

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

EAU CLAIRE CITY EMPLOYEES
LOCAL 284, AFSCME, AFL-CIO

and

CITY OF EAU CLAIRE

Case 189
No. 44088
MA-6163

Appearances:

Mr. Steve Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Jeffrey P. Hansen, Assistant City Attorney, City of Eau Claire, appearing on behalf of the City.

ARBITRATION AWARD

Eau Claire City Employees Local 284, AFSCME, AFL-CIO, hereinafter referred to as the Union, and the City of Eau Claire, hereinafter referred to as the City, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the City, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Eau Claire, Wisconsin on July 17, 1990. The hearing was not transcribed and the parties submitted post-hearing briefs which were exchanged on September 25, 1990.

BACKGROUND

In early 1990, the City acquired a new piece of equipment, a stump cutter, which is used to remove tree stumps and to dig holes to plant new trees. The City assigned the operation of the stump cutter to employees in the Light Equipment Operator classification in pay range A-10. The Union claimed that the stump cutter should be assigned to the classification of Heavy Equipment Operator in pay range A-40. When the parties were unable to agree on the classification to which the stump cutter should be assigned, the instant grievance was filed.

ISSUE

The parties stipulated to the following:

Did the City violate the parties' collective bargaining agreement when it assigned Light Equipment Operators to operate the newly purchased stump grinder?

If so, what is the remedy?

PERTINENT CONTRACTUAL PROVISIONS

Article 3 - UNION SECURITY AND MANAGEMENT RIGHTS

. . .

Section 2. The rights, power, and/or authority claimed by the City are not to be exercised in a manner that will cease to grant privileges and benefits, limited to mandatory subjects of bargaining, that the employees enjoyed prior to the adoption of this agreement and that will undermine the Union or as an attempt to evade the provisions of this agreement or to violate the spirit, or purpose of this agreement.

Section 3. Management Rights. It shall be the exclusive function of the City to determine the mission of the agency, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations.

It shall be the right of the City to direct its employees, take disciplinary action, relieve its employees from duty because of lack of work, or for other legitimate reasons, and determine the methods, means and personnel by which the agency's operations are to be conducted. But this should not preclude employees from raising grievances about the impact that decisions on these matters have on wages, hours, and working conditions.

UNION'S POSITION

The Union contends that over the years it has been involved in determining which pieces of City equipment were restricted to exclusive use by the Heavy Equipment Operator classification. It disputes the City's claim that the determination is an exclusive management right and cites Article 3, Section 2, the maintenance of standards clause as well as employe safety, employe discipline (for damaging City equipment) and the doctrine of equal pay for equal work, i.e. skilled wages for skilled work as grounds for the Union challenging the City's determination.

The Union proffers the following general standard by which new equipment should be appropriately assigned to a classification: "Degree of skill necessary to operate the machine safely." It submits that the stump grinder should be restricted exclusively to the Heavy Equipment Operator class to reduce the risk of employe injury and equipment damage. It points out that the City can assign a piece of equipment to an employe one day and another piece of equipment the next day with the result that an employe could operate the stump grinder once in August and then not again until the next April. The Union asserts that Heavy Equipment Operators operate complex hydraulic equipment on a daily basis, which it defines as manipulation of multiple and variable hydraulic levers, whereas the Light Equipment Operators operate only basic equipment with single manipulation of non-variable hydraulic levers. The Union refers to the operation of the skid-steer (bobcat) which is restricted to use by Heavy Equipment Operators which, at times, requires very close tolerances in its operation as a comparable piece of equipment to the stump grinder. It claims that familiarity with complex hydraulic manipulation and the close tolerances reduces the risk of injury to employes and equipment and thereby meets the general standard set out above.

The Union disputes the City's argument that training on the use of the stump grinder is the key to its safe operation because there is no assurance that the machine would be consistently assigned to those trained or that the training would be sufficient to operate it safely.

The Union maintains that the stump grinder is not comparable to the equipment assigned to the Light Equipment Operator. It argues that the chipper machine, which is a very dangerous machine, as is the grinder is not comparable because it has no hydraulics, does not require operation within close tolerances, and no "feel" for the chipper is necessary to operate it. It claims that the only factor in safe operation of the chipper is physical protection. The Union also asserts that the stump grinder is not comparable to equipment such as the street saw and jack hammer because of the lack of hydraulics or single operation of on or off hydraulics. The Union contends that the chipper, street saw and jack hammer do not require skill with complex hydraulic controls in operating within close tolerance and therefore distinguishes the stump grinder from these pieces of equipment operated by the Light Equipment Operator. It asks that the grievance be sustained and the operation of the stump grinder be restricted to the Heavy Equipment Operator.

CITY'S POSITION

The City contends that the contractual Management Rights clause reserves to it the right to assign job tasks. It submits that it properly determined that the stump router was similar to equipment operated by the light equipment operators including the wood chipper, crack router, boiler, concrete saw, melter and jack hammer. It argues that no language in the agreement gives the Union the power to determine which employes should operate certain equipment and as a result, the City's decision must be sustained.

The City maintains that the Union's argument that the hydraulic operation of the stump

router is similar to machinery operated by heavy equipment operators is inconsistent because light equipment operators operate trucks with six hydraulic valves as well as other hydraulic equipment, the melter applicator and jack hammer. The City also notes that some heavy equipment has no hydraulics including the oiler, sweeper, sludge truck and the boiler.

With respect to safety considerations, the City insists that training is the most important factor in safe operation of the stump router. It disputes the Union's assertion that Heavy Equipment Operators would be more familiar with this equipment and thus operate it more safely. It argues that the evidence fails to establish a magical difference between the two classifications with respect to their ability to operate the stump router safely. It points out that Light Equipment Operators operate the wood chipper which is no less dangerous than the stump router.

The City claims that it has the right to assign classifications to particular pieces of equipment, a right widely recognized by arbitrators and points out that employees are not entitled to exercise seniority to select machines which they prefer within their classification. The City takes the position that it exercised a legitimate right to operate its business and this decision was not arbitrary, capricious or inconsistent with past tradition. It requests a denial of the grievance.

DISCUSSION

Article 3, Section 3 of the parties' collective bargaining agreement provides that the City has the right to direct its employees and to determine the means, and personnel by which its operations are to be conducted. It is generally held that in the absence of specific contract language barring the assignment of work to a particular classification, the employer retains the right to make changes in work assignments. 1/ This does not mean that the employer has no restrictions on such change in assignments. The employer must have a rationale basis for the change and must act in good faith and not arbitrarily or capriciously. In the instant case, Article 3, Section 3 provides that the exercise of Management Rights by the City does not preclude employees from grieving the impact that decisions have on wages, hours and conditions of employment. The parties have also negotiated wage rates for particular jobs and where a particular job falls within the class and rate for similar jobs, the City is not free to assign that particular job to a different class. In Brass Products Co., 85 LA 465 (Lipson, 1985), the arbitrator held that where the work on a new machine was fundamentally comparable to the operation of other machines, the assignment of the new machine to a different classification violated the parties' agreement.

Thus the issue here is whether the stump cutter is fundamentally comparable to the machines that Light Equipment Operators use or to the machines that Heavy Equipment Operators

1/ Bell Telephone Company, 75 LA 750 (Garrett, 1980) at 755 citing Arbitrator Hill's unpublished decision. See also Omaha Cold Storage Terminal, 48 LA 24 (Doyle, 1967) at 32; Anchor Hocking Corp., 80 LA 1267 (Abrams, 1983), at 1274.

use. If the former is found, then the City has a rationale basis for its decision and acted in good faith. If the latter is found, then the City would have violated the terms of the agreement.

In order to determine whether the stump cutter is fundamentally comparable with one group of machines, it is necessary to examine the job descriptions of the Light Equipment Operators and Heavy Equipment Operators respectively, as well as the machines and equipment they utilize.

