

Glazer # 12

AMERICAN ARBITRATION ASSOCIATION

IN THE MATTER OF THE VOLUNTARY ARBITRATION BETWEEN

Employer,

-and-

Union.

GR: CB Line Installation/Moving Work

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ARBITRATION OPINION AND AWARD

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ISSUE

WAS THE CONTRACT VIOLATED WHEN A CB LINE WAS PLACED AT A PLANT IN STATE B, RATHER THAN AT CITY A, AND IF SO, WHAT SHOULD BE THE REMEDY?

The Local, on September 18, 2002, grieved the Company's intention to place a Continuous Braze (CB) line at its Union represented State B facility rather than at the City A facility represented by the Local. The Employer's action is argued to have violated a long-standing Letter of Guarantee which was most recently re-introduced into the 2001-2004 contract.

The letter states:

Updated: May 15, 2001

Mr. Dalton Mulberry
President

Union Local No. 369

Guarantee

Dear Mr. Mulberry:

The Employer City A Plant will continue to produce all of the APROCESS Tubing for all the Employer Plants located in the United States. Also, the Employer City A Plant will continue to produce the APROCESS Tubing for all the customers currently being supplied if within the control of Employer. This Guarantee is for the duration of this Labor Agreement.

The Employer denies that this Letter of Guarantee covers its Continuous Brazing process.

A transcribed arbitration hearing under the rules of the American Arbitration Association was held on June 20 and June 21, 2003. Testifying for the Union were:

Ralph Basil, Tube Mill Operator
Sam Begonia, Electronic Specialist Leader
Derek Balsam, CB Line Inspector
Dalton Mulberry, Local President
Lucas Sage, Bargaining Chair, 1997 Negotiations
Mark Amaryllis, Lead Setup Utility

Testifying for the Company were:

Dave Clematis, VP, Human Resources
Gary Rosemary, former HR Manager
Tyler Pepper, Plant Manager
Dylan Hickory, Group Plant Manager
John Parsley, HR Manager, City A Plant
Tanner Daffodil, Technical Services Manager
Malcolm Verbena, Vice President and General Manager of Some Fuel Group

Comprehensive post-hearing briefs were submitted by the parties.

BACKGROUND

Employer manufactures automotive brake tubes at its City A, Michigan facility. It is a successor of the A Corporation. The Company's brake tubing was patented and trademarked in the early 1930s as "APROCESS". Tubing was heated in a convection furnace, and had to be spliced. After World War II, the Company introduced resistance brazed tubing. This tubing was heated by the electrical resistance of the tube itself as it was passed over electrodes. The Resistance Braze was not considered to be of sufficient quality to be used for brakes. Resistance Braze was discontinued in the late 90s.

The Continuous Braze technology did not exist until approximately 1997, when it was developed by a company in Italy. The CB process uses magnetically induced electricity to heat the tube as it passes through surrounding electrodes. The tube does not need to be spliced in this process, and it moves much faster through the line than it does in the Furnace Brazed procedure.

During the 1983 negotiations, the Company sought and achieved concessions from the Local. In return, the Union achieved the Letter of Guarantee, which continues into the present contract. Tyler Pepper, who was on the Union's bargaining team at that time, and who is now a member of management, testified that he didn't consider Resistance Braze to be APROCESS; therefore, he does not believe that Resistance Braze was ever intended to be covered by the Letter of Guarantee. The Union disagrees with this conclusion.

In 1997, the Company requested early negotiations to consider the addition of a seventh furnace line at the City A facility. The Union agreed and negotiations were nearly completed, when on April 10, Larry Nettle, the former vice president for Human Resources and Dylan Hickory, the Group Plant Manager, announced at negotiations that "APROCESS was dead" and

that Continuous Brazing was a new technology necessary for the survival of the City A plant.

The focus of the negotiations then shifted to the Continuous Braze process.

On April 11, the Company presented a document called “The New Challenge” to the Union’s bargaining team. Included within the document was the statement, “Corporation must do something different. APROCESS is finished. As a corporation, the only choice is to move to “Continuous Braze” and away from APROCESS.”

