

Arb Decision  
1116

ARBITRATION PROCEEDINGS

In the matter of arbitration between:	)	Gr. # 31-2 (2/15/12) 2-01-07
	)	
THE STATE OF OHIO	)	Hearing: March 13, 2013
	)	at Bowling Green, OH
and	)	
	)	Date of Award:
THE OHIO CIVIL SERVICE	)	April 29, 2013
EMPLOYEES ASSOCIATION,	)	
AFSCME LOCAL 11, AFL-CIO	)	

OPINION AND AWARD

Before Mitchell B. Goldberg, Arbitrator

Appearances:

For the Union:

James J. Havenstein,  
Derek Urban,  
Michael J. Danko,  
Patty Rich,  
Thomas Simmons,

OCSEA Staff Representative  
OCSEA Staff Representative  
District Steward  
Grievance Manager, Central Office  
Retired Safety Inspector

For the Employer:

Edward A. Flynn,  
Tricia M. Maassel,  
Shane Black,  
Jessie Keyes,  
Albert Rakas,  
Jeffrey O'Neal,

Assistant Administrator, Office of Labor Relations  
Labor Relations Officer, District Two  
OCB/LRO  
OCB, Second Chair  
Business and H.R. Administrator  
Transportation Administrator

I. Introduction and Background.

The Ohio Transportation Department ("ODOT") operates throughout the State with 12 geographic districts. District 2 covers the 8 northwestern counties of Wood, Ottawa, Fulton, Seneca, Sandusky, Williams, Henry and Lucas. At all relevant times in this proceeding, each county was headed by a Transportation Administrator ("TA"). The Union is the exclusive representative for the

Highway Technicians (“HTs”) who service the State's roads and related infrastructure. They are supervised by a Transportation Manager (“TM”), who reports to the District's Transportation Administrator (“DTA”). Each District has a Business and Human Resource Administrator (“HRA”). The Union represents Health and Safety Inspectors (“SIs”), who are supervised by a an exempt Health and Safety Program Consultant (“SC”), who in turn reports the HRA.

This grievance concerns two class titles, a bargaining unit classification designated as Safety & Health Inspector 1 and the exempt direct supervisory position of Safety & Health Supervisor, referred to also as a Safety Consultant. The District Health Inspectors inspect living conditions, work sites, equipment, vehicular accidents, personal accidents, injuries, and incidents for safety, health and fire hazards. They also inspect for compliance with governmental regulations and departmental guidelines. They also recommend corrective actions. They conduct safety training meetings for satellite facility personnel, explain laws and regulations through the use of educational materials and aids. They conduct fire drills and safety drills. They prepare inspection and investigation reports for hearings and meetings, and review reports and data to detect trends for prevention purposes. They complete injury claim forms, workers compensation forms and conduct hazard communication training.

The Health & Safety Supervisor or Safety Consultant supervises the inspectors and clerical staff and oversees the above processes and activities. They review the forms and reports and recommend corrective actions to the Administrator/Director. They determine if claims are preventable or disallowable; recommend appropriate disciplinary action, lump sum settlements and/or determine percentage of disability for claims. They oversee evacuation plans and conduct periodic drills. They manage district safety and health programs to include hazardous waste storage, shipping and containment. They oversee storage of radioactive materials and containment of leaks. They oversee on-going CDL training programs, monitor confidential driving records and licensure requirements. They work with directors, administrators and managers to ensure compliance safety laws and

regulations, and they work with other governmental agencies regarding security, safety and health activities.<sup>1</sup>

The grievance filed on February 15, 2012 alleges that the Agency violated Article 1.05 of the CBA when it did not fill a vacancy for the sole remaining Inspector 1 position at District 2 after Thomas Simmons, who served in that position, retired. Section 1.05, Bargaining Unit Work states:

Supervisors shall not increase, and the Employer shall make every reasonable effort to decrease the amount of bargaining unit work done by supervisors.

Supervisors shall only perform bargaining unit work to the extent that they have previously performed such work. During the life of this Agreement, the amount of bargaining unit work done by supervisors shall not increase, and the Employer shall make every reasonable effort to decrease the amount of bargaining unit work done by supervisors.

In addition, supervisory employees shall only do bargaining unit work under the following circumstances: in cases of emergency; when necessary to provide break and/or lunch relief; to instruct or train employees; to demonstrate the proper method of accomplishing the tasks assigned; to avoid mandatory overtime; to allow release of employees for Union or other approved activities; to provide coverage for no shows or when the classification specification provides that the supervisor does, as a part of his/her job, some of the same duties as bargaining unit employees.

