BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	Case 75 No. 52500 MA-8997
RHINELANDER CITY EMPLOYEES, LOCAL 1226, AFSCME, AFL-CIO	Case 76 No. 52501 MA-8998
and	
CITY OF RHINELANDER (PUBLIC WORKS DEPARTMENT)	Case 77 No. 52502 MA-8999

Appearances:

Mr. David A. Campshure, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Rhinelander City Employees, Local 1226, AFSCME, AFL-CIO.

Mr. Philip I. Parkinson, City Attorney, on behalf of the City of Rhinelander.

ARBITRATION AWARD

Rhinelander City Employees, Local 1226, AFSCME, AFL-CIO, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant disputes between the Union and the City of Rhinelander, 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 the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the disputes. A hearing was held before the undersigned on July 20, 1995, in Rhinelander, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by October 13, 1995. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties could not agree on statements of the issues and agreed the Arbitrator would frame the issues to be decided.

The Union offers the following statements of the issues:

Case 75 No. 52500 MA-8997 (Relief Operator):

> *Did the City violate the parties' Working Agreement when it failed to adjust the Grievant's (Underwood) hourly rate by $0.52 on July 1, 1993 and July 1, 1994? If so, what is the appropriate remedy?*

Case 76 No. 52501 MA-8998 (Lab Technician):

> *Did the City violate the parties' Working Agreement when it failed to adjust the Grievant's (Garrow) hourly rate by $0.52 on July 1, 1993 and July 1, 1994? If so, what is the appropriate remedy?*

Case 77 No. 52502 MA-8999 (Water & Sewer Leadman):

> *Did the City violate the parties' Working Agreement when it failed to adjust the Grievant's (Recha) hourly rate by $0.15 on July 1, 1994? If so, what is the appropriate remedy?*

The City would state the issues in all three cases as follows:

> *Did the City fail to implement the Arbitrator's award properly for the positions in question?*

There is, practically speaking, no difference between the parties' statements of the issues as far as the disputes being submitted to the Arbitrator; however, the Union's statements of the issues are more specific as to the disputes and, therefore, are concluded to better state the issues to be decided in these cases.

CONTRACT PROVISIONS

These disputes concern the parties' 1993-1994 Agreement and the following provisions of that Agreement have been cited:

ARTICLE 4 - NEGOTIATIONS

D. If, after sincere and mutual effort, the parties to this Agreement fail to reach a mutual understanding over the issues involved, both parties shall jointly submit the disputed items to mediation by the WERC. Should the efforts of the

mediator fail to produce an agreement to the disputed items, it shall be submitted to the procedures of Section 111.70 of the Wisconsin Statutes.

. . .

JOB CLASSIFICATION AND SALARY SCHEDULE

A. Each employee covered by the Agreement shall be classified as to job title and paid in accordance with the following wage schedule. The Classification and wages and the present assignments of employees shall be retained until changed by mutual agreement through negotiations as outlined by Article 4 of this Agreement.

. . .

E. Relief Operators at the Waste Treatment Plant shall receive the Operators rate when operating.

. . .

ARTICLE 6 - PERSONNEL PROCEDURES

. . .

C.,5.

When the employer eliminates a position covered by this Agreement, the employee involved shall hold the hourly rate of pay if higher than the rate of pay of the new job he is assigned to.

. . .

BACKGROUND

As noted previously, these disputes involve the parties' 1993-1994 Agreement. The parties were unable to voluntarily settle that Agreement in negotiations and mediation, and proceeded to interest-arbitration pursuant to Sec. 111.70(4)(cm) of the Wisconsin Statutes. 1/

1/ The parties currently have a 1995-1996 Agreement in force and the rates for the positions in question have been resolved in that Agreement. The remaining disputes are with regard

The parties' 1992 Agreement listed the following job classifications with separate wage rates:

HEAVY EQUIPMENT OPERATOR
EQUIPMENT OPERATOR I
EQUIPMENT OPERATOR II
COMMON LABOR
MECHANIC A
MECHANIC B
MECHANIC C
WATER & SEWER LEADMAN I
WATER SYSTEM LEADMAN
WATER METER READER AND METER MAINTENANCE MAN
WATER DISTRIBUTION SYSTEM MAINTENANCE MAN
WASTE TREATMENT PLANT OPERATORS 1 & 2
SEWER COLLECTION SYSTEM LEADMAN
SEWER SYSTEM MAINTENANCE MAN
LAB TECHNICIAN-WASTE TREATMENT PLANT
RELIEF OPERATOR-WASTE TREATMENT PLANT
PARK MAINTENANCE MAN I
PARK MAINTENANCE MAN II
CEMETERY EMPLOYEES
CEMETERY SEXTON
GOLF COURSE ASSISTANT
GOLF COURSE EMPLOYEE

During the negotiations for the 1993-1994 Agreement, the Union had proposed to eliminate the position of "Relief Operator-Waste Treatment Plant" and make it a "Waste Treatment Plant Operator" position. That proposal was rejected by the City. There was also discussion regarding eliminating the position of Water & Sewer Leadman, the title held by Grievant Recha, who was paid at that rate of $10.83 per hour in 1992. The job Recha really performs is that of Sewer Collection System Leadman and the rate for that position was $10.32 per hour in 1992. No one officially held that classification at the time. The individual performing the work of the Water System Leadman position, Brown, was classified as a Heavy Equipment Operator which had the same pay rate as the Water System Leadman until the Interest Arbitration Award. Brown was reclassified as the Water System Leadman. The classifications utilized in the 1993-1994 Agreement were the same as in the 1992 Agreement. 2/

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to back pay under the 1993-1994 Agreement.

2/ The parties did not sign the 1993-1994 Agreement due in large part to the disputes in these

Also during the negotiations for the 1993-1994 Agreement, the Union had proposed upgrades in the rates for a number of classifications in addition to the across-the-board increases, including an additional 52 cents per hour on July 1 of 1993 and 1994 for "Wastewater Operator" and an additional 35 cents per hour on each July 1st for "Sewer Leadman". In the course of negotiations, the City gave the Union costing information which indicated it was costing the impact of the 52 cents per hour upgrade for "Wastewater Operator" on the basis of seven employes receiving that increase. There are seven employes at the Water Treatment plant: 5 Water Treatment Plant Operators I and II, 1 Relief Operator - Water Treatment Plant, and 1 Lab Technician. The City's costing information also costed a 35 cents per hour upgrade for "Sewer Leadman" on the basis of one employe receiving that increase. There was no mention of an upgrade for "Leadman (Water)" in that costing information.

Being unable to settle voluntarily in the course of negotiations and mediation, the parties submitted "final offers" to the Investigator from the Wisconsin Employment Relations Commission which were ultimately the final offers certified to arbitration. Those final offers provided, in relevant part, as follows:

(Union Final Offer)

2. Increase the wage rates of the following positions by the amounts indicated. (the increase described below for 7/1/93 is to be applied to the 1/1/93 rate prior to the 2% increase for 7/1/93 described in #1 above):

		7/1/93	7/1/94
A.	WASTEWATER OPERATOR	$.52	$.52
B.	LEADMAN(WATER)	.45	.45
C.	HVY. EQUIP. (WATER)	.21	.21
D.	SYS. MAINT. (WATER)	.25	.25
E.	METERMAN (WATER)	.43	.43
F.	SEWER LEADMAN	.35	.35
G.	SEWER MAINT.	.30	.30
H.	HVY. EQUIP. (DPW)	.18	.18
I.	EQUIP. OP. I	.11	.11
J.	LABORER	.05	.05
K.	MECHANIC	.18	.18
L.	SEXTON	.18	.18

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grievances before the Arbitrator.

(City Final Offer)

3. Make the following adjustments to the classifications as set out below, effective 7-1-94:

A.	WASTEWATER OPERATOR		$.52
B.	LEADMAN (WATER)		.45
C.	HEAVY EQUIPMENT OPERATOR (WATER)		.21
D.	SYSTEMS MAINTENANCE (WATER)		.25
E.	SEWER LEADMAN	.35	
F.	SEWER MAINTENANCE		.30
G.	HEAVY EQUIPMENT (DPW)		.18
H.	EQUIPMENT OPERATOR I	.11	
I.	MECHANIC		.18
J.	SEXTON		.18

