

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
and its LOCAL 578, UAW**

and

**OSHKOSH TRUCK CORPORATION
of OSHKOSH, WISCONSIN**

Case 13
No. 65332
A-6190

Appearances:

Jay G. Kopplin, UAW International Representative, UAW Sub-Regional Office, 2125-A South Memorial Place, Sheboygan, Wisconsin 53081-3714, for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and its Local 578, UAW, which is referred to below as the Union.

James R. Macy, Davis & Kuelthau, S.C., Attorneys at Law, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54903, for Oshkosh Truck Corporation of Oshkosh, Wisconsin, which is referred to below as the Company.

ARBITRATION AWARD

The Union and the Company 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 parties jointly requested that the Wisconsin Employment Relations Commission appoint Richard B. McLaughlin, a member of its staff, to resolve a policy grievance concerning the rebuilding of weld whips. Hearing on the matter was held on April 11, 2006, in Oshkosh, Wisconsin. Lee F. Behnke filed a transcript of the hearing with the Commission on May 5, 2006. The parties filed briefs and a waiver of a reply brief by June 19, 2006.

ISSUES

The parties were not able to stipulate the issues for decision. The Union states the issues thus:

Did the Company violate the collective bargaining agreement when it unilaterally reassigned the rebuilding of weld whips to a 208 Maintenance Helper?

If so, what is the appropriate remedy?

The Company states the issue thus:

Did the Company violate Articles 11, 12 or 14 of the collective bargaining agreement when it assigned weld-whip repair work to a 208 Maintenance C position?

I adopt the following statement of the issues as that appropriate to this record:

Did the Company violate the collective bargaining agreement when it assigned weld whip repair work to a 208 Maintenance C position?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 5 – GRIEVANCE PROCEDURE

. . .

Step E: . . . The arbitrator shall have the authority to interpret and apply this Agreement to the extent necessary to adjudicate the grievance but shall not have the authority to add to, deduct from, or alter the provisions of this Agreement.

. . .

ARTICLE 11 – PROMOTIONS AND VACANCIES

. . .

Section 2: Notice of vacancies in positions covered by this Agreement will be posted on the bulletin board for a period of two (2) full work days following the day of the posting . . .

Section 3: Employees will fill job vacancies according the following process:

1. As permanent or training positions in any level become available, they will be posted. Award will be made by a Joint Job Committee.
 - (a). For Level 2 positions, the committee shall consider seniority, and ability to learn.
 - (b). For Level 3 and 4 positions, the committee shall consider seniority, previous training, ability to learn and successful team participation.
- . . .
4. An employee who bids and gets awarded a permanent position in a lower level will receive the wage rate of the lower level regardless of shift. . . .

Section 8: Temporary Assignments (an assignment to a position which an employee is certified in).

Management makes temporary assignments for flexibility due to production demands.

- a. If the Company assigns the employee to a lower job, the employee retains the higher rate. . . .

Section 9: Temporary Transfer (A transfer to a position outside a job classification for which an employee is not certified).

- a. An employee may be temporarily transferred for a period of up to ten (10) working days. . . .

ARTICLE 12 - PROCEDURE FOR NEW AND CHANGED JOBS

Section 1: There shall be a Joint Job Committee composed of two (2) Union Representatives and two (2) Company Representatives. The committee shall be responsible for administration of the job evaluation program in accordance with the following provisions.

Section 2: The job description and evaluation for each job classification shall continue in effect unless the company changes the content of a job. For a new position, or when the duties of an existing position substantially changed in contents or requirements so as to warrant movement within or to a different level,

the Union/employee(s) and coordinator/manager must document the new or changed duties and request for a job review.

Section 3: The Joint Job Committee will schedule a meeting with the appropriate coordinator or manager. They will discuss the new position or the changes within a position and take recommendations for appropriate placement, with reference to relationships with existing jobs and rate structures.

Section 4: The Joint Job Committee will review and consider appropriate placement of the job within or movement to a different level.

Section 5: If the Joint Job Committee members do not agree on placement of the job, then the Company will establish a rate for the job. The Company decision may be grieved as a policy grievance. . . .

ARTICLE 14 - WAGES

. . .

LEVEL 2 POSITIONS AND WAGE RATES

<u>Career Path</u>	<u>Class & Position</u>	<u>Level</u>	<u>. . .</u>	<u>10/01/05</u>
Tech Support	207 Maint. Inspector	High		\$18.31
	208 Maintenance C	Low		\$17.75

. . .

LEVEL 3 POSITIONS AND WAGE RATES

<u>Career Path</u>	<u>Class & Position</u>	<u>Level</u>	<u>. . .</u>	<u>10/01/05</u>
Tech Support	339 Maintenance Specialist	High		\$19.59
Fabrication	322 Welder	Low		\$18.87

. . .

LEVEL 4 POSITIONS AND WAGE RATES

<u>Career Path</u>	<u>Class & Position</u>	<u>Level</u> . . .	<u>10/01/05</u>
		. . .	
Tech Support	Journeyman 403		\$22.06
	Journeyman 404		
	403 Maintenance A	High	\$20.90
	404 Maintenance B	Low	\$20.18
		. . .	

ARTICLE 22 - MANAGEMENT RIGHTS

Section 1: It is agreed that the management of the Employer and its business and the direction of its working forces is vested exclusively in the Employer, and that this includes but is not limited to the following: to direct and supervise the work of its employees . . . to determine the assignment and allocation of duties; to select and to determine the number and types of employees required; to assign work to such employees in accordance with the requirements determined by the Employer . . .

Section 2: The Employer’s exercise of the foregoing functions shall be limited only by the express provisions of this contract and the Employer has all the rights which it had at common law except those expressly bargained away in the Agreement.

Section 3: The exercise by the Employer of any of the foregoing functions shall not be reviewable by arbitration, except in case such function is so exercised as to violate an express provision of this contract or any valid Memorandum of Agreement executed during the life of this Agreement.

BACKGROUND

The grievance form, filed on March 9, 2005 (references to dates are to 2005, unless otherwise noted), alleges violations of Articles 11, 12 and 14, and alleges that the rebuilding of weld whips “has always been Level 3”. The Company’s answer alleges that “other 208 maintenance helpers have performed this work in the past” and denies the grievance. Sometime shortly before the grievance, the Company posted a 208 Maintenance C position, ultimately awarding it to Jamie Rose. The Job Description for the position states:

JOB SUMMARY: Perform routine and preventive maintenance procedures as directed to keep equipment . . . in a good repair. Completes preventive maintenance requirements for paint booths and paint related systems, 5-stage

washer, waste water treatment plant, Smog Hogs, Sunkiss ovens and other similar systems and equipment. Repairs and maintains power tools, assembly equipment as directed. Work can include construction and other miscellaneous duties as directed. Assists higher class maintenance person or more complex repairs, such as, rebuild and repair machine tools, forklifts or other similar production equipment. Dispense chemicals for coolants and water system. Operate and maintain coolant recycler. Keeps records, logs and inventory of oils, coolants, lubricants. Must understand required PM procedures from equipment manuals as it pertains to lubricants, coolants, and filters. Responsible to change and refill coolants in machine tools.

WORK PERFORMED:	% TIME
Miscellaneous maintenance and construction duties	95% (Works alone)
Assist higher maintenance person	5%

In March of 1997, the Joint Job Committee approved the creation of a new position, Maintenance Specialist/Inspector. The heading of the Job Description notes, “**High Level: 3**” and “**Job Number: 339**”, and describes the position thus:

Job Summary:

Perform hands-on scheduled maintenance activities and inspections to ensure the continued safe and efficient operation of plant equipment. Identify and report, and/or repair, pending safety or equipment problems as necessary. Document performed procedures with standardized forms. Perform construction, fabrication, or repair duties as required.

Work can be mechanical, electrical (low voltage-less than 110 volts), hydraulic, pneumatic, in nature. However, working with a Maintenance Journeyman would be required for technical, live electrical, or advanced functions. Daily use of mechanical and electrical hand tools and test equipment is required. Ladders and powered man-lift equipment are regularly used in this job in conjunction will fall arrest devices.