\* \* \*

The Employer recognizes the integrity of the bargaining unit and will not take action for the purpose of eroding the bargaining units.

Both Mr. Simmons, the Inspector, and his supervisor, Ms. Stukey, retired. Their positions were not filled initially; but, about six months later, the District hired a SC to fill the supervisor vacancy. However, the SC is a shared position with District 1. The Union alleges that the duties of the bargaining unit still remain, and that the Agency has decided to disperse those duties among various supervisory, managerial and non-bargaining unit personnel. The class specification documents control or govern the management created job descriptions. It acknowledges that some of the inspector's duties were shared with other classifications, and that overlapping duties

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<sup>1</sup> This matter does not involve the other safety and health class titles of Safety & Health Inspector 2, Safety & Health Compliance Inspector, or Safety Officer. These classifications are not utilized within District 2.

exist as recognized by Section 1.05. However, it alleges that over a period of time the Agency had embarked upon an intentional and deliberate plan to erode the bargaining unit in District 2 by eliminating the unit members who perform safety and health duties. At one time, there were 3 safety and health inspectors; Mr. Simmons was the sole remaining inspector. The inspector duties were systemically taken away from inspectors and assigned to supervisors to the point where no unit employee remains in this field at District 2.

The Agency has, in violation of Section 1.05, increased supervisory duties and decreased the amount of work to zero for these unit employees. The Union believes that the Agency has defaulted in its contractual obligation to “make every reasonable effort to decrease the amount of bargaining unit work done by supervisors.” At the same time, the duties in the health and safety inspection and administration field have substantially increased for management personnel. The Union seeks a make whole remedy for this contract violation that restores the unit SI position. It does not request that the Agency must post and fill the position; but it does request that the duties performed by the SI that were assigned to exempt employees be returned to a status quo of the shared relationship set forth in the class specifications that existed before the Agency began reducing the SI's duties and increasing those duties among exempt personnel.

The Agency acknowledges that it decided in accordance with its management rights, not to fill the inspector position. However, the decision was based upon its operational needs to promote more efficiencies and to avoid duty performance redundancies and duplicative assignments. The inspector's duties were allocated to exempt personnel and to other bargaining unit employees such as highway technicians. It believes the class specifications are somewhat inapplicable to what was being done by inspectors, consultants and others at District 2. Some listed inspector duties, for example, were never performed by inspectors. The Agency has determined that the inspector position is no longer needed or useful as part of its safety and health programs and policies. It made a management decision with

respect to the number of inspector positions it needs, without any intention or plan to erode the unit or harm the unit. It contends that the unit's positions have actually increased, though without more inspectors, but with more highway technicians.

## II. Discussion and Findings.

### Guidance From Contract and Arbitration Principles

The parties provided a number of arbitration decisions where distinguished arbitrators discuss the applicable principles and standards for determining whether and to what extent a bargaining unit is harmed or eroded when bargaining unit work is assigned to supervisors, contractors, or others outside the unit. All except one involve one of the State of Ohio's agencies as the employer, and all except one involve OCSEA. Local 11 as the Union.<sup>2</sup>

Arbitrator Keenan's award involves a bargaining unit work issue in which supervisors were performing many of the same functions as unit employees for at least 2 years before the effective date of the CBA. The Agency claimed as here, that its decision to use supervisors for the subject work was based upon this past use of supervisors, the need for flexibility, and that the classification specifications were "out of date." It also, like here, relied upon its management rights, that taking the work away from the supervisors who were performing the unit designated work would cause an operational hardship, and that it was at all times operating in "good faith." Arbitrator Keenan stated that common sense dictates that "bargaining unit work" encompasses that work performed by bargaining unit employees at the time the parties entered into the CBA. There is no basis to infer that the parties reference in the

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<sup>2</sup> The award issued by arbitrator Rivera is between Local 11 and the Ohio High Speed Rail Authority, which I assume to be a separate entity from the state of Ohio. Gr. 56-00-(91-09-19) 02-01-14 decided November 20, 1992. Arbitrator Pincus issued an award between the Ohio Department of Rehabilitation and Correction on October 26, 2011, Gr. No. 27-31-20100315-0028-01-03. Arbitrator Feldman issued an award on December 12, 2010 in a matter between the State of Ohio and the FOP-OLC, Gr. No. 24-07-20100824-0017-05-02. Two awards from Arbitrator Graham were submitted, one involving Local 11 and the Ohio Dept. of Mental Health, decided November 12, 1988, Case No. G-86-11-7 (Graham I), and one between the same parties in this matter, Case No. 31-03-06-16-99-15-01—07. decided January 2, 2003 (Graham II). An award by arbitrator Keenan was submitted in a matter between the Ohio Dept. of Administrative Services and Local 11, Gr. No. G86-0335, decided August 17, 1988. References to these awards herein shall be referred to by arbitrator name, and page numbers, except the Graham awards shall be referred to as Graham I and Graham II.

