

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration	:
of a Dispute Between	:
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CITY OF MANITOWOC PUBLIC WORKS	: Case 106
EMPLOYEES, TEAMSTERS LOCAL NO. 75	: No. 50021
	: MA-8129
and	:
	:
CITY OF MANITOWOC	:
(DEPARTMENT OF PUBLIC WORKS)	:
	:

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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys  
Mr. Patrick L. Willis, City Attorney, on behalf of the City of Manitowoc.

at Law

ARBITRATION AWARD

City of Manitowoc Public Works Employees, Teamsters Local No. 75, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and City of Manitowoc, hereinafter the City, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The City subsequently concurred in the request and Mary Jo Schiavoni of the Commission's staff, was designated to arbitrate in the dispute. Due to Ms. Schiavoni's unavailability, the undersigned, David E. Shaw, of the Commission's staff, was subsequently designated to arbitrate in the dispute. A hearing was held before the undersigned on February 16, 1994, in Manitowoc, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by May 10, 1994. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated there were no procedural issues, but could not agree on a statement of the substantive issues.

The Union would state the issues as being:

Whether the City violated Article VII, Section 5 of the collective bargaining agreement when it failed to award overtime to the grievant on the basis of seniority on July 28, 1993, and instead awarded it to an employee with less seniority outside the applicable crew; and, if so, what is an appropriate remedy?

The City suggested the following statement of the issues:

Did the Employer violate Article VII, Section 5 of the Labor Agreement when it assigned the senior member of the Sewer Repair Crew rather than the Grievant, to replace a broken catch basin cover on July 28, 1993? If so, what is the appropriate remedy?

The undersigned concludes that the City's statement of the issues more accurately frames the issues to be decided.

CONTRACT PROVISIONS

The following provisions of the parties' 1992-1994 Agreement are cited:

ARTICLE VII  
SENIORITY

. . .

Section 5. Assignment of Overtime. Except as otherwise provided in this Agreement, overtime shall generally be awarded on the basis of seniority within the applicable crew, bracket or classification. The parties recognize that employees sometimes perform duties outside of their designated crew, bracket or classification in connection with their normal work when their normal work is unavailable, or in emergencies. Such performance shall not be considered a violation of this section, even if overtime is involved.

Those employees working on a job at the end of regularly scheduled hours may be assigned overtime on that job for that day notwithstanding anything to the contrary in this section. The Employer shall endeavor to assign jobs which the Employer knows will result in overtime for that day of the basis of seniority as set forth above.

. . .

ARTICLE XVIII  
MANAGEMENT RIGHTS

Except as provided herein, all rights, privileges and prerogatives previously exercised by the Employer are retained by the Employer.

## BACKGROUND

As part of its responsibilities the City maintains and operates a Department of Public Works and the Union represents the employes in the Department. The employes bid on equipment and perform the job for which the equipment is used. There is a Sewer Maintenance Crew and a Sewer Repair Crew in the Department, also known as the Sewer Trouble Crew and Sewer Construction Crew, respectively.

There are four employes on the Sewer Maintenance Crew, the Grievant, Ray Hubbartt, who drives the "rodder" truck, Terrance Skaarda, who drives the "jetter" truck, and a helper on each truck. The Maintenance Crew spends approximately 90-95% of its time cleaning sanitary sewers and approximately 5% of its time on storm sewers, with most work on the latter in the Fall or when there is a heavy rain. In the normal course of their work, the Maintenance Crew removes sanitary covers to "rod" and "jet" out the sanitary sewers. If a sanitary cover is broken, it is brought to the shop and a good cover is then taken back and put on, and they also tighten covers if needed. If other repair work is needed, the problem is reported and the Repair Crew does that work. If a cover has fallen into the hole, the Maintenance crew will pull it out and put it back.

The Sewer Repair Crew consists of three employes and two trucks. The Repair Crew does all repair work on the sewer lids and keeps an inventory of sewer items. The Crew Leader, and most senior member of the Repair Crew, is Randy Junk. One of the trucks, No. 28, has safety equipment and an air monitoring system on it and that truck must be present at all entries into a confined space of four feet deep or more. Both crews are trained in confined space entry. State code requires that all confined space entries of four feet or deeper must be documented and Junk is responsible for doing that documenting. Both the Maintenance Crew and the Repair Crew will replace defective covers in the normal course of their duties. The Maintenance Crew will clean around covers and replace gaskets, but does not do repairs.

On July 28, 1993, one of the four supervisors in the Department, Jerry Dempski, received a report that a catch basin cover was off. The Sewer Repair Crew was out on an emergency job and Dempski sent the Grievant out at approximately 2:30 p.m. to look at the catch basin and place cones around the area and advise Dempski of what was wrong. The Grievant went to the site and found the cover in the catch basin, broken. He placed cones around the hole and took the broken cover back to the Shop and obtained a new one around 2:55 p.m. The employes' normal shift ends at 3:00 p.m. By this time, the Sewer Repair Crew had returned to the Shop. Instead of sending the Grievant back to the work site with the new cover, Dempski sent Junk. Junk went to the site and inspected it to determine what the problem was. Junk replaced the cover, determined that traffic was going over the edge of the grate of the catch basin due to traffic being detoured. Junk's truck carries tools for repair and cleaning work and Junk used a bar to clean tar off the grate to make the cover fit better. Junk was paid fifteen minutes of overtime for the work.

