

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

LOCAL 3055, AFSCME, AFL-CIO

and

GREEN BAY AREA PUBLIC SCHOOL DISTRICT

Case 179  
No. 52813  
MA-9113

Appearances:

Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO,  
appearing on behalf of the Union.

Mr. J. D. McKay, Attorney at Law, appearing on behalf of the District.

ARBITRATION AWARD

The Union and the Employer named above are parties to a 1992-94 collective bargaining agreement that provides for final and binding arbitration of certain disputes. The parties asked the Wisconsin Employment Relations Commission to appoint an arbitrator to hear the rate of pay grievance of Paul Kox. The undersigned was appointed and held a hearing in Green Bay, Wisconsin, on August 24, 1995, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs by January 17, 1996.

ISSUE:

The parties ask:

Did the Employer violate the contract when it did not pay Paul Kox the rate of head auto/truck mechanic for the days in 1995 that the incumbent employee in that position was absent from work? If so, what is the appropriate remedy?

CONTRACT LANGUAGE:

ARTICLE X

PAY POLICY

Attached as appendices to this Agreement are the job classifications and pay schedules. The pay plan attached shall remain in effect without change for the term of the labor agreement.

The Employer shall determine the number of employees to be assigned to

any job classification and the job classifications needed to operate the Employer's facilities. The Union shall be notified in advance of any change to be made in the number and kind of classifications.

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Job Rate: If any employee is required to take a temporary job with a lower rate of pay, the employee shall not be required to take a reduction in pay. Any employee who is required to take a temporary job with a higher rate of pay shall receive the higher rate for all hours worked on such higher-rated job.

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BACKGROUND:

The Grievant, Paul Kox, is a Maintenance Mechanic and has worked for the District for more than eight years. He has been in his present position of Auto/Truck Mechanic since January of 1990. He works in the District's garage, is paid at Level 7 and works with the Head Auto/Truck Mechanic, Al Reindl, who is paid at Level 12. Kox performs general maintenance and repairs on all vehicles and equipment owned by the District, from small cars to dump trucks, tractors, and hand-held equipment for lawn care. Kox's immediate supervisor is Bruce Kitzman, and the Executive Director of Facilities and Related Services is Robert Fuhr.

Reindl directs the flow of work in the garage and tells Kox what he should work on. If equipment breaks down outside the garage, one of them has to go to service it, and Reindl decides who goes on the call. Kitzman does not normally give Reindl or Kox any direction or instructions.

Reindl was off for an extended period of time starting around February of 1995. Reindl was absent for 61 days for sick leave as well as some personal leave and vacation. Kox asked Kitzman about receiving Level 12 pay while Reindl was off, and Kitzman told him that he had been talking to Fuhr about it. Kitzman later denied the higher rate of pay, and Kox filed this grievance. Kox filed a similar grievance in 1994 when Reindl had been off on sick leave for only one or two days. He withdrew the grievance before arbitration.

No one assigned Kox to take Reindl's place during 1995. In Reindl's absence, Kox performs some of Reindl's functions, such as assigning work to others. While Kox may often work alone in Reindl's absence, other supervisors such as John Wied have asked him if he needs help in the garage. When someone is then assigned to the garage to help Kox, Kox is the person who delegates the work. There are times when other employees are assigned to work in the garage even when Reindl is there, and Reindl then assigns work to them.

Daniel Keyzer, a utility worker with the District, worked in the garage about 20 or 30 times during 1995. He has also worked in the garage in the past, but not as often as in 1995. His supervisor, John Wied, assigned him to work with Kox. Kox gave specific assignments to

Daniel Keyzer, such as directions to work on certain pieces of equipment. If he was assigned to the garage when Reindl was there, he took his orders from Reindl. But in Reindl's absence, he took his orders from Kox. Keyzer also had Kox check his work and make judgments about whether or not to replace parts. Keyzer is normally paid at Level 4, and he did not get an increase in pay when assigned to the garage to work with Kox. However, a few years ago he did receive the higher level of pay when Kox was not working due to a death in the family.

In Reindl's absence, Kox also takes the responsibility of making sure that all the vehicles that are to be ready at certain dates are done on time. Reindl is responsible for the schedule of vehicles and seeing that they are ready for certain seasonal work. Kox testified that when Reindl is gone, Kox takes responsibility for the whole fleet because there is no one else there to do it.