CBA to bargaining unit work was to work “exclusively” performed by bargaining unit employees.<sup>3</sup>

This means that the Agency could violate the contract or cause erosion to the unit by not only taking away work exclusively performed by the unit, but also by materially varying the allocated portions of that work which was performed both by supervisors and unit members as contained in the classification specifications. He discussed the importance of referring to the classification specification:

It's important to note at this juncture that “classification specification” is a term of art well recognized in State employment and that as a writing it has the distinct advantage of being tangible and “in black and white.” To be remembered is the fact that the parties were negotiating on behalf of thousands of employees in several different Departments and Agencies of State government. It is readily understandable, therefore, that they would make reference to a document outside the contract and incorporate it therein, as opposed to relying on mere past practice as manifested by previous performance, which practices were doubtless both myriad and amorphous, both within any one Agency, and from one Agency to another. The classification specification is a standard of convenience and certainty. To be sure, as the State intimates, the parties had to be aware, and and in [the CBA] in effect recognized, that some of the Classification Specifications were outmoded. Nonetheless, in the clearest of terms they have elected to make the extant classification specification the applicable standard and yardstick, and their clearly manifested intent must be enforced.

Arbitrator Graham discussed the seriousness and importance of work preservation clauses in CBAs. He cited a long line of awards emanating from arbitrator Wallen's award in 1947, wherein he stated: “The transfer of work customarily performed by employees in the bargaining unit to others outside the unit must therefore be regarded as an attack on the job security of the employees whom the agreement covers and therefore on one of the contract's basic purposes.”<sup>4</sup> He found, based upon the facts before him, that the amount of unit work performed by supervisors had increased, while the amount of the work performed by unit members decreased. He found a contract violation because this result was “not what was contemplated by the parties in the Agreement.”<sup>5</sup> In Graham II, he did not find

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<sup>3</sup> Keenan award, p.14.

<sup>4</sup> Graham I award, p. 9, citing New Britain Machine Co., 8 LA 722 (Wallen, 1947).

<sup>5</sup> Id. at p. 12.

a contract violation because the work at issue was work that was not designated for safety inspectors in the classification specification and therefore, was not within the bargaining unit's jurisdiction.<sup>6</sup>

Arbitrator Feldman discussed CBA language that mandated that management shall not attempt to erode the bargaining unit. He found that this was the case when it used others to accomplish the workload of a transferred grievant. There was ample evidence that bargaining unit work was given to others.<sup>7</sup> Arbitrator Pincus, on the other hand, found that the Employer did not erode the bargaining unit when it assigned work that was not within the exclusive jurisdiction of the bargaining unit, and the unit employees did not have unique and distinct responsibilities for the particular work. He held that, generally, erosion does not take place when two job classifications have overlapping duties and responsibilities.<sup>8</sup>

Arbitrator Rivera's award involved a job abolishment, which is not present in this matter. She found that the tasks at issue, which were consolidated into a management position only involved less than 10% of the manager's yearly tasks. She did not have a standard to judge in terms of what was "inherently bargaining unit work." She found that the Union failed to prove that the bargaining unit work was *per se* usurped.<sup>9</sup> She broke the case down into four sub-issues and found: (1) that the job abolishment was justified; (2) that it was carried out in a procedurally correct manner; (3) that the employer did not act in bad faith; and (4) that the decision did not violate the terms of the CBA.

*The Allocation of Bargaining Unit Work to the Safety  
Consultant After the Consultant Was Rehired*

One needs to examine the duties of the Consultant who was rehired on a shared-duty basis to perform services for District 2 and District 1. If any of this work was work was previously performed by the SI, then the work of the SC performing bargaining unit work increased in proportion to that

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6 Graham II award, pp. 4-7.

7 Feldman award, p. 10.

8 Pincus award, pp. 4-5.

9 Rivera award, pp. 28-29.

previously performed by the SI, while the SI work decreased because the position remained unfilled after Simmons' retirement. This is particularly true if the Consultant is engaged in inspecting living conditions, work sites, equipment, vehicular accidents, personal accidents, injuries, and incidents for safety, health and fire hazards. The record is unclear as to whether the Consultant who now has shared duties with District 7 is performing any of this "feet on the ground" inspection work that was formerly performed by Simmons when he served as the sole Safety & Health Inspector 1.