Hubbartt filed a grievance over his not being sent back out to replace the cover on overtime as the senior employe on the Maintenance Crew, while a less senior employe, Junk, was sent out and paid overtime. The parties attempted, but were unable to resolve their dispute and proceeded to arbitration on the grievance before the undersigned.

## POSITIONS OF THE PARTIES

### Union

The Union notes that the parties agree the nub of the issue in this case is whether the Sewer Maintenance Crew or the Sewer Repair Crew is the

"applicable crew" for the work in question. The Union contends that replacing a catch basin cover where repair work is not needed is the work of the Maintenance Crew. It notes that there is agreement that the parties view the term "maintenance crew" as synonymous with sewer trouble and the term "repair crew" as synonymous with construction crew. Repair work involves construction, while maintenance work involves making minor repairs.

The City conceded that all employees replace catch basin covers in the course of their jobs. While replacing a catch basin cover may sometimes involve construction work, that was not the case in this instance. The supervisor knew at the time he sent Junk out that replacing the cover would not involve construction work, since the Grievant had already diagnosed the problem.

Although some repair work involves replacing manhole covers, that does not make replacing covers repair work in all instances. The Union asserts that in the past the City often used maintenance crew employees to replace manhole or catch basin covers on overtime. Both the Grievant and Skaarda testified that they have been called in on overtime just to replace covers. Both the trucks on the Maintenance Crew are specifically equipped to remove covers and testimony establishes that maintenance employees routinely remove and replace covers.

Regarding the testimony of the supervisors that they call in repair crew employees to replace covers, the Union asserts there is no evidence that those instances involve construction. Further, the supervisors acknowledged that they did not notify the Union of those instances and the Union's witnesses testified they had no knowledge of that happening and would have grieved if they had known.

Finally, the Union contends that it is "common knowledge" that replacing a catch basin cover is maintenance work, not repair work. Moreover, at the time Junk was sent instead of the Grievant, the supervisor was aware there would be no repair work done at the time. The repair work was in fact not done until the next day. The overtime should have gone to the most senior employee on the applicable crew, i.e., the Grievant.

#### City

The City asserts that the issue is not whether the Grievant could have replaced the broken catch basin cover in this instance where other repairs were not needed, it concedes that he had that ability. Rather, the real issue is whether the Repair Crew, which is trained to and does perform repairs on sewer equipment, or the Maintenance Crew, which occasionally replaces broken covers in the course of its work, but whose primary responsibility is to keep sewers clean and running, is the "applicable crew" under Article VIII, Section 5, of the Agreement. The City contends it is the former for the following reasons and that it has attempted to uniformly assign the Repair Crew such work since the clarification to Section 5 was placed in the Agreement in 1992.

First, the nature of the work performed by the Repair Crew, compared to that performed by the Maintenance Crew, makes the former the "applicable crew" to be sent out to replace broken catch basins or manhole covers. The purpose of the Repair Crew is to repair broken sewer facilities, while the purpose of the Maintenance Crew is to ensure that sewer facilities that are not broken function properly. The best example of the work performed by the Maintenance Crew is the removal of debris from the sewers which cause blockages. That crew's job is to maintain sewer facilities, not to replace broken facilities. Conversely, the very function of the Repair Crew is to repair damaged sewer facilities.

Second, while members of both crews have the ability to replace broken

covers with new covers where there are no other problems, broken covers are often symptomatic of more serious problems that can only be assessed and repaired by the Repair Crew, e.g., a cracked housing or the walls of a manhole need repair or replacement. Even the Grievant testified that in cases where he observed a need for more substantial repairs, his crew could not perform them and that the assessment of the damage and its repair had to be done by the Repair Crew. Junk also testified that there were times when he and other members of the Repair Crew perform the repair work at the time they respond to the scene. The Maintenance Crew has neither the training, nor the tools, to do that. When the Department receives a repair call, it does not know at that point the extent of the work needed for the repair and it is the Repair Crew that is capable of diagnosing and handling all types of repair work that may arise.

Third, there is the possibility of a confined space entry. All witnesses admitted that there were times when an employe would have to enter a manhole deeper than four feet to retrieve a broken cover or perform repairs in response to a call. State regulations require that Truck No. 28 from the Repair Crew be present at any confined space entry. Junk, the Repair Crew Leader, is responsible for overseeing the confined space entry program and for filing a report on each such entry. It is not known when a repair call is received whether a confined space entry will be required. Under the Union's position, the Repair Crew would have to be called in after, and in addition to, the Maintenance Crew if a confined space entry was needed. Thus, for purposes of safety and efficiency, these types of calls are more appropriately the domain of the Repair Crew.