The job description 2/ for the Light Equipment Operator lists their principal activities as follows:

1. Operates light trucks and other gasoline powered equipment safety and economically.
2. Operates mechanical equipment and attachments on trucks such as hoists, pumps, winches, spreaders, snowplows, etc.; assists in loading, transportation and unloading of materials; spreads materials on streets such as sand, salt, cinders, performs duties of repair and replacement of signs and sign painting.
3. Performs minor servicing work on equipment such as refueling, lubricating, washing, help mechanics change tires and other minor maintenance.
4. Performs laboring tasks such as excavations, grubs stumps, mows lawns, trims trees and hedges, operates canpressors, etc.
5. Operates specialized sewer maintenance equipment such as sewer rodder, sewer bucket machines, jackhammers, pumps, etc.; flush sewer and storm lines, clean catch basins, etc.
6. Performs related work as required.

The job description 3/ of the Heavy Equipment Operator lists the principal activities as follows:

2/ Union Ex-4.

3/ Union Ex-5.

1. Operates heavy and specialized automotive equipment such as street sweepers, graders, bulldozers, rollers and related equipment in a safe and efficient manner.
2. Operates heavy equipment for street maintenance, construction operations, sanitary landfill, airport operation, etc.; assists in snow and ice removal; cuts, fills and grades for curbs, gutters and sidewalks, etc.
3. Performs minor mechanical maintenance and service work on the equipment operated.
4. Performs related work as required.

The major distinguishing feature between the two classifications is the operation of heavy and specialized automotive equipment. The list of equipment assigned solely to the Heavy Equipment Operator is the following: sweeper, grader, loader, backhoe, steamer, sweeper-vac, skid steer, paver snow loaders, rubber tire gallion roller, tanker trucks, 411 tractor with various attachments, forklift used on streets, logging truck, bucket truck, grit truck and sludge spreader. 4/ These are all large pieces of automotive equipment upon which the operator rides or drives. The stump cutter does not match these in size nor is it automotive, i.e., transports itself with a driver. The stump cutter is essentially a gasoline powered piece of equipment.

The Union has asserted that safety concerns for the operator and the equipment bring this piece of equipment into the Heavy Equipment operator category. One of the most dangerous machines however is the wood chipper which is assigned to the Light Equipment Operator. The wood chipper is gasoline powered but not automotive. It is bigger than the stump cutter and perhaps more hazardous. Both job descriptions emphasize that employes in their respective class must operate the equipment safely. The undersigned is not persuaded that safety of operation distinguishes the stump cutter from other equipment used by Light Equipment Operators.

The second argument made by the Union is the use of hydraulics in the operation of the stump cutter distinguishes it from other light equipment. The evidence demonstrates that the hydraulics used to operate the stump cutter are more complex than the jack hammers or trucks. Additionally, the operation of the stump cutter may involve close quarters with relatively small tolerances such that hydraulic manipulation would involve more than mere on and off operation. Although the hydraulic operation is more complex than the jack hanner, it certainly would not be

4/ Union Ex-1.

as complex as the skid-steer where movement of the machine as well as the use of hydraulics to lower the scoop and set it at the proper level may be done in all one motion. Similarly, the operation of a truck with hydraulics may also involve the simultaneous operation of the truck and hoist. The stump cutter's operation only involves the hydraulics and its associated movement. This is not sufficient to bring the stump cutter in the heavy equipment category.

Even considering the hydraulics and safety concerns, the stump cutter is not fundamentally comparable to the heavy and specialized automotive equipment assigned exclusively to the Heavy Equipment Operator. Therefore, the undersigned finds that the City had a rationale basis for designating the stump cutter as light equipment and did not act in bad faith nor was it arbitrary and capricious when it assigned the operation of the stump cutter to the Light Equipment operator. Consequently, the City did not violate the parties' agreement by such assignment.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 17th day of October, 1990.

By Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator