

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 815 ALLIED INDUSTRIAL
WORKERS, AFL-CIO

and

FWD CORPORATION

Case 62
No. 52980
A-5388

Appearances:

Mr. Donald Schaeuble, International Representative, United Paperworkers International Union, 214 Woodside Drive, Potter, Wisconsin.

Foley & Lardner, by Atty. George Cunningham, 777 East Wisconsin Avenue, Milwaukee, Wisconsin.

ARBITRATION AWARD

The union and the employer are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The union requested, and the employer agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Nancy Berndt, involving the meaning and interpretation of the terms of the agreement relating to layoff. The Commission appointed Stuart D. Levitan, a member of its staff. Hearing on the matter was held on November 8, 1995 in Clintonville, Wisconsin. The hearing was not transcribed, and the parties filed briefs December 12, 1995.

ISSUES

The parties stipulated the following issues for decision:

Was Nancy Berndt properly laid off from her position; was she discriminated against in the process of layoff; if so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

(43) A job evaluation plan involving the appraisal of skill, effort, job conditions and responsibility factors has been installed for the purpose of establishing fair wage differentials between the various jobs on an impartial and equitable basis and by a measuring

device of recognized stability.

It is agreed that the evaluation of existing jobs is correct, and a list of same has been furnished the Union prior to the signing of this Agreement. Such listed jobs are not subject to grievance procedure. All new jobs and changes in existing jobs will be evaluated under said plan. A copy of new and revised job write-ups will be furnished the Union on said jobs within ten (10) days from date of same, and such new job descriptions and classifications shall be subject to the grievance procedure. When evaluation of a job has been completed, a copy will be furnished to the Union.

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SCARCITY OF WORK

(58)(a) In case of lay-offs or return to work following lay-offs, the principle of seniority shall prevail, that is, the last person hired shall be the first laid off. In the department where there is a scarcity of work, the least senior employee working in the classification that needs to be reduced shall be laid off, and the last laid off shall be the first rehired, provided such employee is able to do the available work in a normal and average manner. The most senior displaced employee has the right to choose his/her assignment among the ones that are open.

If the employee does not have the ability to perform the work in a normal and average manner, he will be laid off from the department in question and replaced by the employee he had displaced. Upon being laid off he may exercise the contract's bumping rights.

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ARTICLE VI

GRIEVANCE PROCEDURE

(70)(a) Any employee having a grievance, concerning the meaning or application of any provision of this Agreement, shall verbally discuss his complaint or grievance with his foreman, with or without his steward being present. Should the matter not be adjusted satisfactorily, the complaint may be reduced to writing by filling out and signing in triplicate, a complaint on a standard form

furnished by the Union. Said complaint shall specifically set forth his grievance and shall be countersigned by the steward of his department who shall keep a copy thereof. The original shall be delivered to the employee's foreman, who will acknowledge receipt of same by affixing his signature and date on all copies. Such grievance shall be reported in the manner above provided within five (5) working days after it occurs if the nature of the grievance permits.

. . .

(75)(f) If the Joint Grievance Committee is unable to agree on a settlement of the grievance, then the party desiring arbitration shall appeal to the Wisconsin Employment Relations Board in writing requesting the appointment of a Chairman of an Arbitration Board, who shall promptly notify both parties of this fact and set a date for the hearing. The Arbitration Board shall consist of three (3) members: The Chairman, one member appointed by the Company, and one member appointed by the Union. Failure of either party to appoint its members to the Board, or the failure of such appointee to appear for the hearing shall not serve to invalidate the proceedings. Further, the failure of either party to present its case at the time of the hearing shall not serve to delay the hearing or to invalidate the opinion rendered by the Board.

The decision of a majority of the Arbitration Board shall be final and binding on both parties. Any expense incurred by the Arbitration Board shall be borne equally by both parties.

It is agreed that the employer has the right to request an ad hoc panel be supplied on any grievance submitted to the arbitration step. If such request is made, the W.E.R.C. will be requested to supply the parties a panel of five (5) names from which one (1) shall be selected by agreement or by a process of alternately striking of names with the party requesting arbitration striking first. In the event this process is used, the Company shall bear the full cost of the fees and expenses of the impartial arbitrator.

. . .

(76) The functions of the Board of Arbitration shall be a judicial rather than legislative nature, and such Board shall not have

the power to add to, disregard or modify any of the terms and conditions of this Agreement.

. . .

(113) The Company shall have exclusive supervision of the work, and the direction and disposition of its employees, to meet the needs of its business in the efficient conduct and operation of its plant, subject to the provisions of this Contract.

(113.1) The Company and the Union agree with the principle of Equal Employment Opportunity in all personnel actions including:

(a) Recruitment, selection and placement, testing, training programs, promotion and transfer, layoff and recall without regard to race, sex, age, color, religion or national origin, marital status, veteran status, handicap, sexual orientation, affectional preference and citizenship status:

(b) All compensation, employment benefits and social and recreational programs will be administered without regard to race, creed, sex, color, age, or national origin, marital status, veteran status, handicap, sexual orientation, affectional preference and citizenship status.

(c) It is understood that the usage of any masculine pronoun or any job titles referred to in this agreement shall have reference to any and all employees of either sex.

BACKGROUND

This grievance concerns the company's April 13, 1995 lay-off of Nancy Berndt, a Utility Ladder Preparer. The lay-off notice, which bore the pre-printed explanation "Lay-off due to lack of work," was signed by Foreman LeRoy Robbins. Lay-off notices for other employees, not signed by Robbins, also bore the same pre-printed explanation, which was then either crossed out, or amended by such phrases as "couldn't handle job", or "lay-off due to employe reduction."

Berndt's last day of work in this classification was April 14. She subsequently bumped into a Grade 8 janitor position, where she was assigned as of the date of hearing.

At the time of Berndt's lay-off, the Company anticipated that a senior 406/Fitter-Welder, one of approximately 16 incumbents in that classification, would be absent for approximately six

weeks due to knee surgery.

On April 14, Berndt filed a grievance, stating as the nature of the grievance, "Unfairly permanently laid off due to a lack of work," and proposing as the desired settlement, "retract layoff and be made whole in every way." The union submitted the grievance at the first step on April 20, stating, "The company has discriminated against Nancy Berndt. The company laid Nancy off due to lack of work when in fact the company has transferred another employee from a different dept. into her dept. because there is so much work to be done in Nancy's area."

On April 21, the company replied as follows:

The company has not violated any provision of the Labor Agreement. The grievant's previous job classification was eliminated thereby creating a lack of work available for that job classification. A temporary employee has been placed in a 406 classification to assist with the workload created by an order recently added to the schedule by the service department and coupled by the fact that one employee in the 406 classification is scheduled for an absence due to surgery within the next week. The facts surrounding the placement of the temporary employee in the 406 classification have no bearing on the layoff of the grievant's job classification.

On April 25, the union processed the grievance to the third step, stating, "the union disagrees with the companies (sic) answer."

A few days prior to Berndt's lay-off, Personnel Manager Kathy Leete had mentioned to union officials that she felt Berndt was spending too much time in the bathroom and on cigarette breaks. The Company did not express these concerns to Berndt directly, nor did it ever discipline Berndt for this, or any other aspect of her performance.

At the time of her lay-off, Berndt was a Utility Ladder Preparer, job code 403, pay grade 6, paid at \$12.81 hourly. She was the only person holding that classification, the primary purpose of which is to clean, through chipping and washing, imprecise welds left by welders. Upon her lay-off, the company reassigned some of the work she previously performed on the cleaning of ladders to workers in the Fitter/Welder classification, job code 406, pay grade 3, paid at \$13.28 an hour. The Company never notified the Union it sought to change the Filter/Welder job description following Berndt's layoff.

The Utility Ladder Preparer position was created in early 1990. Some of the occupational rating factors for the position are as follows:

Factors	Deg	Basis of Rating
Initiative and Ingenuity	2 (28)	Repetitive work. Requires the use of some judgement to comply with instructions, follow prescribed routines and standard operations, methods, procedures or practices in washing parts with premixed solution. Make minor decisions regarding quality of efficiently cleaned parts for painters. Notify supervisor of difficulties.
Physical Demand	3 (30)	Sustained physical effort requiring continuity of effort, frequently working with very light or light weight material and tools such as caulkers and hand/palm sanders, washing wands, etc., intermittent handling of fairly heavy material or parts. Usually short-cycle work requiring sanding, bending or stooping. May involve awkward body positions for brief periods.
Mental or Visual Demand	3 (15)	Continuous mental and visual attention is necessary to determine whether parts are sufficiently clean from washing and grinding and insuring that caulking is applied properly.
Responsibility for Work of Others	1 (5)	Responsible only for own work.

Some of the occupational rating factors for the Welder, Lay Out and Set Up Man, Job Code 405, are as follows:

Factors	Deg	Basis of Rating
Initiative and Ingenuity	4 (56)	Laying out work and setting up and fitting and taking parts in proper location in accordance with blue print specifications, for self or others, on frames, or outriggers, fenders, shrouds, skirts, battery boxes, compartment boxes, water tanks, cabs or ladders; judgement requires to weld parts and assemblies where no drawings are available. A qualifying measurement for occupant of this position is that he uses blueprints and measuring instruments. Required to operate automatic or semi-automatic welder using submerged arc, shielded arc, inner shield and stick electrode procedures; may be required (see page 2 attached)
Physical Demand	3 (30)	Physical effort, handling and moving material, positioning electrode and in setting up.

Mental or Visual Demand	3 (15)	Continuous visual or mental attention while welding, setting up, laying out and in checking fusion and distortion.
Responsibility for Work of Others	1 (5)	Occasional helper.

Some of the occupational rating factors for the Fitter, Job Code 406, are as follows:

Factors	Deg	Basis of Rating
Initiative and Ingenuity	4 (56)	Lay out reference points and dimensions on metal stock, structural shapes, or work pieces such as castings, plates, tubes or machined or fabricating parts to indicate processing to be done such as machine welding or assembly, analyzing specifications and computing dimensions according to knowledge of the product, subsequent processing, basic shop mathematics and layout procedures where fixtures are not available. Must have the ability, and is required to weld, as specified in Initiative and Ingenuity as outlined in "Welder, Layout and Set-Up Man" classification.
Physical Demand	3 (30)	Physical effort, handling and moving material, positioning electrode and in setting up.
Mental or Visual Demand	3	Conscious visual or mental attention while welding, setting up, laying out and in checking fusion and distortion.
Responsibility for Work of Others	1 (5)	Occasional helper.

A section in the Chapter on "Workmanship" in the American Welding Society Code Handbook indicated standards for welders to follow in the cleaning of imprecise and imperfect welds.

Some of the occupational rating factors for the Assembler/Electrician - Ladders, Job Code 407, are as follows:

Factors	Deg	Basis of Rating
Initiative and Ingenuity	4 (56)	Use of considerable judgement to plan and perform unusual and difficult work where only general methods are available, and in making broad decisions involving considerable initiative and ingenuity.
Physical Demand	3 (30)	Continuous lifting or moving very light weight material in difficult work positions; Frequently lifting average weight material; rarely lifting heavy weight material.
Mental or Visual Demand	3 (15)	Continuous mental and visual attention; usually repetitive work or diversified operations requiring constant alertness or activity.

Some of the occupational rating factors for the Parts Washer, Caulker and Finish Painter, Job Code 409, are as follows:

Factors	Deg	Basis of Rating
Initiative and Ingenuity	4 (56)	Diversified work, caulking, sheet metal, fibreglassing, sanding and preparing truck for paint, finish painting on trucks, ladders and parts. Mix variety of paint. Secure proper spray operation. Responsible for all caulking requirements on touches, ladders and parts. Prepare trucks and ladders for shipment after painting. Also, may be required to move trays, tubs and pallets of parts, ladders, stamp parts, file, burr, wash and fit parts, and perform simple assembly operations.
Physical Demand	3 (30)	Sustained physical effort, usually short cycle work. Standing, bending, stooping, wet sander involves continuous monitoring. Awkward body positions.
Mental or Visual Demand	3 (15)	Continuous mental attention in spraying or caulking, masking, filing, assembling of parts and operating fork lift.

Some of the occupational rating factors for that Utility Sheet Metal Worker, Job Code 420, are as follows:

Factors	Deg	Basis of Rating
Initiative and Ingenuity	3 (42)	Requires the ability to perform diversified sheet metal duties; repair gas tanks and radiators. Convert radiators to meet various specifications as to location of filler pipe, etc. Some layout and soldering. Refit side panels; make shrouds for radiators. Some judgement in layout of work where prints are not always available.
Physical Demand	3 (30)	Sustained physical effort using sheet metal working equipment and in handling material.
Mental or Visual Demand	3 (15)	Continuous mental or visual attention to details, planning and laying out work. Continuous visual attention while operating equipment.
Responsibility for Work of Others	1 (5)	Occasional helper.

THE PARTIES' POSITIONS

In support of its position that the grievance should be sustained, the union asserts and avers as follows:

The company had already made up its mind to lay-off Nancy Berndt, and then had to find a way to justify it. The company told the union before the lay-off that Berndt spent too much time in the bathroom and smoking. But if the company had a problem with Berndt's performance it should have followed the disciplinary policy in the contract, not put her on lay-off.

Testimony by senior workers shows that the company's claim that "lack of work" justified the lay-off wasn't the case. The testimony showed that the company added two hours per person per section per day to the standard; that there were problems with productivity after the lay-off; and that the fitters always had somebody other than themselves do the kind of work Berndt had done, but which they were now being forced to do themselves do to her lay-off.

The company also violated the contract by eliminating the 403 Utility Ladder Preparer position and incorporating its duties into the

406 Fitter position, which does not include in its position description the grinding and cleaning of ladders. The logical move would have been for the company to give the extra work to the 409 Painters, the only other employees other than the 403 Preparers that have the duty of cleaning ladders.

The company is obligated to notify the union if it changes the work content for a position. There was no such notice given. This was just an attempt to cover up the mistake made in laying off Berndt.

The company first said that the reason for Berndt's layoff was because of a lack of work, when they decided they could not justify that they changed it to the elimination of her job. Now the question is did they eliminate her job because of a lack of work in her classification or did they eliminate it so they could keep a junior male employe instead of Nancy.

It is clear that Berndt was not treated fairly, the Company decided to first lay her off because of a lack of work of which there was none in her classification. Then the company said the lay off was because they had eliminated her job, here again the company had no evidence of this job elimination. The company never gave notice to the union of any of the things they are now saying. Company witnesses will say whatever is necessary to justify what was done to Berndt.

The grievant should be reinstated to her former position and be made whole for the lost wages she has suffered.

In support of its position that the grievance should be denied, the employer asserts and avers as follows:

This case involves a routine layoff, a personnel reduction needed for the company to remain competitive. The facts show that the company is authorized to layoff employes; the grievant was the only person holding the Utility position; any junior employes were welders/fitters holding higher-paid classifications; the grievant could only perform limited duties, and no welding; the welders could perform numerous functions, including those of the grievant; the contract provides for layoff of the least senior employe in the classification that needs to be reduced; the company decided that it made business sense to reduce staffing in the Utility classification;

the grievant's tasks were distributed to remaining employees, as in any layoff; the grievant was not replaced by anyone, and the objective of reducing headcount was achieved.

The union struggled at hearing to identify exactly what part of the contract the company allegedly violated, and its arguments in support of the grievance are unpersuasive. Also, the union never identified what kind of alleged discrimination occurred, and offered no evidence in support of this allegation. The grievant had no contractual guarantee to her job, and was properly laid off from her position.

Further, the emphasis on the personnel manager's comments about the grievant's bathroom breaks and smoking habits are much ado about nothing. That the grievant did not have enough work to do to keep her fully occupied all day is a legitimate, non-discriminatory reason to eliminate her position, rather than laying off a junior welder who was busy and whose work she couldn't do at all.

It is unremarkable that the layoff of the grievant created more work for the welders/fitters, because that is what nearly always occurs when someone is laid off. As the union president admitted, there was no relationship between the legitimacy of the grievance and the fact that some other employees would have to cover some of the grievant's previous tasks. Where the grievant's work was rerouted had no bearing on the contractual correctness of her layoff.

The temporary transfer of other employees into the ladder shop is also unpersuasive, in that the company has that contractual right; the transfers were handled properly; and the union filed no grievances.

The grievance should be denied.

DISCUSSION

The union has identified two specific provisions of the agreement which it contends the company violated, namely paragraph 43 and paragraph 58a. The union also alleged that the company discriminated against the grievant by laying her off, rather than "one of the employees where the lack of work really was."

Paragraph 43 requires that "all new jobs and changes in existing jobs will be evaluated" under a job evaluation plan, and that "a copy of new and revised job write-ups" will be furnished

to the union within ten days of their crafting, with "such new job descriptions and classifications ... subject to the grievance procedure." The paragraph also states that "the evaluation of existing jobs is correct," and that "such listed jobs are not subject to the grievance procedure."

The company argues that this provision is irrelevant to the instant grievance because the job descriptions are only used for setting pay grades rather than setting out detailed duties, and that the 406 description's reference to "subsequent processing" clearly does cover the cleanup function.

In assessing this grievance, there were a number of key points on which I can make no firm conclusion as to the underlying facts. First, the record is silent on the question of whether the job evaluations are, as the company states, created solely in the context of setting pay grades, or are, as the union implies, comprehensive position descriptions. Even more importantly, there is the question of who performed the task of chipping and washing improper welds prior to the creation of the position of Utility Ladder Preparer in 1990. The union's witnesses testified that there was always somebody other than welders/fitters to do this work, and that welders never performed this duty. The company's witnesses testified with equal certaintude that welders had always cleaned their welds prior to 1990, and the elimination of the Utility Ladder Preparer position merely returned things to the way they used to be.

The parties also have a conflict on the impact, to the 403 welders, of the elimination of the 406 position. The union witnesses testified that the increased workload led to the company assuming that it took the welders an added two hours per day to assemble ladders. The company's witnesses professed ignorance on this point. As Arbitrator Barry Baroni said of a similar situation in a dispute also focusing on amended job duties and classifications, "the testimony. . .regarding unit practice was largely conflicting, and frequently confusing." Arco Oil and Gas Co., 84 LA 235, 239 (Baroni, 1985).

The bargaining agreement states that the job evaluation plan was correct as of the signing of the agreement. The agreement was executed in May, 1993. At that time, with the 403 position in existence, the 406 welders did not perform the chipping and washing function that they have been assigned since the elimination of the 403 position.

It is possible that, prior to the creation of the 403 position in 1990, the welders routinely performed the tasks of chipping and washing welds; it is possible that the phrase "subsequent processing" in the job evaluation for the 406 position refers to such tasks as chipping and washing welds; it is possible that the AWSD workmanship standards are incorporated to the extent that they do not require explicit reference; it is possible that the job evaluation plan is not a comprehensive position description, but merely an aid to setting proper wage rates. All these things are possible.

But what is certain is that the company has assigned to the 406 position duties and responsibilities which it did not exercise at the time the collective bargaining agreement was signed in May, 1993, and that the company failed to provide to the union a "copy of ...(the) revised job

write-ups. The company thus violated paragraph 43 of the collective bargaining agreement.

This violation, however, does not automatically have a major impact on the other aspect of this grievance, namely the elimination of the grievant's position and her resultant layoff. Compliance with the notice provision is germane to the issue of the proper pay rate and other conditions of employment for the 406 personnel, rather than to the status of the grievant. Hennepin Paper Co., 83 LA 214, 217 (Gallagher, 1984).

As a business decision, there are obvious advantages and disadvantages to the company by its transfer of work previously done by a 403 position to a 406 position. On the one hand, it gives tasks previously performed at \$12.81 an hour to persons making \$13.28 an hour; on the other hand, it reduces the overall headcount, and, by making the persons who do the welding responsible for cleaning sloppy welds, should lead to fewer sloppy welds.

Ultimately, of course, the question before me is not whether the elimination of the 406 position, and the transfer of its duties to the 403 position, was the right business decision. My proper focus is whether this act was permitted under the collective bargaining agreement. As a beginning point, it has been said that "the weight of the arbitral authority supports the premise that in the absence of contractually-specified limitations or restrictions, management has the unilateral right to make changes in job duties, to create new classifications, to combine jobs and to eliminate jobs." Mead Corp., 84 LA 875, 879 (Sergent, 1985).

That agreement gives the employer "exclusive supervision of the work," and the direction and disposition of its employees, to "meet the needs of its business in the efficient conduct and operation" of its plant, "subject to the provisions" of the agreement.

In United States Steel Corp., 82 LA 534 (Jones, 1984), a veteran Maintenance Spare Parts Attendant grieved his layoff, claiming that the transfer of his duties to other positions was improper. The arbitrator found that the employer had the right to eliminate the position because of budgetary considerations and to reassign the duties, because the parts attendant never had exclusive right to the work and there was continued need for the other employees to perform their specialties in addition to the grievant's work. "A substantial reduction in workload provides a reasonable basis for combining the duties of similar jobs during curtailed operations," the arbitrator explained, at 82 LA 537. Similarly, see also Union Carbide, 84 LA 788 (Seinsheimer, 1985).

In Allied Plant Maintenance Co., 88 LA 963 (Blankston, 1987), the union successfully grieved the employer's directive to maintenance mechanics to clean machinery, which was normally the function of janitors. The arbitrator found that the employer's action was improper based on explicit language giving to janitors the "overall responsibility for the cleaning of the plant," while reserving for mechanics the duty of "clean(ing) up their own mess upon completion of a job assignment." The arbitrator found this division of labor to be clear and unambiguous.

In Youngstown Hospital Association, 88 LA 921 (DeLeone, 1986), the employer laid off a licensed practical nurse and transferred her duties, which it claimed were traditionally overlapping, to a non-unit registered nurse. The arbitrator found that this violated the contractual provisions that "work customarily performed by employees within the bargaining unit shall not be performed" by non-unit personnel, and that the employer, "except in case of emergency, will not fill a bargaining unit job with a non-bargaining unit employee."

The facts of the case under review before me are very similar to Youngstown Hospital, in that the employer has laid off an employe (the grievant) and transferred aspects of her job (washing and cleaning ladders) to other personnel (the 403 welders). The critical difference between this case and Youngstown Hospital comes in the contractual language. In the hospital grievance, there was specific and explicitly language in the collective bargaining agreement preserving unit work for unit positions. The collective bargaining agreement before me has no such explicit provisions.

In Hennepin Paper Co., 83 LA 214 (Gallagher, 1984), the employer combined the duties of two positions, during an attempt to reduce costs, resulting in an employe bumping into a position with reduced wages. The union contended that the separate listings of the two positions in the wage rate made the positions distinct, and that the employer's failure to give the union proper notice of the incumbent's reassignment deprived the union of the opportunity to negotiate over the matter. The arbitrator denied the grievance, finding that there was no implied restriction on the employer's right to organize the work, and that neither the reassignment nor the wage rate would have been proper subjections of negotiation. "The authority of management to make changes such as that involved in this grievance is important to the survival of the enterprise," the arbitrator stated. "If inefficiency accumulates because of management's inability to organize the work of the business, the business may fail -- a loss not only to the owners of the business, but to those employed in it." 83 LA at 216-217.

The employer made a business decision that, to remain competitive, it needed to reduce its payroll. Because of the greater versatility of the 403 incumbents, the employer determined that it made sense to transfer the basic 406 duty of chipping and washing welds, and reduce the number of 406 incumbents. As the most junior 406 incumbent, the grievant was the person placed on layoff. Because the grievant was the only incumbent, the employer took the further step of actually eliminating the position.

This may or may not have been the right business decision. It may or may not have been the most compassionate decision. But it was not a decision which the collective bargaining agreement prevents.

Finally, the union alleges discrimination against the grievant on account of her gender, and asks that I measure the employer's actions in light of Title VII of the Civil Rights Act and something which the collective bargaining agreement refers to as "the principle of Equal

Employment Opportunity." The gist of the union's charge seems to "that the Company acted in a discriminatory manner by putting the layoff in the job classification (403) where the only incumbent was a female, rather than in the classification (406) where a layoff would be borne by a male. The matter of the Company's attitude toward the grievant based on the time she spent smoking and in the bathroom also figures in the union's analysis.

Discrimination against an employe is intolerable. It is immoral and, if certain facts are established, illegal. It is also complex to litigate, and difficult to prove.

The collective bargaining agreement refers to the "principle" of equal employment opportunity, without establishing an explicit litigation process or standard.

The record indicates the gender make-up of the classifications at issue, but is silent on the overall workforce. It is also silent on what steps, if any, the Company has taken, in recruitment, training, promotion, etc., of members of protected status categories. The record is also silent on how, if at all, paragraph 113.1 has been interpreted and applied in previous grievances, if any. On the basis of this record, I cannot find a violation of paragraph 113.1.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the argument of the parties, it is my

AWARD

1. That the grievance relating to the claimed violation of paragraph 43 is sustained. The employer is hereby directed to furnish to the Union a copy of all new and revised job write-ups within ten days of the date of this award.

2. That the grievance relating to the layoff of Nancy Berndt is denied.

Dated at Madison, Wisconsin, this 11th day of March, 1996.

By Stuart Levitan /s/
Stuart Levitan, Arbitrator