The Union committee responded on May 5, 1997 with a letter that said in part: “With our skill and expertise we can utilize new technology and jointly work together to maintain A Corporation as the world leader in fluid systems.”

Wilfred Lilac, the CEO, responded on May 8, 1997 as follows:

May 8, 1997

Mr. Dalton Mulberry
UNION Local No. 000
10000 Some Street,
Yet Another City, MI

Dear Mr. Mulberry:

Thank you for your letter of May 5, 1997, in which you and your Committee assure me of your membership's total commitment to work jointly with us to overcome the challenges presented by Continuous Braze technology.

While not doubting the sincerity of the sentiments contained in your letter, it would be remiss of me not to express my very real concern that today's contract, years of custom and practice, and traditional thinking on the part of both Management and Union will obstruct our ability to really bite the bullets necessary to maximize the opportunities presented by this new technology.

I know that you understand the magnitude of the competitive threat to our business so I am sure you will understand the position I must take in responding to this challenge. Put simply, our investment in Continuous Braze, an investment we will undoubtedly make, will be made only in an environment in which I am

satisfied that we can fully optimize that investment.

In your letter, you talk of history and the responses made by the City A Plant to the different threats to our profitability and livelihood over that time. Unfortunately, my history with City A goes back only to the recent Galfan challenge. You will understand that I found our inability to jointly work that opportunity to our mutual advantage to be far from encouraging.

However, it is now essential that we put history behind us. APROCESS is of the past; our future lies in Continuous Braze. Indeed, I believe you phrased the issue perfectly at a recent meeting with Management, when you said that the City A workforce always knew that APROCESS would meet its demise one way or the other, killed off by either Electric Brakes or Continuous Braze. As you rightly said, no one was sure which would come first. We now know, and it is essential that we take whatever steps are necessary to ensure that the passing of APROCESS proves to be just another opportunity for all of us to show that we have the skill, technology and, above all, the commitment to maintain A Corporation as the world leader in fluid-carrying systems.

As you know, our competition has already acquired Continuous Braze capability. Therefore, I must act decisively and quickly. I have instructed my Management Team to meet with your Committee with all possible haste to deliver to me a fully-costed package delineating the investment option of placing Continuous Braze in the City A Plant. I must have that package by the end of May.

Given the sentiments expressed both at your recent meeting and in your letter, I am optimistic that we can reach a mutually advantageous conclusion and henceforth move forward into a new era of realism and cooperative teamwork. Sincerely,

A CORPORATION

/s/

Wilfred Lilac

Chief Executive, A Corporation

cc: Dylan Hickory
Larry Nettle

Mr. Mulberry denies ever stating that APROCESS would be killed off by Continuous Braze, although he does agree that he discussed electronic brakes.

After negotiations were re-opened, the Union requested the following guarantee from the Company:

Need guarantee letter that the Continuous Braze lines will be installed at the A

Corporation City A plant.

Mr. Nettle, the Vice President of Human Resources, responded by letter on June 2, 1997, stating that the Company would guarantee the introduction of CB lines at City A, but that it would not guarantee that in the future CB lines would only be located at City A.

The Union did not respond to this letter from Mr. Nettle. It considers it to be a rejected counter proposal from the Company.

Next, there was a tentative agreement on June 3, 1997, which did not include a Letter of Guarantee on the Continuous Braze lines, but did continue the prior Letter of Guarantee.

There was testimony from Mr. Sage and Mr. Mulberry that during negotiations for the contract extension, the Union was shown a movie of the new Continuous Braze process. They concluded, after viewing the movie, that Continuous Braze was the same as APROCESS.

