

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 SUPERIOR CITY EMPLOYEES UNION :
 LOCAL 244, AFSCME, AFL-CIO : Case 115
 : No. 49420
 and : MA-7843
 :
 CITY OF SUPERIOR :
 :

Appearances:

Mr. James Mattson, District Representative, Wisconsin Council
 40, AFSCME, AFL-CIO, appearing on behalf of the Union.
Mr. Thomas N. Hayden, City Attorney, appearing on behalf of
 the Employer.

ARBITRATION AWARD

The Employer and Union above are parties to a 1991-93 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve a grievance filed by the Union on behalf of all mechanics, concerning the assignment of mechanic work at the golf course.

The undersigned was appointed and held a hearing on December 8, 1993 in Superior, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on February 14, 1993.

ISSUES:

The parties stipulated to the following:

1. Did the Employer violate the terms of the collective bargaining agreement by not posting the mechanic's position at the municipal golf course?
2. If so, what is the remedy?

RELEVANT CONTRACTUAL PROVISIONS:

ARTICLE 8 - PROMOTION

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8.02 Employees of local 244 may exercise their departmental seniority on a daily basis in bidding for jobs for that day, providing said employees are qualified to fill that particular position in question. Such bidding shall occur after 4:30 P.M. The previous day and before 8:00 a.M. That day, except when the Mayor declares an emergency in which case management reserves the right to assign work assignments without regard to bidding, but according to seniority and classification. Jobs on the paving crews, garage crews and in the sewage disposal plant shall be bid on a weekly basis only, providing further that in the sewage disposal plant, said weekly bumping will only be allowed where there is a qualified replacement available at no additional cost to the City.

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ARTICLE 17 - WORK DAY AND WORK WEEK

It is hereby declared to be the policy of the City of Superior to provide hourly rated employees of the Public Works Department, Park and recreation Department and Equipment Depot forth (40) hours of work each week for fifty-two (52) weeks each year and the City does hereby pledge and promise to do all that is within its power to carry out this policy.

17.01 For all hourly paid employees of the Public Works Department, Equipment Depot and Park and Recreation Department, forty (40) hours shall constitute a normal work week consisting of five (5) eight (8) hour days, Monday through Friday, from 8:00 a.m. to 12:00 noon, and from 12:30 p.m. to 4:30 p.m., with the following exceptions listed below:

A) BACKSHOP: 3:30 p.m. to 7:30 p.m.; 8:00 p.m. to 12:00 midnight; 11:30 p.m. to 3:30 a.m.; 4:00 a.m. to 8:00 a.m.

B) STREET DEPARTMENT: 11:30 p.m. to 3:30 a.m. and 4:00 a.m. to 8:00 a.m., November 15 through April 15. This shift shall be limited to no more than four (4) employees during 1991 and limited to five (5) employees during 1992, 1993, and thereafter.

C) PARK AND RECREATION:

Ball field: Seasonal and temporary maintenance crew shall be excluded from normal workweek and workday.

Outdoor Municipal Rinks: No shift will end later than 10:30 p.m.

D) PUBLIC WORKS: Streetsweeper shift will be agreed upon between the Public Works Director and the employee involved to meet the needs of the service.

E) Other than Saturday and Sunday, rest days may apply to:

1. All outdoor rinks;
2. Municipal Forest Ski Trials, November 15--March 15;
3. Golf Course;
4. Billings Park recreation activities

without penalty payment provisions for Saturday or Sunday work.

F) Summer hours may be implemented upon mutual agreement between the City and the Union.

It is understood that once an employee has permanently been assigned to one of the above shifts he/she shall not be rotated from shift to shift. It is agreed that when the Employer decides to establish a new shift, they will give two (2) weeks notice of their intent unless the union agrees to give such two-week notice.

17.02 There shall be applied a shift differential of thirty cents (\$.30) per hour to all regularly assigned second shifts, and forty-five cents (\$.45) per hour, to all regularly assigned third or night shifts; provided the shift differential with respect to night shifts shall be fifty cents (\$.50) per hour commencing January 1, 1993.

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APPENDIX "A"

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B. Shift differential - \$.30 per hour 2nd shift; \$.45 per hour 3rd shift and night shift; and commencing 1-1-93, \$.50 per hour night shift.

MECHANICS

. . .

3. A mechanic may be assigned to any equipment and shall be paid the rate for the position he/she fills regardless of the type of equipment he/she is assigned to work on.

Mechanics may exercise their seniority on an annual basis in determining shift assignments provided they are qualified.

Annual shift selection shall be made in April, to be effective May 1. Shift selection outside that month shall be granted only for unforeseen and extraordinary circumstances.

DISCUSSION:

The facts are undisputed. For many years, the department has had equipment at the municipal golf course, which requires someone to maintain that equipment during the season. For a long time, employe Bob Gunderson did that work for seven to eight months a year. Gunderson eventually transferred to a different position as an Equipment Operator, and in 1992 the department assigned a Mechanic's Helper to the golf course to replace him. The Union objected to that assignment, and on April 27, 1992, Public Works Director Jeff Vito wrote to Local President Chuck Miller:

In regards to the above dated grievance, it is the City's position that we have not violated any conditions of the Working Agreement. As I indicated to you in a discussion in my office, the reason a mechanic's helper was assigned to the Golf Course this spring, was due to the manpower shortage of mechanics in the Central Equipment Agency.