At the arbitration hearing on the 1993-1994 Agreement, the City submitted an exhibit costing out its offer as to the upgrades it was proposing and that exhibit indicated it was costing the upgrades for "Wastewater Operator" on the basis of six employes in that job classification and the upgrade for "Sewer Leadman" on the basis of one employe in that classification. Apparently at that point in the hearing the Union requested a short recess and a discussion ensued outside the hearing room between the officers of Local 1226 and the Staff Representatives representing the Union at the hearing about the change in the number of employes involved in the "Wastewater Operator" classification and the inability of the Union at that point to amend its final offer so as to specifically include the "Lab Technician" classification as receiving the 52 cents per hour upgrades. The Union did not raise the issue of whether the "Lab Technician" was to be included in the upgrades for "Wastewater Operator". Also at hearing, the parties agreed to combine the two Heavy Equipment Operator classifications (Water) and (DPW), into one classification and assign the cents-per-hour adjustment that had been proposed for the (Water) classification. In the course of the hearing, the Union submitted comparability data to support its proposed upgrades for "Sewer Leadman", and that data was included on an exhibit entitled "1992-1994 Wage Rate Comparison Sewer Collection System Leadman".

The Arbitrator in the parties' interest-arbitration on their 1993-1994 Agreement ultimately awarded the Union's final offer on April 2, 1994. In implementing the Award, the City applied the 52 cents per hour upgrades to only the employes actually in the Waste Treatment Plant Operator I and II classification and not to the employe in the Relief Operator position (Underwood), nor to the employe in the Lab Technician position (Garrow). The City did apply the 35 cents per hour upgrades for Sewer Leadman to the Sewer Collection System Leadman

rates, but did not apply it to Recha's pay rate.

Grievances were filed on behalf of the three employes. The parties attempted to resolve these disputes during the course of their negotiations for their 1995-1996 Agreement, but were unsuccessful and proceeded to arbitration before the undersigned.

POSITIONS OF THE PARTIES

Union

With regard to the Relief Operator - Wastewater Treatment Plant position, the Union notes that the real issue is whether that position was included in the Union's final offer for the 1993-1994 Agreement. The Union asserts that it was evident that the Union's intention was to include the Relief Operator in the upgrades for Plant Operators and the City was obviously aware of the Union's intent. While the parties' final offers were not as precise as they should have been, both final offers included a wage adjustment for "Wastewater Operator". While there was no classification by that title in the 1992 Agreement, nor in the 1993-1994 Agreement, the Union's President, John Zatopa, testified that it was clearly the Union's intent to include the Relief Operator, Plant Operator, and Lab Technician classifications within the term "Wastewater Operator" and the City was well aware of that intent. The best evidence with regard to the latter is the City's own costing of the wage adjustments. At the time of the arbitration, there were five Operators, one Relief Operator, and one Lab Technician. During negotiations, the City provided costing data to the Union which listed seven employes under the "Wastewater Operator" classification. Thus, the Union had reason to believe the City also considered the Relief Operator and the Lab Technician classifications included under that title. The Union first became aware that the City had dropped one of the employes from its costing when it submitted the costing exhibit at the interest arbitration hearing indicating six "Wastewater Operators". Zatopa testified that the Union logically assumed that the six employes the City costed included the Relief Operator, but omitted the Lab Technician. The unrefuted testimony of Zatopa, the Relief Operator, Underwood, and the Wastewater Utility Supervisor, Hager, was that the duties of the Relief Operator are the same as that of the Plant Operator and that the Relief Operator is included in the Operator's work schedule of shift rotation. Hager testified that in August of 1992 he had requested that the Relief Operator position be eliminated and an additional Operator position created, since the two positions perform the same duties and work the same schedules. At about the same time, the Union proposed in negotiations that the Relief Operator position be eliminated, however, both Hager's request and the Union's proposal were rejected. The Union does not claim that Underwood should receive Operator wages for 1993-1994, but only that he was entitled to the same adjustment received by the Waste Treatment Plant Operators. The Union also notes that historically the Relief Operator has received 13 cents per hour less than the Waste Treatment Plant Operator, and that having failed to obtain the elimination of the Relief Operator position, it was clearly the Union's intent to at least maintain the 13 cents an hour differential between the

positions. Even Hager acknowledged the Union's intent regarding the Relief Operator position in his letter to the City's Finance, Wage and Salary Committee urging that Underwood receive the adjustments. In conclusion, the Union's intent that the Relief Operator receive the same adjustments as the Plant Operators was evident and was obvious to the City.