Following the contract ratification, the Company installed two Continuous Braze lines at the City A plant. The issue in this case arose when the Company wrote the Union on July 1, 2002 that it intended to install additional Continuous Braze lines at other U.S. facilities. The Company has both Union and non-Union operations in the United States. Malcolm Verbena's letter stated:

July 1, 2002

Dalton Mulberry
President
Local 000, UNION

Re: Notice regarding CB (Continuous Braze) Line

Dear Mr. Mulberry:

Pleased be informed that it is the intent of the Company to install additional CB lines within Employer North America at our earliest

opportunity. The additional CB capacity will function similarly to the existing CB lines here at City A - i.e., they will provide tubing to Employer Customers and plants located in North America and will supply tubing to customers currently being supplied from City A.

As you know approximately five (5) years ago, you, on behalf of the UNION and Company representatives agreed that the continuous braze process has no relationship to the APROCESS process and as a result, the 1983 letter regarding APROCESS does not cover CB.

It may be that your new bargaining committee, unaware of our past dealings and understandings, would desire to challenge through the grievance procedure, the Company's right to install a CB line as discussed above. While I would expect that you would prevent that from occurring, nonetheless we understand that such a challenge is a possibility.

Given the very significant cost of acquisition and installation of a CB line, we believe that should the Union wish to grieve and/or arbitrate regarding same, it should and must be done timely from receipt of this notice. Should the Union elect to grieve, we should, if necessary, expedite the matter to arbitration as promptly as feasible, but no later than August. As you should appreciate, time is of the essence in this matter.

Please contact me as soon as possible should you have any questions or concerns. We are available to meet at your earliest convenience.

Sincerely,
/s/
Malcolm Verbena
Vice President Operations

cc: Richard Thistle, UNION International Representative Dave Clematis, Vice President Human Resources Jack Spruce, Plant Manager Dylan Hickory, Group Plant Manager James Maple, Chairman Bargaining Committee

Mr. Mulberry responded on July 22, 2002, that the Union did not consider APROCESS to be different than Continuous Braze. He wrote:

July 22, 2002

Malcolm Verbena Vice President Operations
Employer LLC
12345 E. Main Rd.
City A, MI.

Re: Notice regarding CB (Continuous Braze) Line

Dear Mr. Verbena

I am in receipt of your letter regarding the CB Line dated July 1, 2002.

I am encouraged to hear that the Company is satisfied with the performance of the existing CB Lines operating in our City A Plant and desire to increase CB capacity.

As you know I have been involved in all Contract Negotiations concerning our City A Plant since 1982. Throughout these negotiations our major concern has been Job Security. At no time has the Union agreed or considered that the Continuous Braze Process has no relationship to the APROCESS Process.

If the Company intends to install additional CB Lines, I would expect our Contract be honored and installation be placed in the City A Plant as done in the past.

Feel free to contact me if you have any questions.

Sincerely,

/s/

Dalton Mulberry
President

cc: Richard Thistle, UNION International Representative
Dave Clematis, Vice President Human Resources
Jack Spruce, Plant Manager
Dylan Hickory, Group Plant Manager
James Maple, Chairman Bargaining Committee

On February 7, 2003, Mr. Verbena informed Mr. Mulberry that the Company intended to place a Continuous Braze line in City Z, State B, which is a UNION facility. The Company

indicated that placing the CB line in City Z will probably prevent the plant from closing. The cost of the new line is \$1.5 million.

The Company noted that some customers will not accept Continuous Braze Tubing, and that all customers are informed of whether they are receiving Continuous Braze or Furnace Braze Tubing. There was additional testimony from the Company that customers often refer to APROCESS as being synonymous with brake tubing, even when it is produced by a competitor.

There was also testimony that there are different physical characteristics to the tubing created by Continuous Braze, including a different degree of hardness than that found in Furnace Braze Tubing.

A publication of Employer defines a rigid tube as follows:

A continuous strip of copper plated steel is wrapped through 720j and bonded to form a double walled - APROCESS™ - tube.

The latest manufacturing techniques have allowed continuous brazing of double wall tube for precise control of the temperature and brazing conditions and can be coupled to other continuous processes, such as coating.

There is also a publication which refers to the “Continuous Braze of APROCESS Tubing”. The Union maintains that the Continuous Braze process falls within both the APROCESS patent and trademark, since the manner of heating, it argues, does not determine if a tubing is APROCESS.

