

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

CITY OF MANITOWOC WASTEWATER
TREATMENT PLANT EMPLOYEES LOCAL 731,
AFSCME, AFL-CIO

and

CITY OF MANITOWOC (WASTEWATER
TREATMENT PLANT)

Case 123
No. 53143
MA-9251

Appearances:

Mr. Gerald D. Uglund, Staff Representative, Wisconsin Council 40, AFSCME,
AFL-CIO, appearing on behalf of the Union.

Mr. Patrick L. Willis, City Attorney, appearing on behalf of the City.

ARBITRATION AWARD

The Employer and Union above are parties to a 1992-94 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the grievance of Leo Kanugh, concerning overtime pay.

The undersigned was appointed and held a hearing on November 28, 1995 in Manitowoc, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on February 27, 1996.

Stipulated Issues:

The parties stipulated to the following:

Did the Employer violate the collective bargaining agreement in its
assignment of overtime for hauling on June 22, 1995?

The parties further stipulated that if the Union prevails on the question above, the appropriate remedy would be payment for two hours at overtime rate to Dennis Fricke and Peter Klein.

Relevant Contractual Provisions:

ARTICLE VIII

PAY POLICY

. . .

Section 2. Overtime.

- (a) Unscheduled Work. Work performed outside of the regularly scheduled hours of work shall be compensated at the rate of time and one-half (1 1/2) unless otherwise provided for in this Agreement. Vacation, sick leave, holidays, funeral leave and other leave, etc., shall be credited as hours worked for the purpose of computing overtime. Overtime shall be paid for only once. Overtime work shall be offered on the basis of classification and seniority. If the most senior available employee in the classification declines the overtime, it shall be offered to the next senior employee in the classification. If no employee accepts the overtime, the employee with the least seniority who is available in the classification shall accept the overtime if assigned.

Discussion:

The facts are not significantly disputed. On June 22, 1995, the Wastewater Treatment Plant had an excess of sludge to haul using the plant's own sludge truck. All employees in the plant except the secretary are required to maintain a commercial driver's license for purposes of sludge hauling, and except for the electrician, all have performed this work. The work, however, is not distributed equally during normal hours. The evidence is undisputed that Operator I's perform the bulk of the hauling, and that the Employer uses Operator II's most frequently when Operator I's are not available. Mechanics, however, have performed this work in the past and are qualified to do the work. The Electrician is also qualified to haul sludge, but has not been asked to do so.

On June 22, Administrative Assistant Chester Tadych anticipated a need for four hours of sludge hauling, and assigned the work to the two senior Operator II's who were scheduled to work that day, named Andrastek and Revolinsky. Tadych testified that he assigned this work to Operator II's because the Operator I's scheduled to work were already working as Operator II's and therefore receiving higher pay than if he gave them the hauling work. Tadych testified that he identified the need for the work for Thursday, June 22, early in the afternoon of Wednesday the 21st, chose the two most senior Operator II's from among the employees scheduled to work the next day, and offered them the 5:00 to 7:00 a.m. work as overtime. They accepted the work and were paid for it.

A grievance was subsequently filed by Union Steward Leo Kanugh, who is also president of the Union. Kanugh, an Operator II, filed the grievance on behalf of six other employes whom the Union claimed were skipped over for overtime on the sludge hauling. At the hearing, the parties agreed that the Union was not contending in this instance that the Employer should have assigned more senior Operator II's to the sludge hauling even if that meant calling in employes who were not scheduled to work on June 22. Instead, the parties stipulated, the employes who would be entitled to the remedy if the Union prevailed as to the merits would be the two most senior employes in the plant who were qualified to drive trucks. Both of these, Dennis Fricke and Peter Klein, are classified as Mechanic.

Kanugh stated that all employes, from Mechanics to Operator I's, do hauling during the regular day, and Kanugh and Tadych agreed that there is seldom overtime in that work. Kanugh testified that sludge hauling does not appear in any job description and that there is no consistency in who does the work. On cross-examination, however, Kanugh conceded that most of the truck driving is done by Operator I's first and then by Operator II's if the I's are not available. Kanugh testified that Mechanic Klein spent time hauling sludge every day that week except for the day of the overtime, and Tadych, while noting that mechanics do not often do this work, conceded that in the week in question Klein might have hauled for three days, because a lot of employes were on vacation that week.

The parties introduced into evidence two lists of employes maintained for two kinds of emergency situation, in which plant personnel are instructed to call in these employes in the order they appear on the list.

The first list is for power outages, and lists Electrician John Kloida at the top. Following Kloida are three employes classified as Operator III, in seniority order; the two mechanics, in seniority order; the ten Operator II's in seniority; and the two Operator I's, also in seniority order.