The job description for "Maintenance Mechanic - Auto & Truck" follows:

#### GENERAL QUALIFICATIONS AND DESIRABLE SKILLS

1. Thorough knowledge of the mechanical, hydraulic and electrical systems common to Green Bay Area Public School vehicles and equipment.
2. Knowledge of welding techniques.
3. Ability to inspect, diagnose and repair a wide variety of the hydraulic and electrical components of Buildings and Grounds equipment.
4. Ability to perform engine, transmission and related vehicle and equipment overhauls.
5. Knowledge of all tools utilized in equipment maintenance and repair.
6. Ability to read and interpret electrical wiring diagrams, manuals and other common reference materials.
7. Experience in repair of modern types of emission control and electronic ignition systems.
8. Ability to use and interpret newer type electronic engine analyzers.
9. Completion of one year of vocational training in tractor/truck/engine maintenance and repair and 3 years experience working as a journeyman mechanic or other combinations of training and experience which provide the knowledge, skills and abilities necessary to perform duties of this position.
10. Ability to operate the various equipment for maintenance check purposes and possession of a valid Wisconsin drivers license and good driving record.
11. Ability to communicate orally and in writing.
12. Physical strength and agility to lift heavy weights, and stooping, kneeling, climbing or crawling as the nature of this work dictates. Must be able to work in extremes of weather when situation demands.

#### GENERAL DUTIES AND RESPONSIBILITIES

Employee in this classification performs the full range of mechanical maintenance and repair on all school system Buildings and Grounds equipment including tractors (diesel and gasoline), trucks (diesel and gasoline), 4-wheel drive equipment, contractor type gas-powered equipment such as air compressors, cement mixers, gasoline power tools, lawn mowers and chain saws and similar large and small equipment. Employee performs welding, services fuel injection systems, general maintenance such as lubrication, tire changes, checking and changing fluids, hoses, belts, filters, fans. Performs overhaul on engines and equipment.

Employee must provide personal tools common to the trade. Determination of qualifications for this position will involve a review of related education and experience and will include an oral interview, tests, or other measures of knowledge of skills considered necessary for successful job performance of this position.

Employee will work under direction of the Head Mechanic for assignment of work with general supervision and evaluation by the Manager of Auxiliary Services.

As the need arises, employee in this classification shall be assigned work in other classifications. This includes snow removal services, both regular and overtime.

This job description is intended to indicate the types of tasks and level of responsibilities that are required of this position and should not be construed as final specific responsibilities of the position. It is not intended to limit or modify the right of the supervisor to assign other similar work. The use of a particular illustration describing duties shall not be held to exclude other duties not mentioned that are of similar form of task or level of skill.

The job description for the position held by Reindl -- the "Head Auto/Truck Mechanic" -- follows:

#### JOB DESCRIPTION AND QUALIFICATIONS

This is skilled work with major responsibility in directing, scheduling and supervising the repair and maintenance of all motorized and auxiliary equipment.

This includes grounds and turf equipment, snow plow equipment, tractors with hydraulic buckets, dump trucks, four wheel drive vehicles, auxiliary construction equipment, automobiles and all associated and auxiliary attachments to listed equipment.

Employee in this classification shall be able to perform the work at the journeyman level. He shall have completed courses in auto and truck mechanics, served an apprenticeship or supervised training program, and performed work on a full time basis as a skilled auto and truck mechanic for at least 5 years. This experience must be recent and include experience on the newer types of emission controls, electronic ignition, etc. He shall be able to attest to this experience and the quality of his work with letters of recommendation from previous employers.

He shall be a qualified welder with ability to make structural changes and repairs to heavy duty maintenance equipment.

### NATURE OF WORK

Employee in this classification shall be responsible for setting up and organizing a complete preventative maintenance program for all vehicles and grounds equipment and shall organize an inventory control system for a reasonable stock of parts to have on hand. This employee shall supervise and direct any other mechanics that may be part of the staff or added to the staff in the future. This shall include supervising and instructing trainees that may be assigned through programs such as CETA, YWE, and other similar Federal rehabilitation type programs.