With regard to the Lab Technician position, the issue is again whether the position was included in the Union's final offer for the 1993-1994 Agreement. Similar to the Relief Operator position, the evidence that the City was aware of the Union's intent to include the position in the adjustments is the City's own costing data it provided to the Union during negotiations listing seven employes under the "Wastewater Operator" classification. Having reasonably assumed the Lab Technician position was included, it was not until the arbitration hearing that the Union was aware that the City had deleted the position from its costing. It is irrelevant that the Union did not raise that issue with the City or the Interest Arbitrator at the time, since the Union went into the hearing reasonably believing that both parties understood that the seven employes were included in the adjustments for the Wastewater Operator classification. It would be unfair to now penalize the Union and the Grievant because the City chose to surprise the Union at hearing with its revised costing excluding the unspecified employe from the adjustments.

The Union asserts that while one might question why the seemingly dissimilar position of Lab Technician would be included under the proposal for Wastewater Operator, the evidence demonstrates that the positions are interrelated. The Lab Technician must qualify as a Grade IV plant operator, and the Grievant, Garrow, testified he worked as an Operator for more than a year before posting into the newly-created Lab Technician position. The Lab Technician is required to perform Operator duties as needed and the vice-versa is also true. Also, the positions of Plant Operator, Relief Operator and Lab Technician are all under the same supervisor. Historically, the Lab Technician position has made at least five cents per hour more than the Plant Operators, and it would not make sense that the Union would exclude the position from the adjustments, as the result would be that the position would fall significantly behind the Plant Operators' rate. The Union concludes that the fact the City surprised the Union at hearing by submitting revised costing data should not be of any consequence, since the Union's final offer was submitted and certified long before the hearing.

As to the "Water and Sewer Leadman I" position, the Union notes that this grievance differs from the others in that the City properly adjusted the rates for the "Sewer Collection System Leadman" position, but the real issue is whether the parties had an agreement to change the job title of the Grievant, Recha. Zatopa testified the Union believed the parties had reached an agreement during negotiations to eliminate the Water and Sewer Leadman I position and the Union's understanding was that the lone employe in that position, Recha, would be placed in the Sewer Collection System Leadman classification. Thus, the Union proposed the wage adjustments for that position. If the Union did not believe that there was such an agreement, it would not have proposed a wage adjustment for an otherwise vacant classification. Zatopa testified the Union would not consider proposing upgrades for unoccupied positions. That the Union proposed

upgrades for the vacant "Labor" classification is due to it being the position in which all employes begin work in the Department, and the rate for the Golf Course employes is also linked to that wage rate. The City Attorney, Parkinson, testified that during negotiations the parties discussed filling the vacant positions of Sewer Collection System Leadman and Water System Leadman; the former was to be filled by moving Recha from the Water and Sewer Leadman I position which would be eliminated, and the latter was to be filled by moving an employe from the Heavy Equipment Operator classification. While Parkinson claimed that the parties reached agreement regarding the Water System Leadman position, but not the Sewer Collection System Leadman position, he did state that there was "some confusion" regarding those positions. The City raised the question at the grievance arbitration hearing of why the Union would agree to eliminate the Water and Sewer Leadman I position and move Recha to a lower-paying Sewer Collection System Leadman position. Article 6, Section C, Paragraph 5, of the Agreement states that: "When the employer eliminates a position covered by this Agreement, the employee involved shall hold the hourly rate of pay if higher than the rate of pay of the new job he is assigned to." The rate for the Water & Sewer Leadman I position was higher than the Sewer Collection System Leadman position up until July 1, 1994. Thus, if Recha had been moved to the latter position, he would have continued to receive the higher Water and Sewer Leadman rate until July 1, 1994, at which time he would have been entitled to the rate for the Sewer Collection System Leadman classification. Consequently, the Union only seeks backpay for the Grievant Recha in the amount equal to the difference between the two positions (15 cents per hour) beginning July 1, 1994.