### Inspections

The Agency's position and justification for its decisions is succinctly summarized by Administrator Miller's third step grievance decision. He states that the Safety Inspector's ("SI") primary responsibility was to review employee accident reports. The SI would then have his work reviewed by a supervisor who would forward his/her recommendation to Human Resources ("HR") for action. He believes that this process created a redundancy. Management now believes that the employee accident reports are more expeditiously processed directly through HR.

Mr. Simmons testified that as an SI, he physically attempted to inspect all of the worksites in the District at least once a month. These inspections included the city garage, the outpost, drawbridge and work zones set up by work crews.<sup>10</sup> He would regularly physically inspect the crew members to make sure they were wearing proper safety equipment and that they were following proper safety practices. He would also check the construction offices at each site to make sure all proper safety rules and practices were being followed in accordance with applicable laws and regulations.<sup>11</sup> He would make sure that proper traffic closures were in place such as cones, flags and barricades. His supervisor, the full-time Safety Consultant ("SC") would sometimes travel with him on these inspections. He testified that he performed 60-70% of these monthly inspections.

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<sup>10</sup> There were 8 garages, one outpost and a bridge.

<sup>11</sup> In 2011, there were 6 or 7 Construction Offices. Simmons would make sure proper first aid kits were available, fire exits were properly marked and he would inspect for various other safety issues.

He acknowledged that the construction sites were project-based temporary sites, and that contractors and HT personnel had safety inspection responsibilities as part of their jobs, but he performed independent “feet on the ground” inspections as part of his primary duties. He operated at one point during his career with one SC and 3 SIs. The Position Description for the SI lists as his most important duties the inspection components of the job.

A review of the new Employee Safety & Health Policy (Employer Exhibit 4) and the ODOT Safety & Health Standard Operating Procedure (Employer Exhibit 5) that were both issued by HR on June 1, 2009, as explained by witness Albert Rakas, the District 2 Business/HR Administrator, shows that the Agency has de-emphasized independent physical safety inspections of the type performed by SIs at multiple sites. Instead of independent “feet on the ground” unannounced SI inspections, the Agency is relying more on “peer to peer” safety responsibilities with ongoing and more intensive training by HR. Management, in accordance with its CBA management rights, has decided that the SI inspections are no longer necessary to insure compliance with its safety policies. It believes that the front-line workers at the sites, HTs, who are also bargaining unit employees, can inspect their respective facilities. They can monitor the storage of hazardous waste materials, and perform other the other safety compliance functions set forth in the SI's job description after they have received more comprehensive training. It has chosen to rely upon this training, more intense supervision, and self-reporting of safety concerns. It believes that safety will not be compromised, notwithstanding the elimination of independent SIs who roam the entire District on an unannounced basis looking for safety violations and issues that need to be reported and corrected. The Union disagrees with this approach. Witness Simmons testified that from his observations, the training is sub-standard, and insufficient to insure that the HTs and others put safety first before their other job duties and responsibilities, and to provide for self-reporting of safety issues and violations. He does not believe that the other employees now responsible for safety compliance will perform the follow-up responsibilities to make sure that

problems are addressed and remedied. Nevertheless, this is a management call. The Agency is permitted under the CBA to eliminate the job description inspection functions for SIs, so long as it does not violate the job security provisions of the CBA.

This means that the SI inspection work that existed on April 15, 2009, as performed by Simmons, shall not be decreased or eliminated relative to the same work being performed by supervisors. That inspection work, even if it was previously shared with the SC, shall not be unreasonably decreased by assigning those duties to supervisors. The elimination of the SC's inspection work and the SI's work when done simultaneously would not violate Section 1.05 of the CBA, since the elimination of the SI work would not result in increased SC work. However, when the SC was re-hired, there would be a CBA violation if the SC performs these types of shared physical inspections described by Simmons, while there remains an unfilled SI position. The previous shared balance between the SC and the SI would be materially altered from the pre-existing percentages of this inspection work. To the extent that this situation exists, it must cease; otherwise it remains a CBA violation under Section 1.05.

