

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 DRIVERS, WAREHOUSE AND DAIRY EMPLOYEES :  
 UNION LOCAL NO. 75 : Case 228  
 : No. 47513  
 and : MA-7292  
 :  
 CITY OF GREEN BAY (WATER COMMISSION) :  
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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C.,  
 Attorneys at Law, 1555 North Rivercenter Drive, Suite  
 202, Milwaukee, Wisconsin 53212, by  
Ms. Marianne Goldstein Robbins, appearing on behalf of  
 the Union.

Warpinski & Vande Castle, S.C., Attorneys at Law, 303 South  
 Jefferson Street, Green Bay, Wisconsin 54305-0993, by  
Mr. Mark A. Warpinski, appearing on behalf of the  
 Employer.

ARBITRATION AWARD

Drivers, Warehouse and Dairy Employees Union Local No. 75,  
 hereafter the Union, and City of Green Bay Water Commission,  
 hereafter the Employer or Commission, are parties to a collective  
 bargaining agreement which provides for the final and binding  
 arbitration of grievances arising thereunder. The Union, with the  
 concurrence of the Employer, requested the Wisconsin Employment  
 Relations Commission (WERC) to appoint a staff member as a single,  
 impartial arbitrator, to resolve the instant grievance. On  
 July 21, 1992, the WERC appointed Coleen A. Burns, a member of its  
 staff, as impartial arbitrator to resolve the instant dispute.  
 Hearing was held on September 23, 1992. The hearing was  
 transcribed and the record was closed on February 11, 1993, upon  
 receipt of written argument.

ISSUE:

The Union frames the issue as follows:

Did the Commission violate the parties'  
 bargaining agreement when it redesignated the  
 position of Maintenance Mechanic  
 Helper/Outside Crew Maintenance Man to the  
 designation Mechanic and at the same time  
 reduce the hourly rate and alter the hours of  
 the position?  
 If so, what is the appropriate remedy?

The Employer frames the issue as follows:

Did the Employer violate the collective bargaining agreement of the parties when it discontinued the position of Maintenance Mechanic Helper/Outside Crew Maintenance Man and thereafter created the position of Vehicle Maintenance Technician with different hours and a different rate of pay?

If so, what is the remedy?

The undersigned frames the issues as follows:

1. Did the Employer violate the collective bargaining agreement when the Employer discontinued the position of Maintenance Mechanic Helper/Outside Crew Maintenance Man and created the position of Vehicle Maintenance Technician (G-8) with a rate of pay which differed from that of the position of Maintenance Mechanic Helper/Outside Crew Maintenance Man?

2. Did the Employer violate the collective bargaining agreement when the Employer unilaterally assigned Thomas Christoff, the employe occupying the position of Vehicle Maintenance Technician (G-8), to the regular work week of 7:00 a.m. to 3:30 p.m.?

3. If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS:

ARTICLE 3. WORK WEEK

Salary Schedule. The classifications and wage rates to be paid employees covered by this Agreement are set forth in 'Exhibit A', annexed hereto and made a part hereof and shall remain in effect for the life of this Agreement.

The regular work week for all employees other than the filtering plant and pumping station, maintenance personnel, meter repairperson, and mechanics shall be 8:00 AM to 4:00 PM, eight (8) hours per day and forty (40) hours per week. Time and one-half (1 1/2) shall be paid for all hours worked in excess of the regular shifts scheduled, and/or forty (40) hours per

week, whichever is the greater, but not both. An employee entitled to overtime pay shall be required to turn in a claim for such.

The regular work week for maintenance personnel, meter repairperson, pumping equipment operator, mechanics shall be 7:00 AM to 3:00 PM. The regular work week for the Chief Meter Reader and Customer Service Man II shall be 8:00 AM to 4:00 PM. Time and one-half (1 1/2) shall be paid for all hours worked in excess of the regular shifts scheduled and/or forty (40) hours per week, whichever is the greater, but not both.

An employee entitled to overtime pay shall be required to turn in a claim for such.

The work schedules established by this section shall remain in effect unless changed by mutual agreement of the parties.

The regular work week at the filter plant shall be from 12:01 AM Sunday through 12:00 PM Saturday, guaranteed forty (40) hours per week, eight (8) hours per day.

Time and one-half (1 1/2) shall be paid for all hours worked in excess of eight (8) hours per day or forty (40) hours per week, whichever is greater, but not both. Employees shall be paid time and one-half (1 1/2) the hourly rate for the sixth (6th) day and two (2) times the hourly rate for the seventh (7th) day when on a five (5) day work schedule. Employees shall be paid time and one-half (1 1/2) the hourly rate for the seventh (7th) day and two (2) times the hourly rate for the eighth (8th) day when on a six (6) day work schedule.