Fourth, although members of both crews were called in for this type of repair work in the past, that was due to the ambiguous wording in Article VII, Section 5, which did not specify which "classification" governed for overtime purposes. Since that language was clarified in the parties' 1992 Agreement to specify that overtime is to be assigned to the "applicable crew", three out of the four supervisors in the Department have uniformly assigned such work to the Repair Crew. Even the Grievant testified he had not been assigned such work since July of 1992 (when the current 1992-94 agreement was signed). Although another member of the Maintenance Crew testified he thought he had been called out for this type of work on some occasions, he could not recall being called out by those three supervisors. It was only the Equipment Supervisor who had come up through the ranks as a mechanic and who was not familiar with the work, that on some occasions has called members of the Maintenance Crew since the new Agreement was signed.

Fifth, Article XVIII, Management Rights, in the Agreement provides:

Except as provided herein, all rights, privileges and prerogatives previously exercised by the Employer are retained by the Employer.

The City asserts there is no limiting language in the Agreement prohibiting it from assigning work to the "applicable crew" it determines can most efficiently perform the work. Nothing in Article VII, Section 5, precludes the City from making a good faith determination as to which crew should have primary responsibility for making sewer repairs. The City cites Elkouri and Elkouri, How Arbitration Works, for the principle that arbitrators recognize a broad authority in management, absent clear limitations in the contract, to determine the method of carrying on its operations and to operate on the most efficient basis. 1/ It is more efficient to assign sewer repair work, including broken catch basin covers, to the Repair Crew which is equipped to address all types of repairs.

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1/ 4th Ed., at pp. 480-481.

Lastly, the City asserts that the need for labor peace and certainty is best met by assigning the work in question to the Repair Crew. If it were to start assigning such work to the Maintenance Crew, the members of the Repair Crew would have an even stronger basis for a grievance. Further, while members of the Maintenance Crew may be qualified to handle some of these calls, they clearly are not qualified to handle the others. As noted previously, the extent of the repair work that will be needed is not known when the call is first received and the Repair Crew is capable of handling any type of repair when such a call comes in. The motivation behind clarifying Article VII, Section 5 was to provide greater certainty in the assignment of overtime. It is important that the supervisors have an easily understood method of assigning overtime work as it relates to sewer problems. The City's position in this case permits supervisors to make overtime assignments in an understandable manner and it will assure that Maintenance Crew members are assigned overtime to handle maintenance problems and that Repair Crew members are assigned overtime to deal with repair problems.

#### DISCUSSION

Article VII, Section 5. Assignment of Overtime provides, in relevant part, that "Except as otherwise provided in this Agreement, overtime shall generally be awarded on the basis of seniority within the applicable crew, bracket or classification. . ." Both parties agree that the basic issue in this case is whether the Sewer Maintenance Crew or the Sewer Repair Crew is the "applicable crew" to be called in on overtime to replace broken or missing catch basin covers or manhole covers.

The testimony indicates that members of both crews have been called in on overtime for such work in the past, although management has attempted to assign such work exclusively to the Repair Crew since the current Agreement was signed. There is no indication, however, that the Union was aware of management's action in that regard. Thus, past practice is not of much help in determining the "applicable crew" for such work.

It is the areas of qualifications of the members of the crews and efficiency that are most compelling. There is no dispute that members of the Maintenance Crew are capable of replacing a broken cover with a new cover or retrieving a cover that has fallen in the manhole and putting it back in place. The Grievant also testified that they also will replace the gasket or clear tar off the cover or housing so that the cover fits tighter, but that they only report repairs that are needed beyond that. The evidence indicates that when a call reporting a broken or missing manhole cover comes in, it is generally not known what repairs, if any, may be needed. It is more efficient to send out someone who is capable of performing whatever repairs may be needed in the first place, rather than sending out someone who may only be able to report the problem and then have to call in a member of the Repair Crew as well. Further, if a confined space entry is required to either retrieve the cover or do to the repair work, Truck No. 28 from the Repair Crew must be present.

While Article VII, Section 5, of the Agreement requires that seniority be followed in awarding overtime within the applicable crew, it does not define what is to be considered the "applicable crew". As noted above, there is no consistent practice to help define a crew or classification that has even nominally exclusively performed the work in the past under the old language in Section 5. The City has attempted to establish a practice under the new wording, but the practice cannot be considered binding where the other party was not aware of it. With no defining or otherwise limiting language in the Agreement, and no sufficient past practice to define the parties' intent or understanding, it is left to management to exercise its rights under Article XVIII to determine which crew is to be assigned such work. Management has determined that the Sewer Repair Crew is the "applicable crew" for

responding to reports of damaged, broken or missing manhole or catch basin covers. Based upon the evidence, management has a reasonable basis for its determination. In the end, it simply makes more sense from the standpoint of efficiency of operations to assign members of the Sewer Repair Crew to respond to such calls, if they are available.

In this instance, the Grievant was sent to check out the report when the Repair Crew was not available, however, the Repair Crew was back at the Shop when the Grievant returned to obtain a replacement cover for the broken catch basin cover. Therefore, management acted within its rights, and in accord with Article VII, Section 5 of the Agreement, when it assigned the most senior member of the Sewer Repair Crew, Junk, to go back out with the replacement cover for the catch basin on overtime.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 20th day of July, 1994.

By David E. Shaw /s/  
David E. Shaw, Arbitrator