

Arbitration Award No. 810  
IN THE MATTER OF ARBITRATION  
Between  
INLAND STEEL COMPANY  
Indiana Harbor Works  
and  
UNITED STEELWORKERS OF AMERICA  
Local Union No. 1010  
Grievance Nos. 22-R-22, and 22-S-33, -34, -35  
Arbitrator: Clare B. McDermott  
Opinion and Award  
June 21, 1990

Subject: Performance of Bargaining Unit Work by Positions Outside the Unit--Resolution According to Parties' Joint, Long-Time Assignment of Duties.

Statement of the Grievances:

22-R-22 - "Terry Loomis, An Engineer Technician in a salaried position, was caught working an hourly job on May 25, 1984, which John Sepiol had warned him about.

"Relief Sought Cease and desist and pay all monetary losses.

"Violation is Claimed of Article 2, Section 2 and Article 3, Section 1."

22-S-33 - "D. D. DeVreese #16759, on behalf of the Process Automation Bargaining Unit people contends management violated the CBA when they assigned Bargaining Unit work to Junior Salaried Engineer Technicians.

"Relief Sought Cease and desist Engineer Technicians doing the work of Bargaining Unit.

"Violation is Claimed of Article 2, Section 2, Article 3, Section 1, Article 5, Section 1, and Article 13, Section 14."

(Grievance Nos. 22-S-34 and 22-S-35 are identical to 22-S-33.)

Agreement Provisions Involved: Article 2, Article 5, Section 1, and Article 13, Section 14 of the March 1, 1983 Agreement and of the August 1, 1986 Agreement.

Statement of the Award: The grievances are denied.

Chronology

Grievance Filed:	22-R-22	8-10-84
	22-S-33, et al	1-18-89
Step 3 Hearing:	22-R-22	1-24-85
	22-S-33, et al	3-01-89
Step 3 Minutes:	22-R-22	3-11-85
	22-S-33, et al	6-09-89
Step 4 Appeal:	22-R-22	3-21-85
	22-S-33, et al	5-09-89
Step 4 Hearing(s):	22-R-22	8-12, 8-19, 9-1, 10-7, 10-14, 10-24, 11-11, 11-18-88, 8-10-89
	22-S-33, et al	8-10-89
Step 4 Minutes:		8-10-89
Appealed to Arbitration:		8-17-89
Arbitration Hearing:		8-24-89 and 8-25-89

Appearances

Company

R. Castle -- Section Manager, Union Relations

R. V. Cayia -- Arbitration Coordinator, Union Relations

J. Kaminski -- Retired

M. Pelletier -- Section Mgr., Process Automation Dept.

R. Rastovski -- Section Mgr., Process Automation Dept.

V. Niksch -- Staff Engineer Technician, Process Automation Dept.

D. Berdine -- Staff Engineer Technician, Process Automation Dept.

Union

J. Robinson -- Arbitration Coordinator

M. Mezo -- President

D. Devreese -- Griever  
D. Petroff  
M. Cooper  
R. Moricz  
R. Hall  
J. Serwa

#### BACKGROUND

These four grievances from the Process Automation Department of Indiana Harbor Works claim violation of Article 2, Section 2, Article 3, Article 5, Section 1, and Article 13, Sections 3, 4, 6, and 14 of the March 1, 1983 Agreement (Grievance 22-R-22) and of the August 1, 1986 Agreement (other three grievances) in Management's having the Salaried position of Engineer-Technician-Instrumentation perform hands-on maintenance work, which allegedly should be done only by the bargaining unit job of Instrumentation & Control Technician.

The Job Class 22 bargaining unit job, which hereafter will be called Instrument Technician, was created in 1963. Its Primary Function is to

"Install, repair, construct, calibrate, modify, test and adjust any type of electronic, electrical, mechanical, combustion or flow instrumentation or control system and related equipment."

In 1968 Management created the non-exempt salaried position, which hereafter will be called Engineer-Technician. The position is described on a form similar to that used for bargaining unit jobs, but it is not within the job description and evaluation system for bargaining unit jobs. Thus, borrowing from the language of that system, its description reads as follows:

"Primary Function:

Analyzes problems and directs the maintenance and repair of both measuring and control instruments and associated systems, and computers in his assigned area of responsibility.

"MACHINES OR EQUIPMENT USED:

Test equipment and simple hand tools.