Requires the ability to read basic mechanical and electrical prints and perform shop math. Applicants may be interviewed and given a mechanical skills aptitude test.

Work Performed:	% of Time
Prevention Maintenance and Inspection	75
Maintenance repair and construction activities	20
Miscellaneous	5

The Company welds steel and aluminum, and the weld whips used for each differ. The whips for steel are less complex, since steel is more easily routed through a conduit. The whip typically used for steel welding includes a switch controlling the motor feed and the conduit to guide the steel. The greater flexibility of aluminum demands two gear-driven motors to drive the metal, with one located in the head of the weld whip's handle. The whip for welding aluminum also includes airtight tubes to conduct gas to shield the process.

The background to this point is undisputed. The balance of the background is best set forth as an overview of witness testimony.

Don Bucholz

Bucholz has worked for the Company for twenty-seven years, and has served in a variety of Union positions. He noted that Welders once did all of the whip rebuilding. Steve Nelson was a Welder, and experienced back pain that kept him from welding. The Company assigned the rebuilding of weld whips to him to accommodate his injury, and over time built a crib to house the activity. That Nelson continued to earn a Welder's rate while not welding caused some dissension among employees. The Company and Union then worked to combine a number of duties, including the rebuilding of weld whips and a number of maintenance duties relating to equipment essential to the safety of the workplace, such as hoists and their lifting components. The parties also wanted to have welders weld rather than do maintenance or repair work. The position that was created was Maintenance Specialist/Inspector 339. Bucholz was, at the time of its creation, Union Vice-President and participated in the approval process by which the Job Description was created. At that time, the Company and Union anticipated that Nelson would bid for it. He did not, and Neil Schmude filled it.

The Joint Job Committee approved the creation of the Maintenance Specialist/Inspector 339 position under Article 12. The position first appeared in the parties' 2001-06 labor agreement. Either party can bring a position before the Joint Job Committee. The Company never approached the Union concerning a modification of the Maintenance Specialist/Inspector 339 position. At the time of the creation of that position, the Company and Union were reviewing a number of positions, trying to link pay as closely as possible to their knowledge and skill components. To Bucholz' knowledge, any employee who did weld whip repair after the creation of the Maintenance Specialist/Inspector 339 position was classified or paid at or above Level 3, including McGlin.

Neil Schmude

Schmude has served the Company in a variety of positions for over twenty-three years including Welder and Level 4 positions in the skilled trades. He successfully bid for the Maintenance Specialist/Inspector 339 position after its creation. At the time he bid, the movement was down from a 400 Level position. He bid for the job to move onto the day shift, which gave him greater freedom to watch his daughter's school activities. He repaired weld whips and lifting devices. At the time he took the Maintenance Specialist/Inspector 339

position, Nelson was repairing weld whips and continued to do so for a short period of time after Schmude took the position. Schmude worked in the North Plant and did not know how the other plants handled weld whip repair. He transferred back to a 400 Level job after roughly eleven months. It was not unusual for him to do other than skilled trades' work in his 400 Level, but he kept the higher wage rate.

Michael Raugh

Raugh has worked for the Company for twenty-one years, has served in a variety of Union positions and is currently a Chief Steward. He works at the South Plant. The Company uses welders at the North, South and Harrison Street facilities. His investigation of the grievance determined that the Company does not have any 208 Maintenance C positions at the South Plant and that the Company has Welders at the South Plant repair their own whips. Raugh is a member of the Joint Job Committee, and the Company did not approach the Union to alter the 208 Maintenance C Job Description in 2004 or 2005.

Nickie Nitschke

Nitschke, a twenty-one year Company employee, is the Union's Vice President and works at Harrison Street. Nitschke investigated the grievance and concluded that the Company contracts out weld whip repair for the Harrison Street facility.

Perry Graves

Graves, a twenty year Company employee, is the Union's President. He was on the bargaining team for the 1996-2001 labor agreement and its successor. The purpose of creating the Maintenance Specialist/Inspector 339 position was to handle a variety of maintenance and safety functions which were not quite at the skilled trades level. Among these functions was weld whip repair. To his knowledge no employee in the 208 Maintenance C position repaired weld whips, and Rose's assumption of those duties prompted the grievance.

Larry Stumpner

Stumpner, a twenty-year Company employee, is a Steward who works at the North Plant. Doug Kortbein repaired weld whips prior to Rose's assignment. McGlin preceded Kortbein and Schmude preceded Kortbein. Kortbein is a skilled trades' journeyman. Stumpner filed the grievance because Rose, unlike his predecessors, received a 208 pay rate. Tom Weber, a Maintenance Supervisor, told Stumpner that he believed weld whip repair should be done at a Level 3 position, but that higher ranking administrators wanted it assigned to the 208 Maintenance C position.

The Union did not grieve the posting of the 208 Maintenance C position awarded to Rose. If the Union had realized Rose was going to repair weld whips in that position, it would have grieved. This grievance is the first that he has processed which

involves a job assignment. Weld whip repair is not, in his view, the sort of minor repair work done by a 208 Maintenance C employee.

Wayne Alexander

Alexander, a thirty-nine year Company employee, currently serves as Human Resources Manager. In his view, the repair of weld whips falls well within the scope of duties assigned to a 208 Maintenance C employee. The Company routinely assigns duties, such as weld whip repair, down. That the Company thus chooses to pay a higher rate for the duty temporarily does not amount to a Company commitment to do so permanently. He was a member of the Joint Job Committee that oversaw the creation of the Maintenance Specialist/Inspector 339 Job Description, and the committee did not link weld whip repair to the position. The committee jointly wished to create a job that was between the Journeyman and Maintenance C level. Committee input is significant in the creation of a Job Description, but the ultimate authority for the creation of a position is the Company. The most significant input of the Committee involves the slotting of a position within the wage structure.

At the time of the creation of the Maintenance Specialist/Inspector 339 Job Description, the Company was undergoing significant expansion. The main thrust of the newly created position was to assist in OSHA related audits and inspections. At present, there are about ten employees in the Maintenance Specialist/Inspector 339 position.

Timothy Ristow

Ristow, currently a Production Manager for the North Plant, used to serve as a North Plant Maintenance Supervisor. In both positions, he oversees employees in the 208 Maintenance C position. He served on the Joint Job Committee that agreed upon the Maintenance Specialist/Inspector 339 Job Description. At the time of this agreement, North Plant maintenance positions consisted of Journeyman; Hoist Inspector; Janitor and Maintenance Helper. The gap between the pay rate of Hoist Inspector and Journeyman led the parties to create a step between them, which became the Maintenance Specialist/Inspector 339 position. Ristow denied any link between the creation of the position and weld whip repair. Weld whip repair has been an assignment that crossed a number of positions from Journeyman to 208 Maintenance C. At one point in the past, welders did the bulk of weld whip repair work, but the Company has never viewed that as an efficient use of a Welder's time. Ristow knew of a number of employees who performed weld whip repair classified as 208 Maintenance C, such as Carlson, McGlin, Vince Pawlacyk and Joe Vandebrink. Nelson performed weld whip repair to accommodate an injury.

There are roughly six employees classified as 208 Maintenance C.

Thomas Weber

Weber is now the Maintenance Coordinator at the North Plant. In his view, the repair of weld whips is an appropriate assignment for a 208 Maintenance C position. Weld whip repair varies in complexity, with repairs involving aluminum welding tending to be the more complex. This repair is not, however, among the higher level repair work performed by the Company. Anytime spent in weld whip repair detracts from the efficiency of the welding process. The Company now strives to keep a stock of weld whips so that if a weld whip malfunctions, the Company just swaps it out. Weber and Stumpner did discuss the repair of weld whips and Weber acknowledged that the work had been performed in the past at Level 3. Weber, however, views it as “one of the more menial parts of a welder’s job” (Transcript at 150) and denied ever saying that its assignment should be paid as a full-time Level 3 duty.

Rose did not repair weld whips prior to filling the 208 Maintenance C position in March. Weber has been a Maintenance Coordinator for roughly two years, and assigned Rose to repair weld whips because he viewed it as a waste of Kortbein’s time as a Journeyman.

Further facts will be set forth in the **DISCUSSION** section below.

THE PARTIES’ POSITIONS**The Union’s Brief**

In March of 1997, the Company and Union established the new position of Maintenance Specialist/Inspector in the 339 class. A review of the evidence establishes that this new position “was in part intended to help rebuild weld whips.” The parties placed it in the 2001-06 labor agreement. It was not included in the predecessor agreement. The Company’s assignment of weld whip repair outside of that position prompted the grievance.

Weber’s testimony effectively establishes the Company’s violation of the agreement. Although acknowledging that this work had in the past been done by Level 3 positions, Weber also acknowledged that he assigned the work to “Earnest (Jamie) Rose, a 208-maintenance helper.” There is no evidence to rebut the Union’s testimony that the rebuilding of weld whips “has always been minimally assigned to a Level 3 Position and/or Wage Rate.” The Company did not submit the matter to the Joint Job Committee and nothing changed in the work to repair weld whips. It follows that the Company’s action violated Article 12.

Article 22 does not provide the Company the right to assign the work as it did. The assertion that the Company acted due to financial considerations ignores “the economic state of the Company” and ignores that the Company’s view of finances cannot negate contract language. The Union concludes:

The award should find that the Company violated the Agreement. The award should provide for the posting of the position with back pay to the successful

bidder and/or provide back pay to the individual(s) who performed the work and was not paid in accordance with the appropriate Level 3, 339-Maintenance Specialist/Inspector pay scale.

The Company's Brief

After a review of the evidence, the Company asserts that the labor agreement clearly and unambiguously reserves to it "the right to make the assignment it did in this case." Here, "a number of provisions are clear in supporting the Company's assignment decision in this case." Section 1 of Article 22 retains assignment rights to the Company. Section 2 requires that the contract expressly limit the Company's Section 1 rights. Section 3 underscores this by mandating that there can be no arbitral review of the exercise of a management right unless the Company's exercise of it violates an express contract provision. Stumpner's testimony acknowledges that there is no express provision of Articles 11, 12 or 14 that limits the Company's ability to assign the repair of weld whips. The grievance, in fact, rests on the mistaken belief that a 208 Maintenance C employee can only perform minor repairs.

Significantly, Company supervisors have assigned maintenance work comparable in complexity to weld whip repair to the 208 Maintenance C position. Beyond this, the testimony establishes that weld whip repair has been performed in the past by employees in the 208 Maintenance C position. Against this background, "there is no substantive arbitrability regarding this assignment since there has been no express provision of the contract violated."

Article 12 governs changes in existing jobs, but the conditions to its operation have not been met in this case. Wage movement under Article 12 can occur if "an existing position has substantially changed" or if "there is a request for a job review." Neither occurred here. Article 12 grants the Company the ability to make assignments and to change jobs, and nothing occurred in this case to limit the Company's exercise of those rights. It follows that the grievance must be denied.

DISCUSSION

I merged the parties' conflicting statements of the issues. The Union's underscores the breadth of the interpretive issue, which is whether there is a contractual basis for the grievance's allegations. The Company's specifies the governing contract provisions and the contractual title of Rose's position. However, drawing from the Union's reflects that the underlying grievance includes a broad "all others pertaining" reference in addition to the specification of Articles 11, 12 and 14. I would have adopted the Union's statement of the issues but for the use of "unilaterally", which presumes rather than questions a Company violation of the contract.

Neither the testimony nor the parties' arguments affords any basis to ground the Union's allegations other than Articles 11, 12 and 14. A review of those provisions establishes that Article 12 governs the grievance. The parties' conflicting statements of the issue establish that the interpretive issue is whether the rebuilding of weld whips reflects the assignment of a duty;

the creation of a new position; or the substantial change of an existing position. Article 12 governs this issue. Application of Article 11 or 14 presumes that the rebuilding of weld whips constitutes a position. Each section of Article 11 refers to “position”. Article 14 states the wage rates for positions. Each thus presumes that the rebuilding of weld whips is either a position or an essential part of one. This presumes that the rebuilding of weld whips is a position under the operation of Article 12. Analysis of the interpretive issue must start with Article 12, proceeding to Articles 11 or 14 only if the rebuilding of weld whips is essentially a position rather than a duty assignment.