As several positions have been filled in the CEA recently, it is our intention to assign a mechanic to work at the Golf Course this season and to utilize the mechanic's helper position between the CEA shop and the Golf Course on an "as needed" basis. The mechanic will be assigned to start work on Monday, May

4, 1992.

I hope this addresses your concern in regards to this grievance.

Employee Pat Cleary testified that at the time, the Union's main concern was to resolve the Mechanic's Helper issue, but that the Union also wanted the Mechanic's work posted by seniority. Early in 1993, all employees in the equipment depot signed a request to post the Mechanic position at the golf course for the upcoming season. On January 29, Vito wrote a response to Pat Cleary as Secretary of the Local, as follows:

I have received your request regarding the Golf Course Mechanic's position. You state that members of the Equipment Depot are requesting that this position be posted within your department. Based on the contract language, under Mechanics, Section 3, it is stated that mechanics may be assigned to any equipment and shall be paid the rate for the position he/she fills regardless of the type of equipment he/she is assigned to work on. It is our interpretation that this affords management the right to assign employees to work on the equipment that management feels will best serve the City's operation, therefore, I am denying your request to post this position. At the time the position is to be filled at the Golf Course, the City will make the determination as to who will be assigned to work on the Golf Course equipment.

The Union timely filed the grievance protesting this decision on February 5, 1993. The request made in the grievance was that the job be posted "to afford all Equipment Depot employees a fair chance to bid on it by seniority."

The Union contends that the two pertinent Sections of the collective bargaining agreement are Articles 8.02 and 17.01. The Union argues that Article 17.01 clearly states hours of work for employees in the Equipment Depot, and that the hours worked by the Mechanic at the golf course are different, from 7:00 a.m. to 3:30 p.m. The Union contends that for this reason, as well as because the Mechanic assigned to the golf course works steadily at that assignment for months at a time, this is an identifiable position that is not intended to be governed by Section 3 of the "Mechanic" clause on page 27 of the collective bargaining agreement. Cleary testified that the purpose of that clause was to address a situation in which certain Mechanics had refused to work on specific pieces of equipment, such as garbage trucks. The City did not present any witnesses in rebuttal. The Union argues

that beyond this, Article 8.02 contains "powerful language" in which employes have the right to exercise departmental seniority on a daily basis in bidding for jobs for that day. The Union contends that the principle of seniority is violated by the City's action in insisting on assigning the golf course work at its discretion, and that the contract as a whole is therefore violated. The Union requests that the City be ordered to post the Mechanic position at the golf course.

The City contends that the applicable section of the agreement is Section 3 of the Mechanic clause, and that this language clearly identifies that management has the right to assign employes to work on equipment that management feels will best serve the City's operation. The City contends that the Union is simply dissatisfied with this clause, and that makes the subject an appropriate matter for contract renegotiation, not a grievance.

On review of the language of this agreement as a whole, I conclude that the provision for different working hours at the golf course is, to begin with, not sufficient to identify this work as having identifiable bidding rights independent of all other mechanic work. The Union is in essence arguing that there is such a thing as a position of long-standing that should be posted, for this purpose, even while resting its contention on Section 8.02 of the collective bargaining agreement, which clearly identifies that departmental seniority can be exercised on a daily basis.^{1/} It is clear that there has never been such a thing as daily bidding for the Mechanic position at the golf course. Meanwhile, if Section 8.02 is to be read as applicable to Mechanics' work at all, it would have to be found in direct conflict with Section 3 of the Mechanic clause, which expressly reserves to management the right to assign Mechanics to particular equipment. Since that is the core and soul of the Mechanics' job, Article 8.02 would clearly conflict with Section 3 in allowing Mechanics to bid for "jobs" for each day. The only reasonable interpretation of this conflict is that Section 3 of the Mechanics clause, being specific to Mechanics, constitutes an exception to Article 8.02. While management did not offer witnesses to rebut Cleary's testimony as to the original intent of that clause, the fact remains that the clause is clear and unambiguous on its face. Furthermore, there is no basis in this record for concluding that the slightly different hours of the Mechanic at the golf course justify considering that work to be a "different shift" as referred to in Section 3, because there is no evidence to the effect that the City has ever paid a shift differential for that work, even though specified numbers of cents per hour are required to be paid for the second, third, and night shift under Appendix A, Section B on the same page of the collective

1/ Emphasis added.

bargaining agreement. I can only conclude that for Section 3 of the Mechanic clause not to be read as governing the assignment of work on golf course equipment would require something else to be written into this language which is not present now.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the City did not violate the collective bargaining agreement by not posting the Mechanic's position at the municipal golf course.
2. That the grievance is denied.

Dated at Madison, Wisconsin this 2nd day of June, 1994.

By Christopher Honeyman /s/

Christopher Honeyman, Arbitrator