"SUPERVISION RECEIVED:

General Foreman -- Instrument Service (also Foreman -- Instrument Service)

"DIRECTION EXERCISED:

Instrumentation and Control Technicians

"WORKING PROCEDURE:

1. Directs the Instrumentation and Control Technicians, assigned to his area, in:
  - a. Maintaining the various measuring and control instruments and associated systems, and computers in his assigned area of responsibility;
  - b. Installing new instruments or systems;
  - c. Calibration of instruments.
2. Analyze instrumentation or computer problems, both through observation and the use of test equipment, determining the cause of the problem and taking the appropriate corrective action. This requires a working knowledge of pneumatic, hydraulic, digital, electrical and electronic control and instrumentation systems.
3. Participates in the testing, dismantlement and repair of instrumentation or computer systems while 'trouble shooting' defective equipment operations affecting safety, product-quality, general productivity and damage to equipment.
4. Makes adjustments to instruments and systems to make analysis or to take corrective action.
5. Conducts special tests in his area of 'specialization,' interprets the data, and prepares reports on his findings.
6. Trains the Instrument and Control Technicians assigned to his area to recognize and correct instrumentation problems in his assigned area.
7. Plans work schedules for his area, and obtains the proper approval.
8. Develops, or assists supervision in developing new or revised practices and procedures.
9. Directs the preparation and maintenance of shop orders, material requisitions, equipment records, etc.
10. Enforces safe and orderly working practices and conditions in his area.
11. Keeps currently informed of technical developments in field.

". . ."

Area 20 Steward Wilson said that on May 25, 1984 he saw Engineer-Technician Loomis doing repairs on a line conditioner that earlier had been listed by Supervision as being unsalvageable. Wilson said that Loomis had been seen performing similar work before that and, after complaints from employees, he allegedly had

been told by Management to stop doing that. That was said to be improper performance of bargaining unit work by a nonbargaining unit person, in violation of Article 2, Section 2. The Union alleged that the Engineer-Technician was created to direct employees and not to perform their work.

General Foreman Sepiol's response was that, while it was true that the line conditioner had been considered by Management to be unsalvageable, Engineer-Technician Loomis was able to make the necessary repairs so that the Company did not have to incur large repair costs. Sepiol said also that the hands-on work done by the Engineer-Technician was not improper since it was included in that position's description. Sepiol explained that on many occasions he had seen Engineer-Technicians doing hands-on work. That was seconded by General Foreman Pelletier.

The Company contended that the work of the Engineer-Technicians overlapped the duties of the bargaining unit Instrument Technician, so that the Union could not show what was essential to its case here, that is, that the duties in question had been performed exclusively by the Instrument Technician.

The Company urged also that grievant and others in this Sequence were scheduled for forty hours that week and, since the disputed work was not of an emergent nature, it would not have had it done on an overtime basis.

The other three grievances, all filed on January 18, 1989, claim violation of the Agreement when Management assigned bargaining unit work to the Engineer-Technician.

The Union said that notes on daily time reports showed that Engineer-Technicians had done bargaining unit work. The codes and their meanings were as follows:

MI - Rounds and Routines;

I - Inspection;

M - Maintenance;

FT - Breakdown Call;

B - Bench Work;

FH - Troubleshooting;

FF - Failure, False Call;

MU - Preventative Maintenance.

Grievance Committeeman Devreese said that in his nine years as an Instrument Technician, Engineer-Technicians had acted almost exclusively as supervisors or had done project work and that their work did not overlap with bargaining unit duties, except when acting as technical advisors or in emergencies. The Union cited an Inland arbitration award in support of its position.

The Union argued that the Engineer-Technicians's performance of bargaining unit work eroded the scope of the bargaining unit, in violation of Article 5, Section 1, citing another Inland decision. It then was argued that, since the work of the Engineer-Technician overlaps significantly with that of bargaining unit jobs, exclusion of the Engineer-Technician from the unit violates the scope clause of Article 5, Section 1.

The Company denies that the Engineer-Technician is supervisory. Management relies for considerable support here on the assertion that the hands-on work done by Engineer-Technicians is proper because well within the scope of duties listed in the Engineer-Technician's "job description." It notes that that document says the position will do maintenance, installation, and calibration, and make analyses and take appropriate corrective action, and do dismantling and repair work.

The Company insisted that Engineer-Technicians always have performed the full range of the maintenance and repair duties in its resume. Several Management persons had been Engineer-Technicians, and they said they always had done that kind of work, as well as working in a quasi-supervisory capacity.