#### *Investigation of Personal Injury and Vehicle Accidents*

Simmons testified that both he and the Consultant would respond to vehicle accidents and personal injuries depending upon who was available at the time to answer the phones. However, he testified that because of his background and experience, he would inspect heavy equipment. He went to the scenes of accidents, while the Consultant processed all of the necessary paperwork that would be sent to Columbus. Both he and the Consultant would complete the Section H Safety Investigations section of the employee injury reports. Simmons stated that he prepared and completed reports related to injury trends and he compiled data in order to address issues and correct safety problems. He would submit this work to the SC.

### Safety Training

Simmons testified that he conducted monthly training meetings, but this practice later was changed. Instead of personal meetings, he would produce safety briefs on a monthly basis. He still personally attended snow/ice meetings when he was invited to attend. He also provided safety training for new employees. He shared this with the SC on an approximate 50-50 basis. He supplied data for the reports that were prepared by the SC that were submitted to HR or others.

### OVAR Worksheets

Simmons testified that he did much if not all of the legwork to obtain the necessary information to complete the OVAR Worksheets. He obtained the insurance information and interviewed witnesses by telephone relative to the accidents. He obtained the police accident reports. When he did the work he would submit it to the Consultant. The Consultant also performed this work depending upon who was available. He completed as many of these worksheets as the Consultant, but the Agency did not offer his worksheets into evidence; they remain in the Agency's possession.

### Other SI Duties

Simmons testified that he had no duties to perform under the ODOT Emergency Action Plan, other than to periodically conduct fire drills and some training for fire exit usage. He did not perform duties related to the Respiratory Program; this was done by the Consultant. Likewise, he did not perform duties related to the Confined Space Entry Program, the Hazard Communication Program, or the Lock-Out, Tag-Out Procedures.

### The Agency's Realignment of the Above Duties

The Agency has decided to replace the SI's monthly inspections of worksites by relying upon the County's inspections, and inspections by HTs on their particular sites. Simmons, however, testified that his work not only involved the actual inspections, but also the follow-up duties that required notices to the proper persons to insure that the problems were addressed and remedied. For example,

he would insure that defective fire extinguishers and equipment would be replaced. Insofar as the construction offices are concerned, the Agency now relies upon the project contractors to inspect the offices for proper first aid materials, fire extinguishers, and proper exits. The HTs are also on the premises to provide for safety inspections. Simmons, however, is dubious about their attention to safety details and the extent of their training. The Agency is relying now on the TMs and HTs to inspect the work zones. Simmons believes that his inspections were more comprehensive. He would check to make sure the zones were properly set up relative to barricades, cones, guards and signs. If in fact the TMs are performing this inspection work at the work zones, while the work has been totally eliminated from SIs, this increased managerial work is being done at the expense of SIs. This presents a CBA violation issue under Section 1.05. Simmons' monthly training meetings have been replaced by tailgate meetings that are short group meetings conducted at the facility.

According to Mr. Rakas, all of the changes have been made to increase efficiencies and eliminate redundancies. There is an economic component to the changes as well. Federal funding for ODOT has remained flat along with other reduced revenues, while operating costs have increased. There is no intention to erode the bargaining unit; in fact, more HTs have been hired. Now, worksite inspections are performed by the employees who do the work. Inspection forms are prepared by HTs and some account clerks. Equipment operators now fill out their own forms and daily operational sheets. They inspect their own equipment. The vehicle accident reports are completed by managers, administrators and the consultant. There are no longer joint duties as between the SC and the SI. The employees conduct their own fire drills. TMs now insure safety compliance at the County Garage. The employee who is involved in an accident completes the accident forms and reports with assistance from the TM. HR will provide assistance if needed. All safety policies and procedures are conducted and coordinated through the Central Office and Safety Administrator.

Mr. O'Neal testified that his managerial duties include personnel, equipment, purchasing,

policies, and equipment maintenance. Major parts of his duties involve safety issues, training and verifications of inspections. He visits the accident sites, or he sends a TM if he is not available. He testified that an SI, if employed, such as Simmons, would not visit all of the accident sites, or otherwise would not alter what work he performs, or work that the TM performs in connection with the accident investigations. He testified that HTs now conduct building inspections.