In its reply brief, the Union disputes the City's claim that the Union acknowledged that the three grievants had job classifications that were not covered by its final offer. While the Union's witnesses admitted that its final offer could have been more specific, the Union has continuously maintained from the start that the City was fully aware of the Union's intent to include the three classifications within its final offer. The Union also disagrees with the City's claim that evidence of the Union's intent is irrelevant. Both parties' final offers can be characterized as "sloppy", as the classifications for which the upgrades were proposed are in some cases vague and do not exactly match the classifications listed in the Agreement. Thus, the intent of the parties as to which positions were to be included under the classifications listed in the final offers is indeed relevant. The Union also notes that the titles of the classifications listed in the City's final offer are nearly identical to those listed in the Union's.

With regard to the Relief Operator position, the Union disputes the City's explanation for showing six employes under the Wastewater Operator classification in its costing, i.e., that it had six Waste Treatment Plant Operators and one Relief Operator at the time. The unrefuted evidence in the record and the testimony of Zatopa indicates there were five Plant Operators, one Relief Operator, and one Lab Technician at the time of the interest arbitration. Thus, the City's explanation for its costing is not valid. The Union also disputes the City's claim that it is irrelevant that certain positions appear over time to be linked to other positions. The City thought it sufficiently relevant to unilaterally add language to the 1993-1994 Agreement which continues to provide an employe (Skubal) an additional five cents per hour based on an understanding that had

existed in an unwritten form prior to that. Like Skubal, the Lab Technician had been paid five cents per hour more than Plant Operators since the position was created. With regard to the Recha grievance, the Union asserts that the City's claim that the Union acknowledged that at the time of the final offers the parties had been unable to agree on renaming the Water & Sewer Leadman classification, misses the point. The issue is not whether the Water and Sewer Leadman position was renamed, rather the issue is whether the employe in that position had been moved into the vacant Sewer Collection System Leadman classification, similar to the employe in the Heavy Equipment Operator classification being moved into the vacant Water System Leadman classification. Parkinson admitted at hearing that there was "some confusion" regarding those two classifications. The Union also disputes the City's assertion that it was apparent at the hearing that the Union was aware of the potential conflicts, but failed to raise them with the City and the Interest Arbitrator. Zatopa testified that the Union first became aware that the Relief Operator and Water and Sewer Leadman did not receive their expected upgrades when the backpay checks were issued in May of 1994. The Union asks that the three grievances be sustained and the Grievants be awarded backpay consistent with the wage adjustments that were improperly withheld. The Union also requests that the Arbitrator retain jurisdiction with regard to application of the remedy.

City

The City takes the position that it fully implemented the final offer as required by Wisconsin statutory and case law. It asserts that the Union acknowledged at hearing on the grievances that the three Grievants had job classifications that were not covered by the Union's final offer, but offered reasons why those positions should now be included. With regard to the Relief Operator position, the Union claimed that it had been included based upon the City's costing. In the case of the Lab Technician, the Union argued that position had historically been paid five cents per hour more than the Plant Operators and that it unilaterally thought that this practice would continue, even though it is a separately listed job classification. In the case of the Water and Sewer Leadman position, the Union claimed it believed that the classification may somehow be eliminated, although it conceded that at the time of the final offers, the parties had been unable to agree on renaming this classification and both had gone ahead with the Water and Sewer Leadman position as it had been entitled in the Agreement.

The City asserts it had six Waste Treatment Plant Operators and one Relief Operator and that is why it costed the Waste Treatment Plant Operators as seven. It did not intend to upgrade or exclude the Relief Operator position, but since it was a "blended position", i.e., sometimes received the Operator rate, it included the entire cost of that position in its costing. The evidence at hearing indicated that as to the Lab Technician, the Union realized at the interest-arbitration hearing that it had made a mistake in not including the position in the final offer, had conferred on the matter, and had decided not to raise the issue and clarify the matter with the City or with the Interest Arbitrator. Similarly, the Union decided not to pursue and clarify the Water and Sewer Leadman position, even though the City and the Union did discuss and clarify the situation with regard to the Heavy Equipment Operator (Water) and (DPW) classifications in order to clarify the

final offers.

The City asserts that it was the Union's failure to clearly define and separate the positions in its final offer that resulted in the problems the parties now face. The Union admitted being aware of the problems regarding the Lab Technician, yet it did nothing to clarify the issue during the interest-arbitration and should not now be rewarded for that failure by having the individuals receive compensation that was not argued or justified at the interest-arbitration. The City asserts that Wisconsin Statutes make clear that the arbitrator adopts the entire final offer of one party or the other. In this case, the Union chose 11 positions to receive individual increases, and it is undisputed that those 11 positions did receive those lifts. The City asserts that it is irrelevant that certain positions have appeared over time to be linked to other positions. The Union's final offer targeted 11 positions for individual increases, and, unfortunately, left out three employes in separate classifications that the Union now apparently believes should have been included. The time to do that was in the drafting of its final offer. The City asserts that it fully implemented the final offer that was awarded, and extraneous evidence of what the Union intended is irrelevant. It is apparent that the Union was aware of the potential conflicts, but failed to raise and clarify the matters with the City and the Interest Arbitrator so as to avoid subsequent disputes on those issues. Section 111.70, Stats., allows the parties to voluntarily modify their final offers and that is the procedure the Union should have followed in order to include the three positions in their salary structure. To now sustain the grievances for the Union would defeat the purpose of the binding arbitration provisions of Sec. 111.70, Stats., which requires the complete adoption of the final offer of one party or the other. The City acted promptly and in good faith and it is the Union that has failed to clarify and be forthright in these matters.

In its reply brief, the City asserts that there is no evidence in the record to support the Union's claim that the City knew that the Plant Operator classification encompassed the positions of Relief Operator and Lab Technician as well as Plant Operator. The Union's claim is also refuted by its own testimony that it became aware at the interest-arbitration hearing that the City was not costing in any manner the Lab Technician position. Zatopa testified that the Union was aware the Lab Technician was not included in the City's costing, discussed the matter outside the presence of the City, and determined not to raise the issue with the City or the Interest Arbitrator and notified the Lab Technician his position was not being included. Had the Union intended to include the Lab Technician all along, the matter would have been brought to the City's attention and discussion would have been had regarding the inclusion or the exclusion of the Lab Technician in the final offers.

As to the Relief Operator, the City reasserts that no evidence was solicited by the Union regarding that classification and there was no discussion about the inclusion or exclusion of the position in the final offers. While the City did cost six Operators in its final offer, and it is understandable that the Union could have assumed the Relief Operator was included, it just as easily could have decided that the position was not included since the Relief Operator is a "blended" position, and the employe receives Operator pay approximately one-half of the time.

Rather than clarifying its final offer, the Union continued throughout the interest-arbitration only requesting adjustments for the Operators. Similarly, the Union made no wage request for the Lab Technician even though it was aware the City was not including that position in its final offer. The Union chose not to raise or discuss the issue during final offers, but to accept that fact. To allow the Union to sit on its rights and now pursue through these grievances wage adjustments for those employes, when it knew that those employes were not included at the time of interest-arbitration, would be to award the Union inappropriately for that type of conduct. The Union's arguments regarding what the Lab Technician has historically been paid in relation to Operators is irrelevant as the Union chose to seek increases for some classifications and not others. With regard to the Water and Sewer Leadman I position, the City disputes the Union's claim that the City Attorney stated the parties reached an agreement regarding the Water System Leadman, but not the Sewer Collection Leadman. Rather, Parkinson testified the parties never reached an agreement on reclassifying any of the positions due to an inability to decide what to do with the Sewer Collection System Leadman wages. No one testified the parties had bargained the change in these positions and it is inaccurate for the Union to state that it understood the positions had been reclassified. It is clear from a review of the parties' Agreement and the Union's final offer that the Union did not carefully draft its final offer. The Union created the confusion that resulted in these grievances. Just as ambiguous contracts are to be construed against the drafter, the same should hold true in this case.

DISCUSSION

Before discussing the specific grievances, it is necessary to clarify the Arbitrator's role in resolving these disputes. That role is to determine whether the City violated the parties' 1993-1994 Agreement by failing to properly implement the Union's final offer for the parties' 1993-1994 Agreement, as it relates to the wage adjustments proposed in that final offer. In order to make that determination, it is necessary to determine what the parties mutually intended and understood to be the case at the time they presented their respective cases before the Interest Arbitrator. In order to determine what they mutually understood was being proposed, it is necessary to not only review the final offers, which both parties concede were vague and somewhat sloppy as to classification titles, but also the extrinsic evidence as to what they discussed and agreed to in the negotiations that ultimately culminated in those final offers. Just as importantly, it must be noted that it is not the Arbitrator's role to do equity, or to somehow maintain the historical relationships of one classification to another. Evidence as to historical relationships between the wage rates of one classification with that of another is relevant only as to determining intent. With that said, the specific grievances will be addressed.

Underwood Grievance

The Union asserts it intended throughout negotiations to include the Relief Operator in its proposed wage adjustments for "Wastewater Operator" and that the City was aware of that intent, as evidenced by the costing data the City shared with the Union in negotiations and the costing

exhibit it offered at the interest-arbitration. The City asserts the Union's final offer listed "Wastewater Operator" and Underwood was classified as a "Relief Operator" at the time, and, thus, not included in the proposed upgrades.

The Union's President, Zatopa, testified that during both the negotiations and the interest-arbitration the parties never did discuss which individual employes were being included or excluded, but, rather, just discussed the number of employes involved. It appears from the City's costing exhibit it submitted at the interest-arbitration that the City litigated its case on the basis of six employes in the "Wastewater Operator" group; thus including the Relief Operator position in costing the proposed upgrades for that group. The City explains its use of six employes in that group for costing purposes on the basis of the Relief Operator being a "blended position" that receives the Operator rate a significant portion of the time. There is, however, no indication in the record that the City explained its basis for using six employes in costing the "Wastewater Operator" upgrades, or that it explained that the sixth individual would not actually receive that rate all of the time.

The City litigated its case on basis of the full cost of the upgrades for all six employes, which would lead a reasonable person to believe the City recognized that the Relief Operator was included in the upgrades for the Wastewater Operators. Given the inference the City created, if the City intended or understood something other than that, it had the burden of making that clear to the Union and to the Interest Arbitrator. Since the City did not put the Union (and the Interest Arbitrator) on notice that it did not consider the Relief Operator to be included in the upgrades, the City may not now argue that the Relief Operator was not included under "Wastewater Operator". Therefore, it is concluded that the City violated the parties' 1993-1994 Agreement by failing to apply the 52 cent per hour upgrades to the Relief Operator -Waste Treatment Plant position held by Underwood.

Garrow Grievance

The Union asserts that it at all times intended to include the Lab Technician in its proposed upgrades for the "Wastewater Operators" and that, based upon the costing data the City shared with the Union during negotiations costing seven positions under those proposed upgrades, it reasonably believed that the City also included the Lab Technician in that group. The problem, however, is the costing exhibit the City submitted to the Interest Arbitrator showing only six employes in that group. Having put the Union on notice it did not consider or understand that the Lab Technician position was to be included as a "Wastewater Operator", it was then up to the Union to clarify its position at that time. Zatopa testified that the Union's officers and its representatives assumed it was the Lab Technician position that was not being included and discussed the situation among themselves and ultimately decided it was too late to do anything about it. Zatopa testified that other than discussing the matter amongst themselves, the Union did not raise the matter at the interest-arbitration.

Unlike the Relief Operator position, which, after all, is an "Operator" position, the Lab Technician is quite different and it would be much less reasonably assumed to be included in the "Wastewater Operator" group, especially given the change in the number of employes the City costed under that group. Zatopa's testimony establishes that the Union in fact assumed the opposite, i.e., that the Lab Technician was not being costed by the City as receiving the upgrade as part of that group. The Union's assumption was reasonable based upon the title of the group the parties were using and the fact that six was the total number of Operators and the Relief Operator. However, just as the City could not remain silent with regard to whether it viewed the Relief Operator as being included in light of the inference it had created, the Union could not remain silent once it had been put on notice by the City that it was assuming only the six "Operators" were being counted in the group of "Wastewater Operators". The Union's silence could reasonably lead the City to believe the Union was also of the understanding that the Lab Technician was not included in the upgrades. As was the case with the City, the Union cannot create inferences and then rely on ambiguities to now support its position. Having not raised the matter at the interest arbitration so as to put the City and the Interest Arbitrator on notice that the City's understanding was incorrect, the Union cannot now reasonably nor convincingly claim that the parties mutually understood that the Lab Technician position was to be included in the upgrades for the "Wastewater Operators". Therefore, it is concluded that the City did not violate the parties' 1993-1994 Agreement by not applying those upgrades to the Lab Technician position.

Recha Grievance

As the parties note, the issue in this grievance differs somewhat from the others in that the City did apply the 35 cents per hour upgrades for "Sewer Leadman" to the "Sewer Collection System Leadman" classification. The dispute is whether the parties had agreed to eliminate the Water and Sewer Leadman position and place the Grievant, Tony Recha, in the "Sewer Collection System Leadman" position. It appears that while Recha has been classified as the Water and Sewer Leadman I, which had a higher hourly rate than the Sewer Collection System Leadman classification, Recha actually performs the work of the latter position and the Water and Sewer Leadman I function no longer exists in reality. Also, the Sewer Collection System Leadman classification was vacant at the time. The Union asserts it was its understanding that there was an agreement to eliminate the Water and Sewer Leadman position and to create a new "Sewer Leadman" classification which would include the Sewer Collection System Leadman position with Recha in the position. The City asserts that while there were discussions regarding eliminating the Water and Sewer Leadman classification, there were problems with respect to the Sewer Collection System Leadman rate. According to the City, the City Attorney and the Union's representative were to meet and try to work out the problem areas, but the meeting never took place and with no agreement being reached, everyone stayed where they were. Parkinson's testimony, however, indicated that the problem area was the Water System Leadman rate, as well as the Sewer Collection System Leadman rate. Further, everyone did not stay where they were. The City concedes that the employe who was performing the Water System Leadman work, but who was classified as a Heavy Equipment Operator, somehow was reclassified as the Water

System Leadman either after the interest arbitration award was issued or sometime before that. 3/

Both parties acknowledge that there was some confusion in this whole area involving the leadman classifications. The evidence indicates both parties proposed upgrades for "Sewer Leadman" and that both parties understood that classification to include the Sewer Collection System Leadman position. The City's costing exhibit is again indicative of what the parties' mutual understanding was at the interest arbitration with regard to the final offers and the context in which they were made. The City's exhibit it presented at the interest arbitration shows that the City costed the Sewer Leadman upgrades as having one individual in that classification. Since there were only two classifications that had existed that would fit under the heading "Sewer Leadman", Water and Sewer Leadman I and Sewer Collection System Leadman, and the Grievant had been the incumbent in the former and the latter had been vacant, it would lead one to believe that the City must necessarily have been costing the upgrade on the basis of Recha having been reclassified to the position to which it felt the upgrade applied, i.e., the Sewer Collection System Leadman position. It appears from this that both parties understood that Recha would be in the position to receive the upgrade for "Sewer Leadman" and the City having created an inference that led the Union to believe the City shared the Union's intent, the City cannot now convincingly argue to the contrary. Therefore, it is concluded that the City violated the parties' 1993-1994 Agreement by failing to properly implement the interest arbitration award by not placing Recha in the Sewer Collection System Leadman position to which it has applied the upgrades. Thus, Recha was entitled to the rate of that position once it passed the rate of the position he had held. 4/

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

AWARD

Underwood Grievance

The grievance is sustained. The City is directed to immediately make the Grievant whole

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3/ The rates for the Water System Leadman and the Heavy Equipment Operator classifications were the same until the Interest Arbitration Award was issued giving the former larger upgrades.

4/ As the Union asserts, ARTICLE 6 - PERSONNEL PROCEDURES, Section C, 5, essentially provides that an employe will keep the rate of the position that was eliminated if it is higher than the rate of the new position to which the employe is assigned.

by paying him the difference between the hourly rate he was paid and the Relief Operator - Waste Treatment Plant hourly rate with the 52 cent per hour upgrades applied, for all hours he was paid at the lesser rate during the period covered by the 1993-1994 Agreement.

Garrow Grievance

The grievance is denied.

Recha Grievance

The grievance is sustained. The City is directed to immediately make the Grievant whole by paying him the difference between the Water and Sewer Leadman I hourly rate he received and the Sewer Collection System Leadman hourly rate for those hours worked on and after July 1, 1994 during the period covered by the parties' 1993-1994 Agreement.

As the Union has requested, the undersigned will retain jurisdiction in these cases for thirty (30) days from the date of this Award for the limited purpose of resolving any disputes as to remedy. If the undersigned is not contacted in that regard on or before the thirtieth (30th) day, he will relinquish his jurisdiction in these matters.

Dated at Madison, Wisconsin, this 23rd day of February, 1996.

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