PERTINENT CONTRACT PROVISIONS

ARTICLE XVII GRIEVANCE PROCEDURE

...

(105) The decision of the arbitrator shall be final and binding on

the Company, the Union, and the employee or employees involved. The fee and expenses of the arbitrator shall be paid by the losing party. If the decision of the arbitrator is a split decision, the fee and expenses of the arbitrator shall be prorated by the arbitrator between the Company and the Union. Any administrative or filing charges by the Federal Mediation and Conciliation Service will be paid by the Company.

...

Exclusions from Arbitration

(108) An arbitrator shall have no power to add to or subtract from or to modify any terms of this Agreement or any agreements made supplementary hereto, nor to establish or change any wage rate, or the structure of any classification, or any production standard, or any work load assignment, or to rule on Health and Safety issues.

POSITION OF THE EMPLOYER

It is denied that the Union has met its burden of proof. The Company contends that Continuous Braze technology is not the same as APROCESS. Further, it is maintained that the Company made it clear during the relevant 1997 negotiations that Continuous Braze was not APROCESS.

The Company points to the testimony of Mr. Daffodil to support its contention that there is a difference in the tubing that is produced by CB as opposed to the tubing produced by the traditional APROCESS furnace. Further, the Company argues that its customers recognize a difference in the APROCESS and CB tubing, and that some will not accept tubing made by the CB process. The Employer emphasizes that Continuous Brazing is a different process that produces a different product than the traditional APROCESS Furnace Brazed technology.

Employer also argues that the Union is estopped from claiming that CB is APROCESS because it accepted, without protest, the June 2, 1997 letter and the May 8 letter, and that it

subsequently it withdrew its demand for a CB guarantee.

The “New Challenge” document is cited in support of proof of the intent of the parties. It is emphasized that this document shows that APROCESS is dead and that CB is not APROCESS. Also, it is contended that the Union’s failure to receive a guarantee letter for CB, proves that the parties did not intend for CB to be included in the contract as part of the APROCESS guarantee. The Employer argues that the Union is attempting to obtain through arbitration, that which it was unable to obtain in collective bargaining. The Employer denies that the Union has met its burden of proof.

POSITION OF THE UNION

It is asserted that Continuous Braze is APROCESS Tubing, and that the Union has a contractual guarantee to produce all of the CB at the City A plant. The Union also maintains that the CB process fits within the patent for APROCESS. Additionally, various Company documents are cited to show that the Company considers CB to be APROCESS.

Regarding the 1997 negotiations, the Union emphasizes that it never agreed to the June 2 letter and that therefore that letter never became part of the contract; in contrast, the Union argues that the prior APROCESS guarantee remained. The Union asserts that it was unsure as the result of negotiations if CB lines would be installed, but that it understood that if CB lines were installed, they would be installed at City A based upon the guarantee.

The Union emphasizes that the June 2 letter from management was rejected by the Union committee. It also asserts that Mr. Daffodil is incorrect when he asserts that CB is not

APROCESS, based upon the patent. The view of what customers regard as APROCESS is argued to be irrelevant.

For relief, the Union requests that the CB line be shut down and removed from City Z, State B and returned to City A. The Union's request for relief states:

The Union, therefore, requests the Arbitrator make the following Award:

1. Employer immediately stop the use of Continuous Brazing in the City Z, State B Plant.
2. That the CB line in the City Z Plant be removed.
3. That the Local 369 workers be made whole for all work performed by the City Z workers. This make whole remedy is based on the demand that the jobs be placed in the City A Plant.

DISCUSSION

I have carefully considered the evidence and arguments presented by the parties; however, I will only focus on those areas that are necessary to my decision. The crucial question is whether the Union and the Employer intended to include Continuous Brazing within the coverage of the long-standing guarantee, which states that the Local will continue to produce all of the APROCESS Tubing in the United States. To answer this question, the 1997 negotiations must be examined.

Initially, the Employer was requested to discuss the installation of a seventh furnace line at City A. The Union's economic proposal of April 3, 1997 requested a guarantee of the installation of that furnace line before May 15, 1998. The offer did not request a guarantee that the furnace line only be installed in City A. Clearly, the existing guarantee letter required that any additional furnace line be established in City A.

Thereafter, the Company called off negotiations for the seventh furnace line, when it

announced that a new Continuous Braze process, produced in Italy, would make APROCESS technology obsolete. The Company further indicated that this process had been made available to Employer's most serious competition, Competitor. In a memo called "The New Challenge", which was distributed to the Union, the Company referred to CB as a new technology. The memo said:

THE NEW CHALLENGE

April 11, 1997

Sequence of Events

- Early February, 1997 heard of new GM 1/4" business available to A Corporation on a new model launch.
- Approached Company to explore possibility of securing new business for the City A Plant.
- Parties agreed in late February, early March to negotiate early for possible contract extension securing 7th furnace line in City A to handle new 1/4" business.
- Negotiations opened on March 24, 1997.

Negotiation Challenge

- Company and Union negotiating teams instructed to negotiate an early contract around the addition of a 7th furnace line that was acceptable to the Company and the union membership.
- The time frame (sic) was established to reach agreement within two (2) weeks.
- The teams had to extend their efforts into the third week.
- Late Wednesday, April 9, 1997, the negotiations were at a critical point.
- Early Thursday morning, April 10, 1997, both the Company and union bargaining committees were presented a new challenge by A Corporation upper management (Mr. Larry Nettle, Vice President Human Resources and Mr. Dylan Hickory, Group General Manager).

Management Message

- Mr. Nettle conveyed to both committees a startling message!
- A Corporation, as a whole, was at great risk of its very existence due to changing tube producing technology in Italy.
- A competitor in Italy had perfected a tube making process called "continuous braze" at a rate of 620' per minute, making our APROCESS technology obsolete.
- Our competitor has not only perfected this new process, but has qualified the process with European automakers at VW and Fiat, which becomes a direct threat to A Corporation's tube plant in Italy.
- To make matters worse, this competitor has also started working with Competitor in the U.S.A.
- Once Competitor and/or other U.S. competitors are successful in getting the U.S. automakers to qualify this new technology, A Corporation is dead, including the City A plant!

Corporate Strategy

- Based on the above information, which by the way was received almost simultaneous to the early City A plant contract talks opening, decisions had to be made and made quickly.
- The new "continuous braze" technology is not that it is new technology, as much as it is the production of nearly perfect tube at a higher rate of speed and at a lower cost than APROCESS technology. Never before was the new technology a major threat until now.
- The Corporation must do something different. APROCESS is finished. As a Corporation, the only choice is to move to "continuous braze" and away from APROCESS.
- The Corporation has decided to totally invest in "continuous braze" technology and discontinue further investment in APROCESS, anywhere.

The New Challenge

- The City A plant will not be receiving a 7th APROCESS furnace line.

- It is Doomsday for the City A plant without investing in "continuous braze".
- Negotiations must now focus on how to prepare the City A plant for new technology without increasing cost so that the City A plant becomes more competitive, giving management no choice but to place new technology somewhere else within a very short time frame (next 12-15 months).
- Along with new technology comes the realization that less labor will be needed. City A must find a way to protect as many current old technology jobs as possible and not add cost through the transition from old APROCESS to new "continuous braze".
- The new challenge for the bargaining committees becomes:
 - An up front commitment by the UNION and the membership to proceed.
 - That same commitment by the City A management and salaried employees.
 - Work on an agreement together to find a way to put "continuous braze" in the City A plant.
 - Must be cost competitive to keep jobs in the City A plant.
 - Establish a competitive environment to take on a different type work to lessen the loss of jobs through new technology without guarantees.
 - This is not about concessions bargaining, but how to transition from old technology APROCESS to new technology "continuous braze".
 - Must accomplish within a relatively short time frame.
- We must look at this as an opportunity to keep jobs in City A and create a future.
- The alternatives are too painful to even consider. Let's go forward and take control of our own destiny.

At this point, the Employer regarded Continuous Braze as something entirely different than APROCESS, which had been produced by a furnace. It considered it to include a new technology that was being used by competitors.

Next, the Union committee wrote the Company on May 5, 1997 that it would work with the Company to meet the new challenge. Importantly, the second paragraph of the letter refers to Continuous Braze as “a new technology”. The second paragraph states:

Bill, be assured you have the total commitment from all the employees of the City A Plant to work together as a team to face our new challenge. With our skill and expertise **we can utilize new technology** and jointly work together to maintain A Corporation as the world leader in fluid systems.(emphasis supplied)

In response, on May 8, the Company again referred to Continuous Braze as a new technology. It also states that, “APROCESS is of the past; our future lies in Continuous Braze.” This statement evidences an attempt by management to consider Continuous Braze as something different than the APROCESS referred to in the Letter of Guarantee. Further, the letter discusses the option of placing Continuous Braze in City A, as opposed to being required to place CB in City A pursuant to the Letter of Guarantee. The letter states on the second page:

As you know, our competition has already acquired Continuous Braze capability. Therefore, I must act decisively and quickly. I have instructed my Management Team to meet with your Committee with all possible haste to deliver to me a fully-coated package delineating the investment option of placing Continuous Braze in the City A Plant. I must have that package by the end of May.

Given the sentiments expressed both at your recent meeting and in your letter, I am optimistic that we can reach a mutually advantageous conclusion and henceforth move forward into a new era of realism and cooperative teamwork.

The crucial evidence is found in the Union’s economic proposal that followed on May 30, 1997. The Union wrote: “Need guarantee letter that the Continuous Braze lines will be installed at the A Corporation City A Plant.”

If the Union understood that Continuous Braze was already covered by the existing Letter of Guarantee for APROCESS, this offer would seem to be unnecessary. The Company had previously indicated that Continuous Braze was the future and that that was the direction that it intended to pursue. There was no need for the Union to obtain a guarantee that Continuous Braze would be utilized; rather, the only apparent purpose of the Union's offer was to guarantee that Continuous Braze would be located in City A. Again, if it was understood by the Union that CB was already covered by the existing guarantee, there would be no reason to ask the Company for a guarantee to include City A. Therefore, the Union's offer suggests that there was some understanding that Continuous Braze was something different than the APROCESS covered in the existing Letter of Guarantee.

Also on May 30, the Company proposed to keep traditional A Corporation lines at City A as the supplier of A Corporation plants, but to replace A Corporation with Continuous Braze at City A. There was no mention of a guarantee to place all of the Continuous Braze at City A. The Company's proposal said:

COMPANY PROPOSAL

5-30-97 ... Letter of Guarantee - Remaining

Traditional APROCESS Lines will continue to produce all the tubing for the A Corporation Plants currently being supplied if within the control of the A Corporation. The APROCESS process will be replaced in the City A Plant by Continuous Braze technology. Continuous Braze will be introduced into the City A Plant.

The Company, in its proposal, clearly differentiates between traditional A Corporation lines will be used to supply APROCESS and the new Continuous Braze lines, which are considered to be a new technology.

In response to the Union's request for a Letter of Guarantee, the Company provided one on June 2, 1997. However, the letter went on to state that the Company would not guarantee that Continuous Braze would only be added at the City A plant. The letter said:

June 2, 1997

Mr. Dalton Mulberry UNION
Local 000 10000 Some Street
Yet Another City, MI

Dear Mr. Mulberry:

You have asked for a guarantee that, in the event that a mutually satisfactory contract is reached and ratified by your membership, the Company will put new Continuous Braze technology into the City A Plant.

The purpose of this letter is to give you that guarantee. However, I must also point out that, in the same way that the new Continuous Braze process has no relationship to the traditional APROCESS process, so this latest guarantee has no relationship to the 1983 guarantees regarding APROCESS.

The introduction of Continuous Braze technology into City A is a clear signal of our desire to continue to maintain the City A plant as our center of excellence for tube-making. Depending upon costs and other business considerations now and in the future, this is our desire, but I am sure you will understand that there can be no guarantee that Continuous Braze technology will only ever exist in the City A plant.