Management said the work done by Engineer-Technicians may vary from shop to shop. In some areas they may have done more technical work, more project work, more supervisory duties, or more hands-on work. They allegedly may advise supervision as to imposition of discipline and as to awarding promotions, but they do not make those decisions, themselves.

The Company said the number of Instrument Technicians had increased since 1968 and that the department planned to add from thirty to forty more Instrument Technicians within the ensuing three years. Process Automation Department Section Manager Pelletier made six extended recruiting trips, seeking candidates for those positions.

As to the Union's reliance on Article 5, Section 3, the Company stresses that it applies to a "new or changed job," and it notes that the Engineer-Technician is neither. It cites an Inland decision on this point.

Management contends that practice has a substantial bearing on resolution of these disputes, stressing that the Engineer-Technician was established in 1968 and performed these same duties over all the ensuing years, many of which overlap those of the bargaining unit, Instrument Technician job. It says the Engineer-

Technician description, which shows that overlap, was issued and "accepted" in 1968. The Company thus argues that the Union should be estopped from challenging either the exclusion of the Engineer-Technician from the bargaining unit or its doing hands-on work while out of the unit.

On the first of those two points, the Company notes that Section 1 of Article 5 of the Agreement excludes ". . . technical engineers, technical employees. . . ."

It argues that the disputed work overlaps significantly with bargaining unit work and then says that phase of the Union case contradicts the other Union claim that the Engineer-Technicians never have done any bargaining unit work but have functioned nearly exclusively as supervisors. In any event, the Company contends the Union argument is unavailing because it goes beyond the relief sought in the grievances, which was that the Engineer-Technicians cease and desist from doing bargaining unit work. It would be untimely, says the Company, to request now that the Engineer-Technician be declared to be a bargaining unit job.

The Company argues that, since there is a substantial overlap in the duties of the Engineer-Technician and the bargaining unit Instrument Technician, it may assign the work to either the nonbargaining unit position or to the bargaining unit job, citing Elkouri and Elkouri, *How Arbitration Works* (3d ed. 1973) and decisions from this and other bargaining relationships dealing with disputes between two different bargaining unit jobs.

As to the second point, the Company urges that all duties complained of, as if belonging exclusively to the bargaining unit, are properly performed by the Engineer-Technician because well within the description of that position. That description says the Engineer-Technician will perform maintenance, installation, and calibration, will analyze and take appropriate corrective action, and will dismantle and repair. Moreover, says the Company, the Engineer-Technician always has done the full range of those duties since its birth in 1968, as confirmed by the testimony, from the direct, first-hand knowledge of now Section Manager Pelletier, who worked as Engineer-Technician from June of 1976 until March of 1978.

The Union stated it would not argue the facts of Grievance 22-R-22 but would use it as support for its claim that there has not been any such overlap of duties as is argued by the Company.

The Union insists the Engineer-Technician was to direct the force of Instrument Technicians and to provide technical advice to them, and that it did not perform hands-on work on any routine basis. That allegedly changed in recent years when the Engineer-Technicians began to be assigned routinely to the duties normally done by bargaining unit employees. Further escalation of this problem came with the alleged dramatic increase of Engineer-Technicians and the apparent reduction, in both absolute and relative terms, of the number of Instrument Technicians. It is said, for example, that there were 219 Instrument Technicians and 45 Engineer-Technicians in 1981, while that had changed to 179 Instrument Technicians and 56 Engineer-Technicians in 1988.

The Union says that the Engineer-Technician, doing both technical, supervisory, and bargaining unit work, thus comes within the protection of paragraph 5.1, which requires that it be in the bargaining unit. It cites *Inland Award 755* and an outside decision for that conclusion.

At this hearing, the Union said it requested a cease and desist order against the Engineer-Technicians' performing bargaining unit work and not that it be put in the unit.

Company witness Kaminski was retired but had been in on creation of the Engineer-Technician in 1967-68, as then Assistant Superintendent of Power, Steam and Combustion. He explained that Management then realized it had a serious problem in instrument service. The various departments were uncoordinated, and each would order equipment peculiar to its special needs, which created problems for his Power, Steam and Combustion Department. In order to get a competitive advantage it felt it had to accelerate its ability to develop new techniques to improve quality and efficiency. A three-man committee reviewed the alternatives and decided it would be best to develop in-house experts on technology and systems and, therefore, it determined to create the Engineer-Technician position, with incumbents trained for, and assigned at, specific equipment and areas.