For "high water" alarms, the other list includes the three Operator III's, in seniority order; the two Mechanics, in seniority order; three of the Operator II's, in seniority order, followed by the Electrician (whose seniority is immediately lower than the top three Operator II's); the remaining Operator II's; and the two Operator II's. Kanugh testified that the Operator III's get called first for high water emergencies because it is their job to maintain stations. He testified that mechanics have done that job on their way to being mechanics, but that it is no longer their primary job.

It is apparent from the seniority list that promotions in the department have generally tracked department seniority. The sole example of an employe whose high-rated job classification is out of order with other employes, in terms of seniority, is the Electrician.

The Union contends that a commercial driver's license is required of all employes except the secretary and they have all been told they have to maintain a CDL to drive the sludge truck. The Union argues that this demonstrates that driving the sludge truck is a duty of all classifications except the secretary. The Union contends that the order of assignment of hauling duty during non-overtime hours is not in question here, and that the fact that Operator II's are used in preference to other classifications for that work during the regular workday does not control the

issue because the collective bargaining agreement makes that work available to employees on a seniority basis beyond the immediate classification most closely associated with the work. The Union requests that the grievance be sustained with an award of two hours at overtime rate to employees Fricke and Klein.

The City contends that the contract language is somewhat ambiguous but that the Union's interpretation that "classification" means the whole group of employees who possess the qualifications to do the work is less persuasive than the alternative. The City argues that the practice which has been followed is that overtime work should be assigned on the basis of seniority within the job classification to which the work is normally assigned, and that in this instance that meant the Operator II's, once Operator I's, who are normally assigned that work, had been offered it first. The City notes that while there were senior Operator II's who were not offered the overtime work in this case, that is not an issue because the Union claims the remedy for the mechanics. The City argues that the past practice is accurately reflected in the exhibit which shows the order of call-ins for two emergency situations when they arise, and that this demonstrates that "while all of the employees on the list may be capable of performing the work, the order is based not on simple department seniority, but on the classification of those employees who generally perform the work". The City argues that in the high water list, the mechanics, who are qualified to do the work and have more department seniority than the Operator III's, nevertheless fall below Operator III's on the list because Operator III's generally perform the type of work involved. In this situation, the City argues, the Operator II's regularly perform truck driving duties before such duties are assigned to the mechanics, and therefore these duties fit their classification better than the classification of mechanics. The City requests that the grievance be denied.

I note initially that it is not an issue in this proceeding whether or not the City should have offered the overtime work of truck driving first to senior Operator II's who were not scheduled to work on the day in question. There are two reasons, one being that the Union has sought a remedy on behalf of the Mechanics rather than those employees, and the second being that the Mechanics, in my view, prevail in their quest for the two hours' pay.

The City's view is not without reason. The contract clause in question is not specific enough to identify whether more than one classification may share the preference for overtime defined by a reference to classification. And it appears from all of the evidence that Operator II's do perform this work more frequently than Mechanics. But the lists of overtime call-in for emergency purposes, which the City relies on, lead in my view to a different interpretation than the City would have me make. Because the clear agreement of both parties is that work performed primarily by any one classification should be assigned on overtime first by seniority within that classification, the placement of different classifications at the top of the list for the different kinds of overtime is not in controversy. Thus, there is a clear explanation within the terms of the collective bargaining agreement for the Electrician's presence at the top of the list for overtime related to a power failure, and for the Operator III's position at the top of the list for overtime

related to high water. Similarly, it is neither in controversy nor unreasonable that Operator I's would get first preference for overtime in sludge hauling. The difficulty arises only afterwards. Here, the close tracking between promotions to higher classifications and department seniority make it difficult to distinguish the facts supporting the Union's view from the facts supporting the Employer's, since the same order of employes can be argued for the most part both ways.

But there is an exception in the clearly-stated list for high water. The Electrician's position on that list follows his seniority and therefore places him in the middle of the Operator II's. A review of the job descriptions entered into the record reveals no part of the Electrician's job which relates to handling of water problems, though he may be familiar with what to do. This suggests that it is the Union's view which has prevailed in the construction of that list. For this reason, and because the Mechanics are clearly capable of performing the sludge hauling work and apparently did so to a considerable extent during the week in question, I find that it is most consistent with the parties' practice as to high water issues to hold that the Agreement means that preference by classification for overtime work goes only to the classification most immediately associated with the work in question. Thereafter, qualified employes are entitled to a share of such overtime as may be available on a department seniority basis.

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

AWARD

1. That the City violated the collective bargaining agreement by not offering truck driving work to Dennis Fricke and Peter Klein.
2. That as remedy, the City shall pay, forthwith upon receipt of a copy of this Award, two hours' pay at the overtime rate effective on the date of violation to Dennis Fricke and Peter Klein.

Dated at Madison, Wisconsin this 29th day of May, 1996.

By _____
Christopher Honeyman, Arbitrator