*Back to the Contract*

Section 1.05 by its very nature is a job security clause that expressly protects the Union and its members from having their identified work and worker numbers eroded by assigning the work to supervisors. Their work is described in the job descriptions that, as Arbitrator Keenan explained, control and govern their duties and responsibilities. The clause, in plain and unambiguous language, limits the Agency's discretion during the CBA term by providing that supervisors *shall not increase* the amount of the bargaining unit work it is performing. Moreover, the Agency must make every reasonable effort *to decrease the amount of bargaining unit work done by supervisors*. The amount of bargaining unit work, to the extent it is shared with supervisors who perform some of the same duties, shall remain constant "during the life of [the] Agreement." The amount of this work performed by supervisors *shall not increase*. The last sentence of Section 1.05 is merely a general prohibition against the Agency taking "action for the purpose of eroding the bargaining units." Decreasing particular bargaining unit work while increasing the supervisors' performance of the same work, either in volume or quality, is an expressed management prohibition that is not influenced by the Agency's motives or its view of its operational benefits. There is no expressed exception to the prohibition of supervisors gaining a bigger share of the bargaining unit work than they already performed. The Agency must further use every reasonable effort to avoid decreasing the amount of the bargaining unit work done by unit members. A violation of these specific contractual obligations constitutes specific identifiable matters of unit erosion. The last sentence prohibits any further non-specified action that could be taken

for the purpose of eroding the unit. It is merely the tying of the knot over the bargained for subject of job security and the preservation of bargaining unit work for bargaining unit members.

I cannot find a violation in the first instance of the Agency's decision to eliminate the work of both the SC and the SI. This eliminated both the shared work of both the unit member and supervisor leaving a type of status quo. However, the evidence shows that when the SC was rehired, even on a shared basis with another district, the SC and other supervisors began performing at least some of the work that was previously performed on a shared basis with the SI. This circumstance effectively increased the unit work described in the SI job description for the SC and left the SI position unfilled with none of the work. Moreover, as shown by the above evidence, parts of the SI work described in the job description and performed by the SI was dispersed among other managers and administrators in addition to the SC. The work is safety related and is considered high priority work by the Agency. Accordingly, I cannot find that the work is de minimis.

It is true that much of the inspection work has been reassigned to HTs who are members of the bargaining unit, and their ranks have increased during the term of the CBA. However, the inspection work described in the SI job description is of a different nature. It is part of a full time safety assignment that involves physical feet on the ground unannounced site visits at multiple sites for the principal purpose of assuring safety compliance and finding violations that are present. Moreover, the job requires follow-up work that brings attention to the violations and assures that they are addressed and corrected. If the Agency is no longer interested or willing to conduct these types of inspections of the type described in the job description, and in Simmons' testimony, it may choose to eliminate them and substitute a new system. However, it may not delegate this type of work solely to an SC or other managers and administrators, while removing it entirely from the SIs. The altering of the existing work sharing arrangement as between SIs and supervisors in favor of supervision and against the SI unit position is expressly prohibited by Section 1.05 as a form of bargaining unit erosion.

The evidence is unclear as to what specific work is now being performed by the SC. There would be no CBA violation if the SC no longer performs the work set forth in the SI description that was once shared with the SI. Moreover, it is unclear as to the extent of the other work set forth in the SI job description, as testified to by Simmons, has been delegated to other supervisors or managers. If the work described in the SI job description no longer exists there would be no violation.

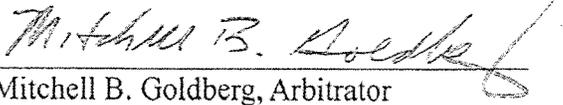
### III. Award.

The grievance is sustained in part and denied in part.. The Agency shall cease and desist from assigning any supervisor, consultant, manager or administrator any of the job duties of a Safety & Health Inspector as described in Joint Exhibit 4. However, those duties set forth in Exhibit 4 shall be modified or altered to conform to the duties performed by Mr. Simmons at the beginning of this CBA , as described above. when he was employed as an SI. The cease and desist order shall remain during the time that the SI position remains unfilled. The Agency may eliminate the work described in the job description; but, it may not alter the shared proportion of that work that existed between the SC and other supervisors when the CBA became effective by keeping any amount of that work for supervisors, consultants, managers and/or administrators, but eliminating it for SIs.

Specifically, the Agency shall cease and desist from having supervisors or managers perform independent multiple site safety inspections. Peer to peer safety inspections that are not of this type shall be permitted. The shared work and duties that Simmons performed with his SC and other managers, administrators and supervisors shall not be altered with respect to his work investigating personal injuries and vehicle accidents, safety training, preparing OVAR worksheets or other similar reports and forms, or his other described duties, by assigning any portion of that work to non-bargaining unit members for the term of this CBA.

Jurisdiction is hereby reserved to resolve any disputes between the parties relative to the implementation of this Award, and to supplement additional remedies if needed.

Date of Award: April 29, 2013

  
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Mitchell B. Goldberg, Arbitrator