Under Article 12, a “job description . . . shall continue in effect unless the company changes the content of a job.” A “new position” or substantial changes “in contents or requirements” of “an existing position” that would “warrant movement within or to a different level” can prompt “a job review.” The Union’s concerns cannot be focused on a “new position”. It did not grieve the posting of the 208 Maintenance C position filled by Rose. The focus under Article 12 is thus whether Company assignment of weld whip rebuilding to Rose constitutes a substantial change to the Maintenance Specialist/Inspector 339 position.

Ignoring for the moment the contractual consequence of a substantial change to a position under Article 12, doubt surrounds each aspect of the substantial change asserted by the Union. The existence of such doubt favors the Company’s view over the Union’s. The Company has assigned the rebuilding of weld whips across “Class & Position” as listed in Article 14, and has assigned such work to employees in the 208 Maintenance C position. Under Ristow’s testimony, it appears that the Company assigned the work to employees in that position before the employee acquired a higher classification. Even if, like Schmude, an incumbent brought higher qualifications to the work, the fact remains that the assignment was in the 208 Maintenance C position. Even for those cases where the Company assigned the whip rebuilding down to an employee in a higher classification, the work looks more like an assignment than a position or the central feature of a position. That employees who earn a Level 4 rate have rebuilt weld whips did not, under any view of the facts, make the work Level 4 work, since the Welder position, once responsible for the rebuilding of weld whips, is Level 3. The evidence on this point favors the Company’s view that rebuilding weld whips is a duty assignment.

Further doubt surrounds the Union’s allegation. The testimony of Union witnesses confirms that they view the rebuilding of weld whips as an assignment. The Company moved the former assignment of the duty from Welders generally to Nelson alone to accommodate an injury. That doing so caused dissension among other employees in the Welder Class affords some reason to doubt that the repair work rose to Level 3 compensation. Beyond this, Nelson continued to perform the work for at least some time after Schmude filled the Maintenance Specialist/Inspector 339 position. There is no reason to believe Schmude needed training in the area, and this favors the Company’s view that Nelson continued to benefit from an assignment for reasons having nothing to do with the Level of the work.

The strength of the Union’s argument is that the agreement of the Joint Job Committee on the Maintenance Specialist/Inspector 339 Job Description made the rebuilding of weld whips a

central feature of that position. The position did not exist in the prior contract and the Union concludes that the creation of the position, under Section 2 of Article 12, leaves its essential components intact pending a review by the Joint Job Committee.

This assertion has persuasive force, but significant doubt surrounds it. As noted above, Nelson's rebuilding of weld whips after Schmude's assumption of the Maintenance Specialist/Inspector 339 position is a troublesome preface. There are more fundamental reasons for doubt. The Job Description for the Maintenance Specialist/Inspector 339 position does not mention weld whip rebuilding. This undercuts the assertion that the assignment is a core feature of the position. Significantly, the assignment falls within a section of the Job Description that puts "Maintenance and repair" at 20% of the position's time. Beyond this, that section also refers to "construction activities", further diminishing the significance of the 20% designation. The assertion that the creation of the position reflects a mutual understanding that weld whip repair would be performed by a single employee has little evidentiary support. It has no support in the language of the Job Description. Beyond this, there is no persuasive evidence that the Company centralized the weld whip rebuilding function. The centralization appears to have been limited to the North Plant. This favors the Company's view that this was a duty assignment that can vary across class and facility.