Sincerely,
A CORPORATION
/s/
Larry Nettle
Vice President, Human Resources

This letter did not become part of the collective bargaining agreement, and the long-standing guarantee letter continued into the new contract. However, I am persuaded that the June

2, 1997 letter is enforceable against the Employer under the Doctrine of Estoppel. A promise was made by the Employer to introduce the new Continuous Braze technology into the City A plant if a mutually satisfactory contract was reached. A contract was reached, and the Employer fulfilled its promise by introducing CB lines into the City A plant.

However, I decline to find that the Union is estopped by its failure to respond to the June 2 letter into accepting CB lines in plants other than City A. The Union did not make a reciprocal promise in response to the June 2 letter, and I decline to find estoppel based upon the Union's silence in the context of collective bargaining.

I do find, however, that the bargaining history reveals that there wasn't a mutual agreement to expand the coverage of the old Letter of Guarantee to cover the new Continuous Braze technology. The Employer clearly considered Continuous Braze something different than APROCESS for purposes of the old Letter of Guarantee. The Union's understanding is less clear, but its proposal concerning a City A guarantee, and the rest of the bargaining history, supports that the Union understood that the prior guarantee did not cover Continuous Brazing.

In the absence of proof by preponderance of the evidence that the parties intended for the CB to be covered by the prior guarantee, I am unable to conclude that the prior guarantee was intended by the parties to include Continuous Brazing. The parties bargained relative to a new guarantee for Continuous Braze, but one was not achieved.

Also, the old guarantee covered the traditional furnace-made APROCESS, when it was initially written. Continuous Braze technology did not exist at that time. Therefore, it would appear that Continuous Braze technology was not within the scope of the original guarantee. Continuous Braze is a new technology that was introduced by an Italian corporation. It has been

provided to a competitor in the United States. This suggests that Continuous Braze is not the same as APROCESS; to conclude otherwise would mean that the products of the Italian company and the U.S. competitor are APROCESS also. Of course, people in the industry refer to APROCESS Brake Tubing in a generic sense; however, I am persuaded that there is a difference between the APROCESS Furnace Tubing, which was created by A Corporation, and the Continuous Braze technology, which was developed by a foreign company.

Further, while Continuous Braze and Furnace Braze Tubing certainly have much in common, they do reveal a different degree of hardness. Most importantly, the customers regard Continuous Braze and Furnace Braze Tubing as being different, with some customers only accepting Furnace Braze Tubing. I cannot conclude that Furnace Braze Tubing and Continuous Braze Tubing are fungible in the same way that coal is the same, regardless of the extraction process.

The original Letter of Agreement was meant to cover Furnace Braze Tubing, and possibly Resistance Braze Tubing. However, there clearly was no intent to include Continuous Braze Tubing within the original agreement, since that technology did not exist at the time that it was written. After the Continuous Braze technology was introduced in Italy, there was bargaining between the Employer and the Union concerning a guarantee for Continuous Braze Tubing. The bargaining reveals that the parties considered the Continuous Braze and traditional Furnace Braze processes to be different, and there was no agreement to include Continuous Braze as part of the old guarantee.

There is one final point to consider. The additional of a CB line at a UNION represented plant in City Z, State B did not cost the City A plant jobs, although it potentially cost it the

creation of additional jobs.

It its June 2, 1997 letter, the Company promises, along with its intent to put CB technology into City A, “To maintain the City A Plant as our center of excellence for tube-making”, subject to other certain costs and business considerations. The letter goes on to state that “this is our desire”. The introduction of one CB line at a UNION plant in State B, while work has been maintained in City A, would not seem to be contrary to the promises made in the June 2, 1997 letter.

AWARD

For the foregoing reasons, the grievance is denied. Pursuant to paragraph 105 of the contract, the Union must be designated as the losing party for purposes of the arbitrator’s fees.

Mark J. Glazer Arbitrator September 29, 2003