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SCHEDULE A  
SALARY SCHEDULE

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CLASSIFICATION OF WORK	1-1-91	1-1-92	1-1-93
Maintenance Mechanic Helper/ Outside Crew Maintenance Man	13.1513.69	14.18	

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BACKGROUND:

In 1981, the Employer posted the following:

GREEN BAY WATER DEPARTMENT

The job title of Maintenance Mechanic (part time) has been eliminated and will be replaced by the following job title:

JOB TITLE: Maintenance Mechanic Helper/Outside Crew Maintenance Man

JOB DUTIES: Under supervision, to perform maintenance on vehicles, equipment, and perform various construction and maintenance work; and to perform related work as required.

EXAMPLES:

As Maintenance Mechanic Helper:

- 1) Repairs and maintains trucks, cars, digging equipment, air compressors, thawing machines, ditch pumps, and other related equipment

As Outside Crew Maintenance Man:

- 1) Drives truck
- 2) Operates Hydrocrane, backhoe, ditch pumps, air compressors, and other related equipment
- 3) Make pipe joints
- 4) Make taps
- 5) Lay water mains and services
- 6) Inspects hydrants
- 7) Makes repairs on water mains, services, and hydrants

QUALIFICATIONS:

- 1) Knowledge of the standard

practices, equipment,  
tools, hazards, and  
safety precautions of the  
automotive trade,  
construction, and  
maintenance field

- 2) Knowledge of the principles of gasoline and diesel engines and ability to make repairs
- 3) Skill in diagnosing defective equipment
- 4) Ability to understand and follow oral and written instructions

DESIRABLE TRAINING AND EXPERIENCE:

- 1) Must have current Wisconsin driver's license
- 2) Experience in automotive maintenance and repair - both gas and diesel engines

SALARY: \$8.14/hour AFTER PROBATIONARY PERIOD:  
\$8.39

The Maintenance Mechanic (part time) position had been occupied by a student, who performed minor maintenance and repair, e.g., changing oil and lights. As of June, 1981, the Maintenance Mechanic (part time) position had an hourly wage rate of \$5.08.

The Maintenance Mechanic Helper/Outside Crew Maintenance Man position posted in 1981 was a bid position and was awarded to Benny Blondheim. At the time that he was awarded the Maintenance Mechanic Helper/Outside Crew Maintenance Man position, Blondheim worked at the filter plant. Previously, Blondheim had worked as an Outside Crew Maintenance Man.

During his tenure as Maintenance Mechanic Helper/Outside Crew Maintenance Man, Blondheim devoted the majority of his work time to Maintenance Mechanic Helper duties. Due to a lack of physical strength, Blondheim could not perform all of the duties of the Outside Crew Maintenance Man. Blondheim worked in the Maintenance Mechanic Helper/Outside Crew Maintenance Man position until 1986.

On June 18, 1986, the Employer posted the following:

SUBJECT: Job Opening

JOB TITLE: Maintenance  
Mechanic/Outside  
Crew  
Maintenance Man

JOB DUTIES: Under  
supervision, to  
perform  
maintenance on  
vehicles,  
equipment, and  
perform various  
construction  
and maintenance  
work, and other  
related work as  
required.

EXAMPLES:

As Maintenance Mechanic Helper:

- 1) Repairs and maintains trucks, cars, digging equipment, air compressors, thawing machines, ditch pumps, and other related equipment

As Outside Crew Maintenance Man: (Note: Successful  
signer will be last  
on the outside crew  
seniority list-for  
overtime call in.)

- 1) Drives trucks, operates backhoe, ditch pumps, air compressor, hydrocrane and other related equipment.
- 2) Makes taps for water services
- 3) Installs water mains
- 4) Makes repairs to water mains, services, hydrants, and valves
- 5) General maintenance to buildings and grounds

QUALIFICATIONS:

- 1) Knowledge of standard practices, equipment, tools, hazards, and safety precautions of the automotive trade, construction, and maintenance field
- 2) Knowledge of the principles of gasoline and diesel engines and ability to make repairs
- 3) Skill in diagnosing defective equipment
- 4) Ability to understand and follow oral and written instructions
- 5) Must have current Wisconsin driver's license

SALARY: Probationary period: \$10.88 per hour  
After probationary period: \$11.13 per hour

While the position posted in 1986 carried the title of Maintenance Mechanic/Outside Crew Maintenance Man, the position continued to be referred to as Maintenance Mechanic Helper/Outside Crew Maintenance Man. The position posted in 1986 was a bid position which was awarded to Lloyd Cota.

Cota, unlike Blondheim, could perform all of the work of the Outside Crew Maintenance Man. While Cota was in the position of Maintenance Mechanic Helper/Outside Crew Maintenance Man, he also posted for and received the position of Lead Worker. Cota was eligible to post for the Lead Worker position because of his Outside Crew Maintenance Man skills. 1/

During Cota's tenure as Maintenance Mechanic Helper/Outside Crew Maintenance Man, Cota devoted no more than one per-cent of his work time to the performance of Outside Crew Maintenance Man duties. Cota continued in the position through January of 1992.

In February, 1992, the Employer provided the Union with a copy of the following:

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1/ The Lead Worker position was posted on an annual basis and was awarded to qualified employes on the basis of seniority. The Lead Worker worked with crews of outside contractors who installed and repaired the Utility's distribution system. The employe occupying the position of Lead Worker needed to have extensive knowledge in all areas of distribution system maintenance. The undersigned does not consider work performed as Lead Worker to be work performed in the Maintenance Mechanic Helper/Outside Crew Maintenance Man classification.

NOTICE

Discontinuation of Maintenance  
Mechanic/Outside Crew Maintenance  
Man

The position of Maintenance  
Mechanic/Outside Crew Maintenance  
Man is discontinued. An additional  
position in the vehicle and  
equipment maintenance section will  
be added.

The Employer provided the Union with the following:

SUBJECT: Job Posting

JOB TITLE: Mechanic

JOB DESCRIPTION: Under general supervision, to perform varied maintenance, repair, and modification work on Water Utility vehicles and equipment. Also to perform general shop and plant maintenance, including the custom fabricating of tools and equipment, and other related work as required.

EXAMPLES OF DUTIES:

- 1) Complete hydraulic, air, and mechanical brake system maintenance and repair
- 2) Automatic transmission maintenance, including removal, repair, and reinstallation
- 3) Manual transmission removal, repair, reinstallation, and clutch repair and replacement
- 4) Repair or replacement of tie rod ends, pitman arms, idler arms, steering gear boxes, and power steering pumps
- 5) Complete suspension repair
- 6) Complete differential and driveline repair
- 7) Complete engine maintenance
- 8) Engine removal, disassembly, assembly, and installation
- 9) Complete electrical and lighting repair



- 10) Electronic systems diagnosis and repair utilizing diagnostic computer
- 11) Heating, ventilating, and air conditioning system maintenance and repair
- 12) Cooling system maintenance and repair
- 13) Hydraulic system maintenance and repair
- 14) Exterior and interior panel and trim adjustment, replacement, and minor repair
- 15) Minor paint touchup
- 16) Small equipment maintenance and repair
- 17) Metal fabrication and welding
- 18) General shop maintenance

QUALIFICATIONS:

- 1) Vocational diploma in Automotive Mechanics from Northeast Wisconsin Technical College or equivalent from another institution and three years experience in related field; equivalent combination of training and experience without a diploma will be considered
- 2) Considerable knowledge of and experience in maintenance and repair of heavy equipment, including diesel engines, air brakes, and hydraulic systems
- 3) Working knowledge of methods, techniques, equipment, and materials used in metal fabrication and welding
- 4) Ability to understand and follow oral and written instructions
- 5) Good communication and record keeping skills
- 6) Valid Commercial Driver's License (must be obtained by end of probationary period)
- 7) Ability to establish and maintain good public relations
- 8) High school diploma or equivalent

SPECIAL NOTE:

The standard forty hour workweek is Monday through Friday from 7:00 a.m. until 3:30 p.m., including two paid fifteen minute break periods and a thirty minute nonpaid lunch period. To coordinate maintenance and repair needs with needs for vehicle and equipment use, it will at times be necessary to vary the standard start and stop time. This is to be considered routine to this position; no extra compensation is provided for this variation.

DATE AVAILABLE: Immediate

HOURLY WAGE RATE: During probationary period -  
\$12.60 per hour  
After probationary period - \$13.27 per  
hour

PROBATIONARY PERIOD: Thirty days

The Union and the Employer met on March 20, 1992 to discuss the proposed position of Mechanic. By a letter dated March 24, 1992, Union Representative Williquette advised Employer Representative Bill Nabek that it did not believe that the Employer had assigned a fair rate of pay to the proposed position and provided an example which illustrated that the wage rate of \$13.27 per hour being offered by the Employer did not compare to the in-place G8, the position which the Employer had argued was comparable to the new position. The Union further advised the Employer that the Union was opposed to any variation in the hours of work without paying overtime per the contract.

By a letter dated March 26, 1992, Employer Representative Bill Nabek explained how it used the G8 position to arrive at the rate of \$13.27 per hour and further advised the Union as follows:

In this position, it will at times be necessary to vary the start and stop times by up to 2 hours with respect to the regular working hours, as we have discussed. These variations will not normally require any more than the standard 8 hours. Of course, if extra time is required, it will be handled in the same manner as any other overtime.

By a letter dated April 1, 1992, Union Representative Williquette recalculated the comparison between the new position and the DPW G8 position and advised Employer Representative Bill Nabek, inter alia, as follows:

As you can see, the consistency in the spread between the Utility and the DPW is approximately 2.9 percent. Based on this fact and the fact that the duties and qualifications listed on the new mechanic posting, as compared to the prior posting and the head mechanic posting, this position will require extensive training, knowledge and qualifications.

We also maintain that any variation in the hours for this position should be paid through

overtime.

Following a further exchange of correspondence, the parties were unable to agree upon the wage and work hours of the proposed Mechanic position. By a letter dated April 22, 1992, Employer Representative Bill Nabek advised Union Representative Williquette as follows:

We have received your final offer for the proposed new position in our Utility.

In the past, as your records show, and at the insistence of previous representatives of Local No. 75, we have established the rate of pay for new positions at equality with the comparable municipal positions. From our standpoint, that means that our rates would equate to comparable positions in the City Department of Public Works.

For our position of mechanic, the comparable is the Department of Public Works' G8, senior mechanic, and as the job descriptions are identical, the pay rate should be identical. You will recall that this application of the job description was made by you.

Therefore, we will establish the position of mechanic within our table of organization at a pay rate of \$13.27 and will fill said position per the procedures of our current labor agreement. We are, of course, ready to bargain all effects of this posting, but note that since you have already established a final offer, said final offer would be your position in an interest arbitration that would ensue, presuming, of course, that you have made all preliminary arrangements as required by Section 111.70-.77 of the Wisconsin Statutes.

Thank you for your attention to this matter and the making of your recent proposal.

On April 29, 1992, the Union filed a grievance with the Employer which alleged as follows:

The Employer has posted a job with a lessor rate of pay than stated in the agreement. The Employer has also posted the hours and varied

them, which is indifferent to the contract.

In May of 1992, the Employer posted the following:

SUBJECT: Job Posting

JOB TITLE: Vehicle Maintenance Technician (G-8)

JOB DESCRIPTION: Under general supervision, to perform varied maintenance, repair, and modification work on Water Utility vehicles and equipment. Also to perform other related work as required.

EXAMPLES OF DUTIES:

- 1) Complete hydraulic, air, and mechanical brake system maintenance and repair
- 2) Automatic transmission maintenance, including removal, repair, and reinstallation
- 3) Manual transmission removal, repair, reinstallation, and clutch repair and replacement
- 4) Repair or replacement of tie rod ends, pitman arms, idler arms, steering gear boxes, and power steering pumps
- 5) Complete suspension repair
- 6) Complete differential and driveline repair
- 7) Complete engine maintenance
- 8) Engine removal, disassembly, assembly, and installation
- 9) Complete electrical and lighting repair
- 10) Electronic systems diagnosis and repair utilizing diagnostic computer
- 11) Heating, ventilating, and air conditioning system maintenance and repair
- 12) Cooling system maintenance and repair
- 13) Hydraulic system maintenance and repair
- 14) Exterior and interior panel and trim adjustment, replacement, and minor repair
- 15) Minor paint touchup
- 16) Small equipment maintenance and repair
- 17) Metal fabrication and welding
- 18) General shop maintenance

QUALIFICATIONS:

- 1) Vocational diploma in Automotive Mechanics

from Northeast Wisconsin Technical College or equivalent from another institution and three years experience in related field; equivalent combination of training and experience without a diploma will be considered

- 2) Considerable knowledge of and experience in maintenance and repair of heavy equipment, including diesel engines, air brakes, and hydraulic systems
- 3) Working knowledge of methods, techniques, equipment, and materials used in metal fabrication and welding
- 4) Ability to understand and follow oral and written instructions
- 5) Good communication and record keeping skills
- 6) Valid Commercial Driver's License (must be obtained by end of probationary period)
- 7) Ability to establish and maintain good public relations
- 8) High school diploma or equivalent
- 9) Residency in City of Green Bay

SPECIAL NOTE:

The standard forty hour workweek is Monday through Friday from 7:00 a.m. until 3:30 p.m., including two paid fifteen minute break periods and a thirty minute nonpaid lunch period. To coordinate maintenance and repair needs with needs for vehicle and equipment use, it will at times be necessary to vary the standard start and stop time. This is to be considered routine to this position; no extra compensation is provided for this variation.

DATE AVAILABLE: Immediate

HOURLY WAGE RATE: During probationary period -  
\$13.02 per hour  
After probationary period - \$13.27 per  
hour

PROBATIONARY PERIOD: Thirty days

NOTE: This job posting is contingent upon agreement with Teamsters Local No. 75 Union. Upon agreement, any compensation variances will be retroactive to the start

date in this position.

If interested, please sign below before May 5, 1992 at  
4:30 p.m.

Tom Christoff was hired into this position on July 6, 1992. Prior to assuming this position, Christoff was employed as lead mechanic for the Department of Public Works. The grievance was denied by the Employer, and thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES:

Union

The Employer violated the collective bargaining agreement when it redesignated the position of Maintenance Mechanic Helper/Outside Crew Maintenance to the designation of Mechanic and at the same time, reduced the hourly rate and altered the hours of the position. The workload and duties of the Maintenance Mechanic Helper/Outside Crew Maintenance Man position as compared to that of the Mechanic position are not sufficiently different to warrant a decrease in the wage rate.

As Utility has acknowledged, ninety-nine percent of the prior job involved the work of Maintenance Mechanic. The redesignated job also involves more than ninety percent Maintenance Mechanic work. Contrary to the argument of the Employer, the Mechanic continues to perform some of the duties of the Outside Crew employes, as did the Mechanic Maintenance Helper/Outside Crew Maintenance Man.

Assuming arguendo, that the Mechanic does not perform any Outside Crew work, the Employer's unilateral reduction of wages for the position violates the contract because the position, as negotiated, involves virtually no outside work. During the negotiations for the current contract, the Employer stated that it would not increase the wage rate for Mechanic Maintenance Helper/

Outside Crew Maintenance Man position in the same manner as the Outside Crew employes because the Mechanic Maintenance Helper/Outside Crew Maintenance employe only performed Outside Crew duties one percent of the time.

The Employer argues that the prior designation for the Maintenance Mechanic/Outside Crew member was in reality a red circle job especially created for the first incumbent, Ben Blondheim. However, Blondheim obtained the job in 1981, years before he became ill, in response to a need for more staff in the mechanics shop. Moreover, the job was re-posted, without reevaluation, at the contractual rate, after Blondheim passed away.

Somewhat contradictorily, the Employer argues that the ability to perform outside work justified a higher level of pay for the combined designation than for the current designation of Mechanic. In point of fact, the rate for the jointly designated job, Mechanic Helper/Outside Crew, was below, not above, the rate for Mechanic which existed prior to 1987. Thus, the change in moving from Mechanic Helper/Outside Crew Mechanic to Mechanic certainly does not warrant a reduction in the wage rate. Moreover, the new Mechanic position has the added requirement that the employe have an associate degree in auto mechanics and the job description for the Mechanic position is more elaborate than that of the Mechanic Maintenance Helper/Outside Crew Maintenance Man position. If any wage adjustment was to be made, it should have been an increase.

The Employer's assertion that there was a material and substantial difference between the present Mechanic position and the former Maintenance Mechanic Helper/Outside Crew Maintenance Man position because "the previous occupant of the hybrid position was permitted to bid on the lead workers job" is a gross oversimplification and misstatement of the facts in this case. As the record establishes, the Lead Worker position involved a separate job posting which lasted temporarily and was offered on an annual basis. The Lead Worker position was not a part of the hybrid position in the Mechanics Shop.

The Employer relies upon an exchange of correspondence between the parties which occurred prior to the time that the redesignated position was posted in May. This correspondence compares the redesignated job to that of a Department of Public Works (DPW) Mechanic. While this correspondence may be relevant in an interest arbitration proceeding, the correspondence has no relevance to the issue before the arbitrator.

Contrary to the claim of the Employer, the Union's position in this early correspondence was not that the wage rate should be

that attributable to the DPW Mechanic, but rather that it should remain at the level of the pre-existing job, and above the rate of a new DPW Mechanic by the same proportion. Moreover, this correspondence occurred prior to the time that the Union had an opportunity to observe the extent to which the redesignated job mirrored and/or surpassed the job under its prior designation. When Tom Christoff was hired, it became evident to the Union that the job was basically the former Mechanic Maintenance Helper/Outside Crew Maintenance Man position with, if anything, enhanced responsibility.

The previously designated Maintenance Mechanic Helper/Outside Crew position and other shop positions have a contractually established work day of 7:00 a.m. to 3:00 p.m., which can only be altered by mutual agreement. The past practice of the parties in making schedule changes demonstrates the meaning of this provision. The Employer cannot avoid its contractual obligation by renaming the position from Mechanic to Vehicle Maintenance Technician. Christoff is entitled to overtime compensation for all time worked in excess of his contractual hours.

In remedy of the Employer's contract violation, Tom Christoff should be compensated at the rate provided for in the contract and for all unpaid overtime due to the Employer's wrongful adjustment of regularly scheduled hours for the position. His schedule should be returned to 7:00 a.m. to 3:00 p.m. unless altered by mutual agreement.

#### Employer

The Employer acknowledges that if the newly created position is merely a recasting of the old "hybrid" position, then the Employer must fail in this grievance. Likewise, if this is the same job under a different heading, then the hours of work for the "hybrid" position would remain the same for the new position. However, if there has been a substantial change in the position, it must be conceded that management has a right to negotiate a different wage rate and to establish a different starting time, while adhering to the contractual language regarding the number of hours that can be worked within the day without receiving extra compensation for overtime work.

When comparing the job description of the "hybrid" position and the newly created position, noticeably lacking is the responsibility for the installation of water mains and the making of repairs to water main services, hydrants and valves. The Utility's General Manager and Paul Pavlik, one of the Utility's supervisors, testified that, in their opinion, there was a



substantial difference between the two positions and that to work on the outside crew laying water mains and installing fire hydrants was a significant difference between the "hybrid" position and the newly created position.

The Union's witness, Curtis Rice, conceded that the employee occupying the newly created position has not gone out and inspected, operated and repaired hydrants and water valves and has not gone out and installed water mains and laterals. Curtis Rice further conceded that these are significant duties of the maintenance person or the outside crew person, and that the new job description doesn't require the performance of these duties. Furthermore, Rice conceded that the duties of the "hybrid" position, as described in Employer's Exhibit 13 at lines 1 and 3 were significant.

The substantial and material difference between the two positions is also supported by the fact that the previous occupant of the "hybrid" position was permitted to bid on the Lead Worker's job. The Lead Worker was required to supervise and inspect the work of the water main installation and emergency repair work done by special contracts. Uncontroverted testimony establishes that the occupant of the "hybrid" position would not have been permitted to bid for this Lead Worker's job, but for the fact that the incumbent held the "hybrid" position.

The Employer maintains that the only reason for the higher rate of pay accorded to the "hybrid" position was the expectation that the occupant of that position would be called out, albeit infrequently, to perform the duties of the outside crew. If these outside crew duties are eliminated, there has been a material and substantial change in the position.

In 1981, there was a part-time maintenance position at the Green Bay Water Utility. The hours of work for that job were expanded, but the Mechanics' duties were not, except in one important way, i.e., the occupant of the position was also required to work with the outside crew and be conversant in the installation of water mains and their repair. From time to time, the occupant of this expanded position was required to supervise outside crew construction work. This additional work is what commanded the higher rate of pay. By adding the outside crew duties to the maintenance workers position, the Water Utility significantly altered the position of Maintenance Worker. Logic dictates that by eliminating that function, there has been a correspondingly significant reduction in the position.

The newly created position occupied by Tom Christoff is materially and substantially different than the "hybrid" position which was discontinued by the Employer. Management has the

prerogative to create the new position and management has complied with all of the contractual requirements in creating the new position. The Union's grievance is without merit and should be dismissed.

DISCUSSION:

The Union does not argue that the Employer may not abolish or create job positions. Rather, the Union argues that the Employer did not abolish a position and create a new position in the present case because the Vehicle Maintenance Technician (G-8) position posted in May of 1992 is essentially the same position as the Maintenance Mechanic Helper/Outside Crew Maintenance Man position which had been occupied by Lloyd Cota. The Union maintains, therefore, that the employe occupying the position of Vehicle Maintenance Technician (G-8) is entitled to receive the contractual wage rate of the Maintenance Mechanic Helper/Outside Crew Maintenance Man. The Union further maintains that the employe occupying the position of Vehicle Maintenance Technician (G-8) is contractually entitled to work the hours of the Maintenance Mechanic Helper/Outside Crew Maintenance Man, unless these hours are altered by mutual agreement.

Comparison of the Maintenance Mechanic Helper/Outside Crew Maintenance Man Position to the Vehicle Maintenance Technician (G-8) Position

The position of Maintenance Mechanic Helper/Outside Crew Maintenance Man was created in 1981. As a review of the 1981 position description reveals, the occupant of the position was required to be qualified to perform Maintenance Mechanic Helper duties, as well as Outside Crew Maintenance Man duties. Additionally, the occupant of the position could be assigned Maintenance Mechanic Helper work or Outside Crew Maintenance Man work, as required by the Employer.

When the position was posted in 1986, there were some changes in the position description. However, the occupant of the position was required to be qualified to perform Maintenance Mechanic Helper duties, as well as Outside Crew Maintenance Man duties. Additionally, the occupant of the position could be assigned Maintenance Mechanic Helper work or Outside Crew Maintenance Man work, as required by the Employer.

The Vehicle Maintenance Technician (G-8) position which was posted in May of 1992 and awarded to Tom Christoff did not require the occupant of the position to be qualified to perform the Outside Crew Maintenance Man work which had been performed by Blondheim and Cota. Nor did it provide the Employer with the

right to assign Christoff to the Outside Crew Maintenance Man duties performed by Blondheim and Cota.

It is not evident that Christoff has been asked to perform the Outside Crew Maintenance Man work which had been performed by Blondheim and Cota. To be sure, Christoff did unload anthracite coal at the filter plant. While the Union claims that the unloading of anthracite coal is the work of the Outside Crew Maintenance Man, this claim was not proven at hearing. Nor is it evident that Christoff performed the work of the Outside Crew Maintenance Man when he inspected the doors on the settling basins to design a lock system and seal gaps, or when he designed and/or fabricated a lock system.

The Vehicle Maintenance Technician (G-8) position also differs from the Maintenance Mechanic Helper/Outside Crew Maintenance Man position in that the former contains a much more expansive list of mechanic duties. Given the testimony at hearing, the undersigned is persuaded that the vehicle and equipment maintenance and repair duties of the Vehicle Maintenance Technician (G-8) are more complex and require more skill than those which were performed by the Maintenance Mechanic Helper/Outside Crew Maintenance Man.

Given the difference in the complexity of the vehicle and equipment maintenance and repair duties, it is not surprising that the Vehicle Maintenance Technician (G-8) position differs from the Maintenance Mechanic Helper/Outside Crew Maintenance Man position on the basis of the qualifications needed to perform the mechanic duties associated with the position. For example, the Vehicle Maintenance Technician (G-8) position, unlike the Maintenance Mechanic Helper/Outside Crew Maintenance Man position, requires a Vocational diploma in Automotive Mechanics from Northeast Wisconsin Technical College or equivalent from another institution and three years experience in related field; equivalent combination of training and experience without a diploma will be considered; considerable knowledge of and experience in maintenance and repair of heavy equipment, including diesel engines, air brakes, and hydraulic systems and working knowledge of methods, techniques, equipment, and materials used in metal fabrication and welding.

William Nabak, who is currently the General Manager of the Utility, recalls that the Maintenance Mechanic Helper/Outside Crew Maintenance Man position was created in 1981 to provide work for Benny Blondheim because Blondheim lacked the physical strength to perform many of the duties of the Outside Crew Maintenance Man. Nabak's testimony on this point was disputed by Head Mechanic Norbert Van Lieshout. Regardless of the rationale underlying the creation of the Maintenance Mechanic Helper/Outside Crew

Maintenance Man position, it is evident that since the creation of the Maintenance Mechanic Helper/Outside Crew Maintenance Man position, the employe occupying the position has devoted the vast majority of his work time to performing the work of a Maintenance Mechanic Helper. Thus, as the Union argues, the deletion of the Outside Crew Maintenance Man duties from the position of Maintenance Mechanic Helper/Outside Crew Maintenance Man would not result in a significant change in the actual work performed by the Maintenance Mechanic Helper/Outside Crew Maintenance Man. The undersigned is persuaded, however, that the deletion of the Outside Crew Maintenance Man work from the Maintenance Mechanic Helper/Outside Crew Maintenance Man position would significantly alter the qualifications which would be needed for the position, as well as significantly alter the kind of work which could be assigned to the position. 2/

In summary, the undersigned is persuaded that there are significant and material differences between the duties and qualifications of the position of Vehicle Maintenance Technician (G-8) and the duties and qualifications of the position of Maintenance Mechanic Helper/Outside Crew Maintenance Man. Inasmuch as the Vehicle Maintenance Technician (G-8) position is not essentially the same position as the Maintenance Mechanic Helper/Outside Crew Maintenance Man, the Employer is not contractually obligated to provide the Vehicle Maintenance Technician (G-8) with the rate of pay that was bargained for the Maintenance Mechanic Helper/Outside Crew Maintenance Man.

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2/ During the negotiation of the collective bargaining agreement which is the subject of this dispute, the Employer provided the Outside Crew Maintenance Man position with a greater wage increase than other employes. In denying the Union's request to apply the greater increase to the Maintenance Mechanic Helper/Outside Crew Maintenance Man, the Employer stated that the position did not warrant the greater increase because the Maintenance Mechanic Helper/Outside Crew Maintenance Man did not devote more than one percent of his work time to Outside Crew Maintenance Man work. This fact does not demonstrate that the Outside Crew Maintenance Man duties performed by the Maintenance Mechanic Helper/Outside Crew Maintenance Man were insignificant to the Employer, or that these duties were not a significant factor in establishing the Maintenance Mechanic Helper/Outside Crew Maintenance Man wage rate. Rather, this bargaining history establishes nothing more than that the Employer believed that employes who perform the work of Outside Crew Maintenance Man should be paid more than those who perform the work of the Maintenance Mechanic Helper/Outside Crew Maintenance Man.

## Hours of Work

Having concluded that the Employer is not contractually obligated to provide the Vehicle Maintenance Technician (G-8) with the rate of pay that was bargained for the Maintenance Mechanic Helper/Outside Crew Maintenance Man position, the undersigned turns to the issue of whether or not the Employer violated the collective bargaining agreement by unilaterally assigning the Vehicle Maintenance Technician (G-8) a standard forty hour workweek of "Monday through Friday from 7:00 a.m. until 3:30 p.m., including two paid fifteen minute break periods and a thirty minute nonpaid lunch period".

Employe hours of work are governed by Article 3, Work Week. Under the terms of Article 3, employes other than filter plant employes, work either 8:00 a.m. to 4:00 p.m. or 7:00 a.m. to 3:00 p.m., unless changed by mutual agreement of the parties. (emphasis added)

In the present case, neither party argues and the record does not establish that the Vehicle Maintenance Technician (G-8) is a filter plant employe. The Union argues that, for the purposes of Article 3, the Vehicle Maintenance Technician (G-8) position must be considered to be a "mechanic". Upon comparison of the Vehicle Maintenance Technician (G-8) duties and the duties of the Mechanic position description developed by the Employer 3/, as well as Nabak's letter of April 22, 1992 in which he advised the Union that "we will establish the position of mechanic within out table of organization at a pay rate of \$13.27 . . .", the undersigned agrees. Under the language of Article 3, Paragraph Three, the regular work week of a "mechanic" is 7:00 a.m. to 3:00 p.m.

Giving effect to the language of Article 3, the undersigned is persuaded that the Employer was not contractually entitled to assign the Vehicle Maintenance Technician (G-8) position a regular work week of 7:00 a.m. to 3:00 p.m., unless those hours were mutually agreed to by the parties. The parties to the collective bargaining agreement are the Union and the Employer. In the present case, the Union did not agree to change the hours of the Vehicle Maintenance Technician (G-8) position from 7:00 a.m. to 3:00 p.m. to 7:00 a.m. to 3:30 p.m. Accordingly, the undersigned has concluded that the Employer violated the collective bargaining agreement when it unilaterally assigned Christoff the regular work week of 7:00 a.m. to 3:30 p.m. It is appropriate, therefore, to order the Employer to cease and desist from unilaterally assigning Christoff to the regular work week of 7:00 a.m. to 3:30 p.m. and

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3/ Union Exhibit #3.

to order the Employer to immediately assign Christoff to the regular work week of 7:00 a.m. to 3:00 p.m., unless the Union and the Employer mutually agree to change this regular work week.

As discussed above, the Employer is contractually required to assign Christoff the regular work week of 7:00 a.m. to 3:00 p.m. By assigning Christoff the regular work week of 7:00 a.m. to 3:30 p.m., the Employer caused Christoff to work 1/2 hour in excess of the regular shift which was permitted by the collective bargaining agreement. Paragraph Three of Article 3 expressly provides that "Time and one-half (1 1/2) shall be paid for all hours worked in excess of the regular shifts scheduled . . ." Giving effect to this language, the undersigned concludes that Christoff is contractually entitled to be paid 1/2 hour of overtime for all days in which he was required to work from 7:00 a.m. to 3:30 p.m.

As the Employer argues, Article Three contains a provision which requires the payment of overtime for hours "worked in excess of eight (8) hours per day or forty (40) hours per week". This provision, however, provides an overtime benefit which differs from that required by Paragraph Three of Article 3 and is not controlling herein.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following:

AWARD

1. The Employer did not violate the collective bargaining agreement when the Employer discontinued the position of Maintenance Mechanic Helper/Outside Crew Maintenance Man and created the position of Vehicle Maintenance Technician (G-8) with a rate of pay which differed from that of the position of Maintenance Mechanic Helper/Outside Crew Maintenance Man.

2. The Employer violated the collective bargaining agreement when the Employer unilaterally assigned Thomas Christoff, the employe occupying the position of Vehicle Maintenance Technician (G-8), to the regular work week of 7:00 a.m. to 3:30 p.m.

3. The Employer is to immediately cease and desist from assigning the regular work week of 7:00 a.m. to 3:30 p.m. to Thomas Christoff, the employe occupying the position of Vehicle Maintenance Technician (G-8), and is to immediately assign the regular work week of 7:00 a.m. to 3:00 p.m. to Thomas Christoff, unless the Union and the Employer mutually agree to change this work week.

4. The Employer is to immediately pay Thomas Christoff, the

employee occupying the position of Vehicle Maintenance Technician (G-8), one-half (1/2) hour of overtime at time and one-half for all days in which Christoff was assigned, and worked, 7:00 a.m. to 3:30 p.m.

Dated at Madison, Wisconsin this 10th day of May, 1993.

By Coleen A. Burns /s/  
Coleen A. Burns, Arbitrator