The language of the Maintenance Specialist/Inspector 339 Job Description affords further reason to doubt the Union's treatment of weld whip repair as a distinct function, restricted to Level 3 and above. It notes that repair work on a single function can vary across Class lines. Only "low voltage-less than 110 volts" falls within the scope of the Maintenance Specialist/Inspector 339 Job Description. It is undisputed that the complexity of repair work on weld whips varies. Rebuild of weld whips for steel tends to be less complex than that of aluminum. Presumably, work within each can vary in complexity. Freeing a line obstructed by loose debris would tend to be less complex than soldering a line that must be kept airtight to prevent the entry of such debris. This undercuts the Union's assertion that all weld whip repair functions reflect Level 3 work. The parties' handling of the variance in complexity of electrical work underscores this. Similar to this, the 208 Maintenance C Job Description puts repair and maintenance of "power tools" within the incumbent's competence, but makes the incumbent an assistant to a "higher class maintenance person" on "more complex repairs" such as the rebuilding or repairing of machine tools. It is not necessary to determine where weld whip rebuilding fits on that scale to note that the Job Descriptions shy away from treating repair work of specific items as a distinct job function for a position. Rather, the job descriptions treat repair work as an assignment that floats between classes based on the complexity of the work involved.

The doubt noted above does not pose the need to allocate doubt regarding a key fact under the burden of proof. Rather, it points to a flaw in the asserted basis for a contract violation. The evidence shows that the Union had a consistent view of the reason to create the Maintenance Specialist/Inspector 339 Job Description. The Company's is no less consistent, and did not involve incorporating weld whip repair as a core feature of the position. More significant than the doubt noted above is that the evidence supports the Company's view. The terms of the Job Description underscore that the position's primary focus is inspection and maintenance duties

related to workplace safety issues. Both Union and Company witnesses agree that the position was to be a bridge in pay and thus in skill level between the 208 Maintenance C and skilled trades' positions. The evidence does not manifest that the parties mutually discussed or shared an understanding on the significance of weld whip repair to the Maintenance Specialist/Inspector 339 position. This favors the Company's view that the work is an assignment that flowed between employees and positions.

In sum, the evidence does not support the Union's assertion that the Joint Job Committee made weld whip rebuilding/repair a core feature of the Maintenance Specialist/Inspector 339 position. This means the grievance lacks support in Article 12. Weber assigned the duty of weld whip rebuilding to Rose. This did not make Rose's 208 Maintenance C position "new". Assigning the duty outside of the Maintenance Specialist/Inspector 339 position did not "substantially change" that position. Thus, there is no basis to conclude the Company violated Article 12 in its assignment of the duty to repair and rebuild weld whips. Since this reflects Company assignment of a duty rather than its alteration of a position, there can be no violation of Article 11 or 14. The absence of contractual support is fatal to the grievance under the terms of Sections 2 and 3 of Article 22.

Before closing, it is important to tie this conclusion more closely to the evidence and argument presented in this case as reflected by the conflicting statements of the issues. The Union advances a valid concern that assignment of higher Level work (as "Level" is used in Article 14) to a lower Level position can undermine the wage schedule. However, grievance arbitration is not the primary location for that concern. The assertion that the Company's assignment practice should be overturned suffers from the matter not being documented and then submitted to the Joint Job Committee "for a job review" under Article 12, Section 2. By its use of the term "unilaterally", the Union contends this was a Company responsibility. However, this ignores that Article 12 does not place the burden on either party alone. More practically viewed, the Union's filing of a grievance as opposed to action seeking a job review ignores that the Union, not the Company, argues that change has occurred. In any event, under Article 12, Section 2, the Joint Job Committee is the preferred forum for the Union's concern. The doubt noted above cuts against the Union more strongly than the Company because the evidence fails to show the parties, through the Joint Job Committee, ever agreed that weld whip rebuilding was a core feature of the Maintenance Specialist/Inspector 339 position. The purpose of grievance arbitration is to give parties the benefit of their agreement, and the evidence does not support the Union's view that the parties reached the agreement the grievance seeks to enforce.

The difference in the parties' statement of the issue regarding reference to "rebuilding" or "repair" work might reflect that the Union seeks to have only one aspect of weld whip repair work to be treated at or above Level 3. Even ignoring the difficulty of separating "rebuilding" from "repair", witness testimony used the terms interchangeably. There is no persuasive evidence to indicate that the Joint Job Committee made such a distinction and thus no basis to make it here.

AWARD

The Company did not violate the collective bargaining agreement when it unilaterally reassigned the rebuilding of weld whips to a 208 Maintenance Helper.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 22nd day of August, 2006.

Richard B. McLaughlin /s/

Richard B. McLaughlin, Arbitrator

