcontracting language has been included in successive collective bargaining agreements and has remained unchanged. Thus, contracting out of covered work has been agreed to by both parties, subject to restrictions identified in the CBAs. Those restrictions have been in place since 2007.

Here, the work at issue (civil work) consists of concrete and foundation work performed at substations. There is no dispute that concrete and foundation work at substations has been performed by bargaining unit employees in the Shawnee area, and that these employees are competent to perform that work. Those unit employees and trainees (apprentices) continue to receive training in concrete and foundation work. While Illini-covered employees still perform some of this work, Shawnee employees have not done so since about 2015. In the Shawnee area, that work has been continuously contracted out to contractors pursuant to Sec. 1.03B. This arrangement has enabled the Company to deploy its workforce to focus on preventive maintenance tasks. No evidence was presented that the Union has ever abandoned its claim to this work.

The second paragraph under Sec. 1.03B requires that "Except in emergency situations, before bringing contractors on the property, the Company shall notify the union of the name of the contractor the location the work is being performed and the scope of the project." Thus, the CBA requires the Company to provide notice to the

Union whenever subcontractors come on site to perform subcontracted work. Notices presented in evidence show that a number of these contractors were to perform site/civil work, i.e., concrete and foundation work (C Ex. 1). The Company did not argue, and there is no evidence (except until recently) that it failed or refused to comply with this provision. The fact that management provided the Union with notice of when it employs subcontractors to perform civil work suggests to the arbitrator that the Company acknowledged that civil work is bargaining unit work. Contractors performing civil work would otherwise have been excluded from the notices provided to the Union long ago if it had always been non-bargaining-unit work.

The weekly notices sent to the Union also show that the Company uses (non-exclusively) union subcontractors to perform site/civil work at substations. Presumably, these contractor-employees meet the criteria set forth in the CBA. The Company's longstanding use of union contractors for this work suggests to the arbitrator that this practice is another acknowledgment that the work is covered by the CBA. Further, before the Union's grievance, the Company never notified the Union that site/civil work was not covered work. Its continued notices to the Union and use of union contractors are inconsistent with its current position that site/civil work is not covered by the CBA because it is non-bargaining work.

Another factor in this case is that these parties have three bargaining agreements covering identical collective bargaining units, with the primary distinction being that each agreement covers a separate, identifiable geographic area: Southern, Eastern, and Western. All three collective bargaining units are negotiated jointly and share the same job classifications, although each unit differs in size. Finding that concrete and foundation work is non-bargaining unit work in this case

would be inconsistent with the practice in the Illini CBA, where substation employees still perform that work, albeit non-exclusively.

The fact that Shawnee-represented employees have not performed that work since 2015 because the Company has been contracting it out does not help the Company's case. Here, all indications are that contracting out is consistent with the CBAs, which have included the same contracting provisions for years. That the Union has not grieved over the Company's contracting out of this work is not evidence that the Union has waived its right to continue to claim jurisdiction over this work; it is recognition that successive CBAs have recognized the Company's right to do so, subject to the restrictions defined in the agreements.⁸

Thus, the arbitrator finds that the parties' past practices of how they have interpreted and applied the contracting provisions in successive CBAs leads to the conclusion that site/civil (concrete and foundation) comes under the Union's jurisdiction; and that the Company breached the contract when it subcontracted the work to a contractor who does not meet the criteria set forth in the CBA.

Opinion

The contractual language at issue in this case has been part of successive collective bargaining agreements for nearly twenty years. Accordingly, the arbitrator looked to the parties' history and past practice to determine the intent and meaning of the disputed contractual language. Neither party should be permitted to obtain through arbitration what it could not achieve during negotiations for an agreement. Here, the current CBA will expire later this year, and the parties will have an opportunity in the next collective bargaining agreement to clarify and address the issues that gave rise to this grievance.

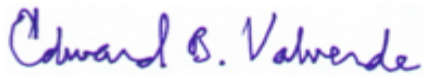
⁸ The notices that the Union receives does not identify what wages and benefits the contractor is paying its employees. Here, the Union was aware that Terra5 carpenters were not union employees and were not receiving equivalent wages and benefits. Thus, this grievance was filed.

Order

The arbitrator finds that, due to the ambiguity of the CBA's subcontracting provisions, the parties' past practice controls in this case. A preponderance of the evidence establishes that concrete and foundation work is covered by the CBA and that the Company's contracting out of that work to a contractor who does not comply with the criteria set forth in the current CBA violated Article 1, Sec. 1.03B of the current CBA. The record does not show what wages and benefits were paid to the Terra5 employees who performed the work, though there was no dispute that the amount was less than the equivalent wages and benefits required by the CBA. Accordingly, the arbitrator will require the Company to compensate the Union for the difference between what was paid to Terra5 employees and what should have been paid to employees performing that work in compliance with the CBA.

Additionally, the Company will be ordered to cease and desist from breaching the CBA in the manner involved herein and to continue providing the Union with notice of any outside contractors performing bargaining unit work on its premises, in accordance with the CBA. The arbitrator will retain jurisdiction to address any issues regarding the remedy.

Date of Award: May 7, 2026.



Edward B. Valverde
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