Employee in this classification directs and/or performs all the work necessary to maintain and repair all motorized and auxiliary equipment. He shall evaluate the need of repair or replacement of equipment and vehicles and expedite repair of same. He shall keep the appearance of equipment as attractive as possible with the cooperation of operating personnel, and keep equipment up to standards as required by City and State laws.

Some of the related duties of this mechanic shall be scheduling and directing the repair of non-highway equipment such as grounds and turf equipment, including the sharpening and repairs to brush and plow equipment. He shall repair and replace starters, generators, alternators, electrical wiring systems, all parts of drive train, water pumps, brake systems, clutches, and all parts and equipment generally associated with auto, truck and tractor repair.

He shall weld and make structural modifications and repairs to all vehicles, plows and accessory equipment.

He shall schedule maintenance and have ready equipment for each season so plow equipment, sanders, lawnmowing equipment, etc. are ready for use as the need arises.

Employee shall give complete lubrication to motors and chassis, transmissions, differentials on all equipment. Employee shall maintain an accurate log and record of all equipment as regards to lubrication, oil changes, anti-freeze, filters, repairs, etc. and other related work as required. He shall expedite repairs and replacement of tires on all rubber tired equipment, repair or replace wheel bearings as needed on all mobile equipment, clean windshields, wash equipment, etc. as the occasion demands. Auto mechanic shall convert motors to desired equipment and install new motors in equipment that have motors beyond repair.

Special attention must be given to fire prevention and safety precautions in vehicles and garage area.

Employee in this classification performs related work as required.

#### HOURS OF WORK

Hours of work shall be on a flexible time basis to suit the needs of the operation of the school system.

Hours would be a regular eight (8) hour day falling within the time period of 6:00 a.m. to 9:00 p.m. Hours to be determined by the Supervisor of Buildings and Grounds and scheduled at least one week in advance.

#### THE PARTIES' POSITIONS:

##### The Union:

The Union asserts that even if no one in management ever assigned Kox to replace Reindl, the key aspects of Reindl's job, such as determining what needed to be done on a given work day and how to accomplish these tasks, were being performed by Kox because they had to be done. Kox admitted that no one in management came up and told him he was assigned these duties, but he was expected to perform many of the duties of the Head Auto/Truck Mechanic because no one else was doing these tasks. No one from management came into the shop during the time that Reindl was absent to take over any of Reindl's supervisory functions or to assign those functions to another employee. Therefore, Kox performed duties that fell within those of the Head Auto/Truck Mechanic in the absence of Reindl.

The Union argues that if Kox is expected to perform these duties, or if in fact he is required to perform them because of the expectations, he should be paid at the higher rate of pay under the terms of Article X. The language does not talk about an individual being assigned to a higher rated job -- it uses the word "required." It is clear that there was an expectation on the part of

management that Kox would perform whatever tasks were necessary from Reindl's job description, and that management had no intention of paying him for this work using the argument that he was not assigned to do it. In this fashion, the District was able to get the necessary work done without replacing the pay level of either the Head Auto/Truck Mechanic or the Maintenance Mechanic - Auto & Truck, if that position were replaced during the Head Mechanic's absence.

The Union notes that there is a great deal of overlap in the job descriptions in terms of knowledge and skills. But other duties in Reindl's job description raise the question of responsibility which needed to be looked at. Kox testified that when Reindl was absent, Kox's responsibilities were greater because he took on additional responsibilities normally handled by Reindl. The difference between his normal duties and the work he does when Reindl is absent is making decisions about what work needs to be done and in what order of priority. When Reindl is present, he makes the decisions on which job has priority and he assigns work to Kox. But when Reindl is absent, making sure that the work in the shop is done becomes Kox's responsibility.

Kox took over the supervisory responsibilities for other mechanics or mechanic helpers that were assigned from time to time to work in the shop. He directed their work, in Reindl's absence, taking Reindl's place in supervising the work of the shop. It is the intent of the contract in Article X to compensate employees who perform work in a higher classification at the appropriate rate for that job. If Kox's job duties or responsibilities do not change when Reindl is absent, he would have no reason to file a grievance. But the record shows that Kox did perform Reindl's job and he should be compensated for the difference in his pay for those days that he did that job.

#### The District:

The District asserts that Kox was never assigned to the Head Mechanic's job by management, and he admitted he was never directed to perform those duties. The District is obligated to provide an employee with a higher rate of pay when it requires the employee to take a temporary higher rated position. But in this case, management never assigned Kox to the higher rated position, and Kox contends that he was assigned to it as a result of Reindl's absence rather than as a result of a management directive. The contract does not require that an absent employee be automatically replaced -- that is left to management's discretion, and management was not obligated to assign Kox the work of Head Mechanic on the basis of Reindl's absence. Reindl's absence alone is not sufficient to sustain the grievance, and Kox must show that he was required by management to perform the Head Mechanic's duties.

The District further contends that the work Kox performed was within the parameters of his job description. In order to sustain the grievance, the Arbitrator must find that Kox was required to perform the core duties of the Head Mechanic position. The Head Mechanic's job description requires that he be responsible for setting up and organizing a complete preventative maintenance program for all vehicles, that he be responsible for setting up and organizing an inventory control system, and that he supervise and direct mechanics. Maintenance and repair of all equipment and

vehicles is a shared responsibility between the Head Mechanic and the Maintenance Mechanic.

The contract does not provide for an automatic reclassification of personnel when an employee/supervisor is absent. Kox testified that the actual work he did was not the issue, but that there was no one to direct him. The actual work he performed is the central issue. Kox

also stated that he took the responsibility of deciding what had to be done on a vehicle, but that is within his job description. An overlap of job duties does not support a claim for higher classification work -- Kox must show that he consistently performed work outside of his job description and consistent with the duties of the Head Mechanic. The claim that he occasionally had to tell a helper what to work on is not enough to sustain the grievance. His supervision of Keyzer consisted of telling him what tasks needed to be done on a particular day. Keyzer worked an estimated 20 to 30 times in the shop since February, and this minimal supervision for an insignificant amount of time during the day does not justify the claim for 60 days of higher rated pay. Also, the 60 days were not consecutive days of absence. Kox is counting all sick leave, personal leave, holiday and vacation leave that Reindl incurred over a seven month period. If Reindl took one day of personal leave, Kox believes he should be paid Reindl's rate.

Even if, arguendo, Kox performed the work of the Head Mechanic, he did so without the knowledge or consent of management and therefore should not be paid the higher rate. He did it on his own volition. If the Union has a complaint about the work performed outside of a classification, the complaint should be against Kox, not management. Kox never had the authority to perform any duty associated with the Head Mechanic position. In denying the grievance, the District even informed him that if he was contemplating working outside his job description, he should discuss it with his supervisor, Kitzman. Kox failed to contact Kitzman, even though he only had to walk down the hall to inform Kitzman of the situation and ask how to proceed. In spite of being told on March 24th that he would not be paid the higher rate, Kox claims to have performed the higher rated job over the next five months. This shows that Kox was acting on his volition and in clear contradiction to management's March 24th directive.

Kox is asking for pay at the Head Mechanic rate for February 20, 21, and 23 and all days after that the Head Mechanic is absent. He is asking the Arbitrator to rule that he is forever entitled to an automatic reclassification to the Head Mechanic rate to be triggered by Reindl's absence rather than the actual work he does. The contract does not provide for an automatic reclassification due to the absence of the higher rated employee. Article X is clear and employees receive the higher rate when they are required to take a temporary higher rated job. Article X also says that the higher rate of pay is for all hours worked on such a higher rated job. Under the Grievant's claim, he would automatically be paid the higher rate whenever his supervisor is absent, whether or not he actually performed the work of the Head Mechanic. In order to sustain this grievance, the Arbitrator would have to eliminate Article X and add a clause to provide for such automatic reclassification.



### In Reply:

The Union replies to the District by arguing that the District equates the word "required" in Article X with the word "assigned." The Union's position has been that where the job or the circumstances surrounding that job requires the employee to perform functions of an absent job category, that employee should receive the rate of pay for the absent job. Kox took over the primary job duty of Reindl, the responsibility for seeing that the shop operated in an efficient and orderly fashion, seeing that the proper vehicles were maintained or repaired. Since no one in management complained about how the shop was functioning, they must have been satisfied with the job that Kox was doing.