In the past, outside experts had been brought in to deal with new equipment. The bargaining unit Instrument Technician job had been in existence for some years, but the Company was losing them to outside firms. At the time of creation of the Engineer-Technician in 1968, there were seventy-one Instrument Technicians. The thought was, in part, that with the Engineer-Technician position, there would be a higher goal for Instrument Technicians to aspire to, so that they would not leave the Company.

Kaminski said that in creating the Engineer-Technician position, the Company contemplated it would do hands-on work and, therefore, would overlap with the Instrument Technician. That hands-on work would be of the light kind, since the Engineer-Technicians would not carry tool pouches but would have only a

pair of pliers, a small wrench, a screwdriver, and testing instruments. They have not done work beyond the capability of those tools. The position's hands-on work was to be inspection, trouble-shooting, a degree of repair and maintenance, analysis, and calibration. Kaminski said the Engineer-Technicians have done that kind of work. He knew that from personal observation. Examples were their working on closed-loop, combustion-control, oxygen-analyzers for No. 4 Slabber and their working to make temporary controls and indicators at the soaking pits. In that effort Engineer-Technicians physically broke lines and filters, working with Instrument Technicians. Kaminski said use of the Engineer-Technicians on such assignments allowed the Company to reduce its reliance on outsiders.

Kaminski testified that discussions were had with two named Union representatives and with employees at the time of creation of the Engineer-Technician position. In his view, the Engineer-Technician directs, leads, and works. The Instrument Technician job also directs and, of course, works. The Engineer-Technician's "working" would be "light," such as analyzing changes, some minor maintenance work, and blowing down filters, but would not be of the heavy kinds of work of installing and connecting instruments, or changing major diaphragms and controls. Engineer-Technicians would analyze the gas analyzers to increase their reliability, but would not go out to fix them. They would decide to go out or to send out an Instrument Technician. A Troubleshooting assignment would call probably for an Engineer-Technician, as would an instrument that still was not operating properly after several repair attempts by Instrument Technicians.

Company witness Niksch, had been an Instrument Technician and then became an Engineer-Technician in 1978, and he has worked as such in the 7 Blast Furnace area since then. He said he had done all the physical work that Engineer-Technicians do. He estimated about 30 percent of his duties was light work, overlapping those of Instrument Technicians. He does project work, as well, such as deciding what would be needed in putting in new equipment. He acts also as a technical advisor to Instrument Technicians.

Niksch said perhaps 1 to 2 percent of his time was spent on Rounds and Routines, an example being that, if he were at an area where instruments were and if they had run out of ink, he would put some in, and he has checked on operation of filters. Maintenance work was his greatest single effort, taking maybe 15 percent of his time. In short, if a thing be broken, he would fix it if his light tools (6" crescent wrench, needle-nose pliers, and 8" screwdriver with a medium-to-large slot) could do that work. For example, if an impulse line were plugged, he would blow it down, and if a filter were dirty, he would replace it. He has done all those tasks since 1980.

About 7 percent of his time is charged to dealing with Breakdown Calls. If there be a failure, he would go out and try to resolve it.

Bench Work takes only 1 or 2 percent of his time now, but he did more of that in the past. That is repairing faulty instruments.

He does no Preventive Maintenance, all of which in his area is done by Instrument Technicians.

He does some supervisory duties in lining up crews.

Company witness Berdine was an Instrument Technician and then went to the Engineer-Technician position in 1973. He said it was not accurate that Engineer-Technicians do only or even largely emergency, project, and technical-advice work. As an Engineer-Technician for seventeen years he has done hands-on physical work with the small hand tools mentioned above. He says 75 percent of his work is outside the three categories considered proper by the Union. He has done very little Rounds and Routines, quite a bit of Maintenance in replacing valve positioners and transmitters, quite a bit of Breakdown Call work, and very little Bench Work. Perhaps 70 percent of his time has been spent on Troubleshooting, and very little on Preventative Maintenance.

Berdine said he worked with five Engineer-Technicians in the five-year period from 1968 to 1973, while he was an Instrument Technician, and he saw all of them performing hands-on maintenance work in that period.

Company witness Pelletier was an Instrument Technician for six years, and he became an Engineer-Technician in 1976 and worked that position until 1978, when he went to Supervision. While working as Instrument Technician, he served with three Engineer-Technicians, and he says his Instrument Technician work and the work those Engineer-Technicians did then had substantial overlapping areas, although each Engineer-Technician did different kinds and percentages of hands-on work. Pelletier worked side-by-side with those Engineer-Technicians while they did hands-on work. He saw Engineer-Technician Loomis do hands-on work similar in nature to what he did in repairing a line conditioner, which was the work in dispute in Grievance 22-R-22.