While there is some overlap in the maintenance work of the two jobs, the key question is whether Kox continued to perform duties primarily within his job description or whether he performed duties from Reindl's job description which went above and beyond the duties in his own job description. The Union contends that the latter is true. The job requirements of the shop required Kox to replace Reindl when he was absent, in order for the shop to operate. This was implicit in his job. Kox had to determine what needed to be done in terms of priority. No one else was making those decisions. The District was aware of this and took advantage of Kox's willingness to perform Reindl's duties. It would be impossible to determine when Kox was doing his job as opposed to Reindl's job, and that is why he asked to be paid at the higher rate of pay for all the hours he worked while Reindl was absent.

The District objects to the Union's contention that there was an expectation on the part of management that Kox would perform whatever tasks were necessary from Reindl's job description. The District asserts that not only was there no expectation of such, but that Kox was told on March 24th to go to management if he felt he was working outside his job description. In spite of that, Kox claims to have continued to perform Reindl's job over the next five months. In view of management's directives to Kox, it is hard to believe that management ever expected Kox to perform the Head Mechanic's job duties.

The District argues that the Union failed to demonstrate that Kox performed duties outside his job description for 480 hours. The District continues to find it absurd that Kox believes he should be paid the Head Mechanic rate because he had to supervise himself, even though he worked independently when Reindl was present. Reindl did not spend eight hours a day supervising Kox. While Keyzer was assigned to assist in getting lawn mower equipment ready, Kox's supervision consisted of telling him what tasks needed to be performed on a particular day.

### DISCUSSION:

In looking at grievances for out-of-class pay, arbitrators have often spoken of the key or core parts of a job, or the central core of a classification. For example, in Wilson Jones Co., 51

LA 35 (1968), Arbitrator Daugherty stated:

" . . . (1) In all such cases the critical questions are (a) What are the key or core elements of the jobs involved which distinguish one job from the other(s) and justify the wage rate differentials between (among) them agreed to by the parties, and (b) did the aggrieved employee(s) perform actual work that 'invaded' said core elements? (2) In many such cases there are substantial areas of overlap in the operations specified for two or more jobs. That is, an employee in one job is

authorized to do some of the work that another employee in another classification is also permitted to do. But in such case an employee in one job cannot properly be said to have taken over the work in another job until and unless he has been required to perform operations that the parties have agreed are key and relatively exclusive to the latter classification."

Similarly, Arbitrator Seligson in Union Carbide Nuclear Co., 37 LA 411 (1961), referred to the core of the work:

"To summarize: this ruling holds that before an employee in a lower rated classification can be said to be doing the work of a higher rated classification, in order to receive the higher rate of pay provided for in Section 7, Article 7, he must have been engaged in work which forms the central core of that higher rated classification, not just an isolated, marginal, relatively insignificant duty. To hold otherwise, would result in undermining and blurring the distinctions between classifications and wage rates so carefully negotiated by the parties."

In Alaska Dept. of Transportation, 78 LA 999 (1982), Arbitrator Tilbury reviewed 40 years of arbitration decisions on the subject of making a proper job classification and found the following 27 factors (footnotes omitted):

- (a) Are the physical demands and the risks encountered in the task he is asked to perform similar to those encountered by those who have the higher classification?
- (b) What are the comparative working conditions? Are they similar to those in which those who are classified at a higher classification work?
- (c) Are employees in the lower class routinely called upon to perform such tasks, or is it extraordinary even though there may be some over-lapping with those in the higher classification?
- (d) Does the work he is asked to perform require greater responsibility and

mental skill than that required normally of those who work in the lower classification?

(e) What procedures are used to evaluate other employees in determining their proper wage rates?

(f) Are separate work areas provided for each classification?

(g) Is the work which is being evaluated more hazardous, burdensome, or a "major change in the nature of an existing job"?

(h) Does the work he is asked to do in this instance result in a new function or increase the capacity from that stated in the contract?

(i) What are the applicable contract provisions?

(J) What is the degree of change from the normal activities?

- (k) Is the job they are requested to do a primary function of the higher classification or only a secondary one?
- (l) What is the basic intent of the parties?
- (m) What has been the employee's prior work experience? If, for example, the employee brings considerable prior experience and skill to the job he is asked to perform, even though temporarily, this would strengthen his claim to be paid at the higher rate.
- (n) Was the assignment simple or complex?
- (o) How much time is required to do the assigned work? If it does not take much time, then it is less likely to be classified as one in the higher classification.
- (p) What has been the past practice at that particular plant, etc.? If, for example, the union acquiesced on grieving the lower pay for the work in the past, this should be considered.
- (q) What degree of supervision is provided for the new work assignment?
- (r) What degree of discretion and judgment is necessary to complete the job satisfactorily?
- (s) What are the job fundamentals?
- (t) What evaluation has been made of the work by management? This factor is not a controlling one. Nevertheless, most arbitrators do consider it as a factor on the theory that management should be allowed some reasonable discretion in setting job criteria.
- (u) Does the job call for the independent use of an operator's personal skills, or is it a job where the operator merely directs a machine to apply those skills?
- (v) Were the job descriptions drawn unilaterally or negotiated ones?
- (w) Is there added responsibility in doing the assigned work?
- (x) Is there a greater degree of dexterity required to do the new work, as compared with the work he has been doing?
- (y) What is the comparative educational background of the grievant vis-a-vis those who are receiving a higher rate of pay for the work he is called upon to do?
- (z) Were the jobs in their present form at the time the last collective bargaining agreement was drawn or has it changed in any way?
- (aa) Are there any binding past practices and mutually accepted interpretations which apply?

Arbitrator Tilbury noted that the above is not a complete list of all factors, but some of the more salient ones.

While there is a substantial overlapping of duties between Reindl's and Kox's positions, there are discernable differences that result in the higher classification and pay for Reindl. These are the "core" elements for the purpose of this grievance, because the question is whether Kox performed Reindl's job in order to justify the higher class pay. Of course he performed Reindl's job as Maintenance Mechanic. But the Head Mechanic's job differs from Kox's job in the following respects.

First, it is clear from both the job descriptions and the testimony that the Head Mechanic's position differs from the Maintenance Mechanic's position in the area of supervising other people. Reindl directs the work of Kox when Reindl is present. This may not entail much time when both people are experienced mechanics, but Reindl makes decisions about what to work on, when to work on it, etc. He is the one responsible for supervising any mechanic in the shop and instructing trainees.

Secondly, the Head Mechanic's job description states that he shall be responsible for setting up and organizing a complete preventative maintenance program for all vehicles and equipment, and shall organize an inventory control system in order to have a stock of parts on hand. This is a responsibility not seen in the Maintenance Mechanic's job description and may be considered another of the core elements that distinguishes the two positions. There is nothing in the record about how much work these duties would entail at any given time. Presumably, the preventative maintenance program and inventory control system have both been established, and employees in the shop follow them.

Third, the Head Mechanic's job description states that he is responsible for scheduling repairs and maintenance, as well as scheduling equipment so that it is ready for each season. This is more or less a component of the element above -- organizing a preventative maintenance program. However, it is also a different duty than setting up the program. Scheduling equipment means that one has to see that it gets into the shop for maintenance and repair. The Head Mechanic needs to see that lawn mowers are ready by spring, that snow plows are ready by winter, etc.

There is evidence on the record to support Kox's claim in part, because Kox invaded those core duties of Reindl at times in two respects -- first, the supervision of other employees, and secondly, the scheduling of equipment for seasonal work. On the other hand, the problem with the record is that it does not show when and how often this occurred, and Kox is not entitled to higher classification pay simply because of the absence of Reindl. He is entitled to the higher pay at the times that he performed the core duties of the Head Mechanic. There is no evidence that Kox spent any time in the other core duties of setting up a preventative maintenance program or organizing an inventory control system.

Kox clearly stepped into the shoes of Reindl when other employees were assigned to the shop. I fail to see how Kox's supervision of Keyzer or any other helper differs from Reindl's supervision of Kox. The District admits that Kox and Reindl worked independently, and that Reindl never supervised Kox eight hours a day. The extra pay that comes with Reindl's job is for taking over the responsibility to supervise another employee, to direct and assign work, to see that the work is being accomplished. Kox did this when Keyzer or others were assigned to the shop.

Accordingly, on days when other employees were assigned to the shop to assist Kox, I find that he took over the core duties of the Head Mechanic's position and should be paid at the higher rate of pay on those occasions. Management assigned other employees to help Kox in the garage,

but no one from management came into the shop to give those employees any direction. Thus it fell on Kox's shoulders to direct those employees and delegate work to them, just as Reindl would have done had he been there. Keyzer estimated that he worked in the garage about 20 or 30 times, that he took orders from Kox, that Kox checked his work and made judgments about whether or not to replace parts. These are the core duties of the Head Mechanic's position that differ from the Maintenance Mechanic's position and warrant a higher classification. While supervision of others does not entail constant supervision, it is the overall responsibility taken that makes a difference.

When Reindl was absent, Kox took the responsibility to see that vehicles were ready for certain seasonal work. He did this because he knew it had to be done, and there was no one else taking care of this task. This is also part of the core duties of the Head Mechanic's position. There is no evidence on the record about how much time this task would have taken.

Even though the District's management did not specifically assign Kox to perform any of the core duties of Reindl's job during Reindl's absence, management left Kox in a position that required him to fulfill those duties. When management assigned others to the garage to work with Kox, no one from management came into the garage to give those employees any direction. Kox had to take on the responsibility of directing the work and supervising the work of other employees assigned to the garage. Management could have taken that short walk from the offices down the hall, but chose not to do so and left Kox in charge.

While the District argues that if Kox performed the work of the Head Mechanic, he did so without the knowledge or consent of management, both such knowledge and consent may be imputed to management under these circumstances. Management knew that Kox thought he was working out of class, because Kox filed an ongoing grievance early on in Reindl's absence, and he had filed one the previous year also. The District says that Kox could have walked down the hall to ask Kitzman how to proceed. The hallway runs both ways, and it was management's ultimate responsibility to know what was going on in the garage and to determine who was in charge. Management did nothing and should not complain now. Kitzman or Wied or Fuhr could have come into the shop on a daily basis to direct the work of other employees or to see that Reindl's functions were being performed. There is no evidence on the record that anyone from management ever took any steps to oversee the operations of the garage. Thus, management either knew or should have known about the work Kox was performing and gave its implied consent by its silence.

The Union, in its reply brief, stated that it would be impossible to tell which hours Kox was working at his own job and which hours he worked that could be considered Reindl's job, and that is why he asked to be paid the higher rate of pay for all hours worked when Reindl was absent. This is a major flaw in the Union's argument -- it is the Union's burden to come forward with evidence of how and when Kox invaded the core duties of Reindl's job. Kox is not entitled to higher class pay any time Reindl is absent.

Article X says that: "Any employee who is required to take a temporary job with a higher rate

of pay shall receive the higher rate for all hours worked on such higher-rated job." Kox is entitled to the higher rate of pay for hours spent in the garage while other employees were assigned to the garage, because he was ultimately responsible for delegating work to them, directing their work and overseeing it, which is part of the core duties of the Head Mechanic's job. The District most likely has records that would show when other employees were assigned to the garage to work with Kox in Reindl's absence. However, I cannot order a remedy without more precise information, because there is nothing on the record to determine when Kox worked with others or when he worked alone. There is also nothing on the record to determine when Kox would have invaded other core duties of the Head Mechanic, such as scheduling seasonal equipment to be ready.

I will hold jurisdiction open for approximately two months in order for the parties to search their records and find the dates when Kox would have worked as the Head Mechanic, based on the assignment of other employees to the garage or based on any records that indicate when Kox would have performed the other core duties outlined earlier. The parties may wish to make an estimate in an effort to reach a fair settlement. If they cannot agree, I will issue a supplemental order for a remedy, provided that I am given some objective basis on which to do so.

#### AWARD

This grievance is sustained in part. The Grievant, Paul Kox, is entitled to the higher classification pay for the days that he spent supervising other employees during the Head Mechanic's absence, or the time spent involved in the Head Mechanic's duties such as scheduling equipment to be repaired or serviced for seasonal work. I will hold jurisdiction open until May 31, 1996, for the purpose of allowing the parties to reach a remedy or submit evidence to support a remedy in accordance with the guidelines given above.

Dated at Madison, Wisconsin this 8th day of March, 1996.

By Karen J. Mawhinney /s/  
Karen J. Mawhinney, Arbitrator