Pelletier did similar work during the two years he was an Engineer-Technician, plus directing a couple of Instrument Technicians on Bench Work, receiving and prioritizing calls on which he would send an Instrument Technician or go out and handle them, himself.

In his Engineer-Technician time he did no Rounds and Routine work, Inspection, nor Preventive Maintenance, while in the Main Shop, but he handled a lot of Bench Work, Troubleshooting, and Breakdown Call work.

In 1978 Pelletier went to a supervisory position and was responsible for six Instrument Technicians and two Engineer-Technicians and, therefore, saw what they did. It was the same as what he had done in that position. He agreed that some Engineer-Technicians did less hands-on work than others but insisted that to his direct, personal knowledge all Engineer-Technicians did some of that kind of work. The three possible career patterns caused that difference. For example, some Engineer-Technicians were interested in moving up to a Supervisory position, handling scheduling, overtime, and such administrative responsibilities; others wanted to go to higher maintenance positions (Engineers); and a third group wished to remain as Engineer-Technicians.

Union witness Moricz was an Engineer-Technician for three months but gave up that assignment when disappointed at not experiencing what he had been led to expect. He said he did no hands-on work in those months. He had been told he would be teaching new Instrument Technicians. He said it was not his experience that Engineer-Technicians would do hands-on work but he saw them acting as liaison persons between Instrument Technicians and Supervision. He never saw Engineer-Technicians doing hands-on Troubleshooting work, nor Maintenance. The Engineer-Technicians would work with the Instrument Technicians, as in lending a hand, but he agreed he did not observe the Engineer-Technicians for full turns. A named Engineer-Technician did go on Rounds and Routines and Inspections with Moricz and also did that on his own.

Instrument Technician Serwa has filled in as an Engineer-Technician on many occasions and then did not do the same work he always had done as an Instrument Technician. While filling in as an Engineer-Technician he would hang up the tool pouch he carried as an Instrument Technician. As an Engineer-Technician he would line up crews of Instrument Technicians, give advice, and act as an extra pair of hands, as needed.

Serwa agreed that Niksch's testimony of what he did was accurate, but he disagreed with the percentage of time Niksch said he put in on the hands-on activity. Serwa thought only 5 or 10 percent of Niksch's Engineer-Technician time would have been spent on hands-on work, and he suggested Niksch did more of it than the other Engineer-Technicians.

Union witness Petroff, an Instrument Technician, has filled in as Engineer-Technician. He testified in general much the same as Serwa did. He, too, said Niksch's testimony as to the kind of work he did as an Engineer-Technician was accurate, but he said that Niksch's stated percentages of hands-on work were too high.

Grievance Committeeman DeVreese said he filed the last three grievances because three Instrument Technicians were assigned as Engineer-Technicians and continued to do on the latter assignments what they had done on the former ones. He said the causes of grievances filed on this subject in the more distant past had been isolated examples of Engineer-Technicians' doing hands-on work, but the latter three grievances were situations in which Engineer-Technicians simply did the full gamut of the bargaining unit Instrument Technician job. The witness asserted that the prior Section Manager had said his goal was to have a 60 percent Engineer-Technician force, which statement concerned the Union in the latter three grievances.

Pelletier returned to the stand and said Management had withdrawn from that goal.

The Union urges that these grievances seek to protect it against the worst threat Management can make: the removal of work from the bargaining unit and from the protection of the Agreement, which would break the Union.

The Union charges that, whatever the quantity or quality of work done over earlier years by Engineer-Technicians, there was a significant change in that in the mid-1980s, in that the position then began doing much more hands-on work than it had done before, thus escalating this to a full-blown "scope" dispute. The problem was made worse, says the Union, by an alleged dramatic increase in the number of Engineer-Technicians and a concurrent decrease in the number of Instrument Technicians, in both an absolute and a relative sense.

The essential point is that, as a position excluded from the bargaining unit, the Engineer-Technician's work may not overlap that of the bargaining unit Instrument Technician. If it were to do so, that would violate

paragraph 5.3 of the Agreement. The excluded Engineer-Technician must be limited to work that is excluded, as well, that is to technical or supervisory duties, or both, or the entire position (both the technical and the supervisory duties and the hands-on tasks) must be brought within the bargaining unit. Noting the Company insistence that these Engineer-Technicians are "technical employees" and not supervisors, the Union replies, if that be accurate, they may not do any bargaining unit work, even within the exceptions of Article 13, Section 14, since that provision does not apply to nonbargaining unit positions which are not Supervisory.

The Union alleges that there was no prompt advice to it in 1968 when the Engineer-Technician was created, saying that it would perform hands-on work. The Company disagrees, and notes the meetings held then with two named Grievance Committeemen.

The Company denies that there was any recent change in the Engineer-Technicians's work, insisting that from 1968 the position at various locations and times has done substantially the same quality and quantity of hands-on work.

The Company argues that the analysis by practice of unchallenged assignments, which was employed in resolution of the decision in CO EX 12 (1988), is relevant and should be adopted here, too.

#### FINDINGS

This is a fact problem, to be resolved by the facts, and that would apply whether it were to be governed by Article 2, Section 2, Article 3, Article 5 (paragraphs 5.1, 5.2, and 5.3), or Article 13, Section 14. The parties arguments show their agreement that the precise bounds of 5.1 are not scientifically exact and that a practical approach (practice) is necessary in order to decide on which side of a rather vague line any given position might fall. That is, as the parties' arguments make clear, the most reliable and practical way to grope one's way through the sometimes general provisions of those Articles is to be guided, at least in these circumstances, by the parties' joint handling of this matter over the years.

On this pivotal issue, the clear weight of the evidence shows that this Engineer-Technician position was created in 1968, and that the Union was advised then that it would combine technical tasks, perhaps some Supervisory or nearly Supervisory responsibility, and recognized, rather light, hands-on work. Its resume said so, and all those duties were described to the Union representatives in those meetings and have been performed by that position since then.

Paragraph 5.1 expressly excludes ". . . technical engineers, technical employees . . .," from the recognized bargaining unit. Thus, no violation of that provision arises here.

The Union put some reliance on paragraph 5.3. But that presupposes that this Engineer-Technician is a "new or changed job." It is neither. It was not created at any time relevant to 1984 (filing date of Grievance 22-R-22) or 1989 (filing date of the other three grievances) that would warrant characterizing it as "new," and nothing in it was "changed" with any such time relationship. Thus, no proper challenge on that score could have been presented in 1984 or 1989.

The Union recognizes its vulnerability on that point, and it argues that the position was "changed" only recently, in that it allegedly had not done any significant hands-on work in the more remote past and only recently had begun to perform meaningful volumes of such work.

But that is the crucial point on which the evidence fails to support that position. All Company witnesses, among whom are those who pulled both Instrument Technician and Engineer-Technician assignments and those who performed only the latter or only other supervisory assignments, testified that from its creation in 1968 the Engineer-Technician position performed all the duties, including the light, hands-on maintenance and repair work in its description.

The Union witnesses wound up disagreeing only as to the accuracy of the percentages of time that kind of work was done. They all agreed that, at one location or another, Engineer-Technicians had spent up to 10 percent of their time doing light, hands-on work of one kind or another. Most said they had not seen Engineer-Technicians do more than that. But that is a less total denial than the Company witnesses' assertions. Accordingly, on the main testimonial difference, the Company presents the more persuasive case, so that it must be found that from its creation in 1968 the Engineer-Technician position regularly performed the full scope of duties listed and noticed to the Union then. Accordingly, there was no relevant "change" in that position that would warrant a 1984 or a 1989 challenge under paragraph 5.3.

Hence, since the position always has done that work, no violation of either 5.1, 5.2, 5.3, or 13.77 (assuming but without deciding that it would apply to these facts) arose from the parties' joint administration of its duties. That is, Management put some, light, hands-on work in a nonbargaining unit position which thereafter performed such work, and the Union did not object for sixteen, or perhaps, twenty-one years.

Accordingly, it must be concluded that the parties jointly decided that those facts presented no violation of the Agreement.

The Union argues that is contradicted by a drop in the ratio of bargaining unit Instrument Technicians to nonbargaining unit Engineer-Technicians over recent years. But that simply was not demonstrated with sufficient force to carry the point.

To return to the thought of the first sentence of these Findings, the facts clearly support the Company position that this assignment always has performed as the Union says it did only recently. In light of that finding, no violation of the Agreement appears, and the grievances will be denied.

**AWARD**

The grievances are denied.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator