

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

RACINE PROFESSIONAL EMPLOYEES'
ASSOCIATION

and

THE CITY OF RACINE

Case 498
No. 54150
MA-9567

Harold Kobbervig Pay Grievance

Appearances:

Weber & Cafferty, S.C., by Mr. Robert K. Weber, Attorney at Law, appearing on behalf of the Association.

Long & Halsey Associates, Inc., by Mr. William R. Halsey, Attorney at Law, appearing on behalf of the Employer.

ARBITRATION AWARD

Pursuant to the provisions of their collective bargaining agreement the Racine Professional Employees' Association (hereinafter referred to as the Association) and the City of Racine (hereinafter referred to as the Employer or the City) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute concerning correct level of compensation for Assistant City Engineer Harold Kobbervig. Daniel Nielsen was so designated. A hearing was held on November 18, 1996 at the City Hall in Racine, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The parties submitted post-hearing briefs, and the record was closed on January 4, 1996.

Now, having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the undersigned makes the following Award.

I. Issue

The parties stipulated that the following issue should be determined herein:

1. Should the grievant be classified as a PU-28? If not,
2. What is his appropriate classification?

II. Pertinent Contract Language

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ARTICLE IV
MANAGEMENT RIGHTS

The Employer possesses the sole right to operate City government and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this contract and the past practices in the departments covered by the terms of this Agreement, or by the City under rights conferred upon it under this agreement or the work rules established by the City of Racine. These rights which are normally exercised by the various department heads include but are not limited to the following:

1. To direct all operations of the City government.
2. To hire, promote, transfer, assign, and retain employees in their position with the City and to suspend, demote, discharge and take other disciplinary action against employees for just cause.

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4. To maintain efficiency of City government operations entrusted to it.
5. To introduce new or improved methods or facilities.
6. To change existing methods of facilities.

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8. To determine the methods, means and personnel by which such operations are to be conducted.

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ARTICLE VIII
GRIEVANCE PROCEDURE

A. Definition of a grievance: should a difference arise between the city and the association or an employee concerning the interpretations, application, compliance with this agreement, such difference shall be deemed a grievance and shall be handled according to the provisions herein set forth.

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K. Decision of the Arbitrator: The decision of the Arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the contract area where the alleged breach occurred. The Arbitrator shall not modify, add to or delete from the express terms of the Agreement.

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ARTICLE XXV EXCESS TIME

A. Association members shall not be paid for excess time worked. Excess time shall only be recorded and taken with the approval of the department head and shall only be that time specifically authorized to be worked by the department head. Excess time accumulated may be taken at a time mutually agreed upon between the employee and the department head and cannot be carried forward beyond the calendar year, except that time earned during the month of December may be carried only into January of the following year.

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III. Background Facts

The Employer provides municipal services to the people of Racine, in southeastern Wisconsin. Among the services provided is the operation of a Department of Public Works, including an engineering department. Richard Jones is the Commissioner of Public Works, James Blazek is the City Engineer, and the grievant, Harold Kobbervig, is the Assistant City Engineer.

The Association represents the non-exempt professional employees of the City, including the grievant. Under the negotiated pay scale for professional employees, the top three pay ranges are PU-26, 27 and 28. For employees such as the grievant, who have five or more years of service, PU-26 pays \$60,695 per year, PU-27 pays \$63,711, and PU-28 pays \$67,559. The Assistant City Engineer's job is the only position classified in the PU-26 range. There are no bargaining unit jobs in the PU-27 range, although the Assistant Commissioner of Public Works and the recently created position of Assistant City Engineer / Traffic Engineer are paid in the parallel NR-27 range for non-represented employees. The only represented position in the PU-28 range is Assistant City Attorney.

Prior to a reorganization in 1989 and 1990, the City Engineer's office was responsible for two functional areas -- sewers and streets. At that time, the top professional staff of the

Engineering Department consisted of the City Engineer, a Deputy City Engineer and two Assistants. The job description for the Deputy City Engineer was:

Characteristic Work of the Class

Nature: Under direction to do engineering work of a high degree of professional difficulty and administrative responsibility calling for extensive knowledge of the principles and techniques of several branches of civil engineering practice in planning, organizing, and directing all of the engineering work for the City; and to do related work as required.

Examples: As chief assistant to the City Engineer, is in responsible charge of assisting and implementing the planning, programming and administering the various activities of the Engineering Department; individually has general technical responsibility for supervising all engineering activities involving location, design, construction, operation and maintenance of all public improvements under the jurisdiction of the department; plans, organizes and directs the work of a staff of assistants; makes work assignments and arranges work schedules; keeps records and makes reports; is to act for the City Engineer in his absence, as may be necessary.

The reorganization moved responsibility for sewer design to the separate Water and Wastewater Utility and transferred one Assistant City Engineer's job to the Utility. The Deputy City Engineer's position was reassigned to the Utility in the second phase of the reorganization, leaving Blazek and Kobbervig overseeing two Civil Engineer-III's, four Engineering Technicians and one Civil Engineer-I in the Engineering Department.

After the reorganization, Kobbervig asked for an increase in pay to reflect his assumption of some duties of the Deputy City Engineer. He proposed placement in the PU-28 range. Reclassification requests are customarily handled in negotiations, and the City and the Association addressed the matter of Kobbervig's pay in bargaining, without coming to agreement. On April 18, 1996, the instant grievance was filed, asserting that the refusal to reclassify the grievant was an unreasonable exercise of management rights. The grievance was denied, and was referred to arbitration.

A hearing was held on November 18, 1996, at which time the grievant testified that after the Deputy's job was eliminated, the duties were split between Blazek and him. The primary responsibility he picked up from the Deputy was attending and taking minutes for meetings of the City Council's Public Works Committee, although he conceded this work was primarily clerical in

nature. He also assumed more responsibility for correspondence and some office administration.

His current job description, though accurate, is incomplete, in that it does not include the new duties he assumed from the Deputy's job not other services he has provided outside of his position description:

CLASS TITLE: ASSISTANT CITY ENGINEER

TYPE OF WORK PERFORMED:

Assists in providing professional engineering advice and assistance to City departments and in assigning, coordinating and reviewing the work of the Engineering Department.

TYPICAL DUTIES PERFORMED: (These examples do not list all the duties which may be assigned.)

- * Assists in supervising Engineering Department operations.
- * Works in the planning and implementation of the department's capital improvement program; prepares and directs department's operational and outlay budgets.
- * Checks and reviews specifications and contract documents including bid quality form for City projects; prepares contracts for consulting engineers performing work for the City; prepares engineering cost feasibility studies and makes recommendations.
- * Attends public hearings, committee meetings, design or construction conferences, meets with the public to explain and coordinate public works projects.
- * Assists in planning, directing and participating in a department in-service program; writes approval letters and reports on submittal of technical material by consulting engineers.
- * Directs and reviews the preparation of a variety of reports, vouchers and forms.
- * Performs related work as assigned.

Kobbervig noted that, in addition to the listed duties, he was also responsible to act for the

City Engineer in his absence; serve as secretary to the Public Works Committee; participate in reviewing and screening job applications; assist in preparation of the Capital Improvement Program and the annual departmental budget; prepare applications for Community Development Block Grant funding; field inquiries from the public regarding City policy; serve as computer consultant to the Department; serve on the Graphic Information Systems committee; and mediate employee problems about policy and work rules.

Kobbervig pointed out that Blazek had written a letter supporting his request for reclassification to PU-28, citing his leadership in computer operations in the Engineering Department, and the fact that he held licenses as both an engineer and a registered land surveyor. Blazek's letter explained that the land surveyor's license was valuable to the City because it saved the costs that would otherwise be incurred from having to hire outside consultants for surveying work. Kobbervig also produced a 1994 salary survey for engineers in Wisconsin from the National Society of Professional Engineers, showing the median salaries for categories in which he believed he would be included:

<u>CATEGORY</u>	<u>SALARY</u>
All Respondents	\$60,900
30 or more yrs. experience	\$74,740
BS Engineering	\$57,450
BS plus 30 yrs. experience	\$76,400
Level of Responsibility	\$65,350
Branch of Engineering (Average)	\$59,452
Job Function	\$74,240
Industry or Service of Employer	\$52,312
Registration as PE and RLS	\$67,600
Supervisory/Managerial Resp.	\$53,800
<u>Size of Organization</u>	<u>\$62,000</u>
Mean	\$64,013 (sic) 1/
1994 top rate in PU-28	\$61,818

Kobbervig testified that the new, non-bargaining unit position of Assistant City Engineer/Traffic Engineer was created in 1996 to replace the former job of Traffic Engineer when the incumbent retired. 2/ Kobbervig had applied for this job after the grievance was filed, but

1/ \$64,013 is the mean figure cited in a July 1995 letter Kobbervig sent to the Association's negotiators (Assoc. Exhibit #4). It appears that the mean is actually \$64,022.

2/ The creation of this job as a non-bargaining unit position is the subject of separate prohibited practice and unit clarification cases which are not directly relevant to this dispute.

was passed over in favor of a junior applicant. He expressed the opinion that this job was analogous to his, yet was paid at a rate equivalent to the PU-27 range. Finally, Kobbervig detailed special contributions he had made to the office before the City had an in-house computer department, including the development of databases for sidewalk orders, contracts and assessment schedules. He continues to maintain these databases.

On cross examination, Kobbervig acknowledged that much of the supervision, office administration and computer work he performed was similar to what he had done before the Deputy's position was eliminated, and that the effect of that reorganization had primarily been to add attendance at Public Works Committee meetings. He denied that he received compensatory time or any additional compensation for meeting attendance. He estimated that his annual salary, including longevity, was \$62,000.

Richard Jones appeared for the City, and testified that reclassifying the grievant to either PU-27 or PU-28 would damage the internal wage structure of the Department, since the Assistant Commissioner of Public Works was paid in the NR-27 range. Jones said that the new Assistant City Engineer/Traffic Engineer was created to downgrade the pay of the Traffic Engineer, which at NR-28 had been too high for the responsibilities of the job. The new job has day-to-day responsibility for traffic engineering, street lighting and parking, and had greater responsibilities for field operations than does the Assistant City Engineer. The person selected for the new job was the former Assistant Traffic Engineer.

Personnel Director James Kozina testified that he rejected the Association's proposal to reclassify Kobbervig through bargaining, because he felt it was not justified. His office had done a survey of the 1996 salaries paid to the number two person in the engineering departments of eleven comparable Wisconsin cities:

<u>CITY</u>	<u>Minimum</u>	<u>Maximum</u>
Appleton	\$43,680	\$61,152
Beloit	\$42,846	\$59,485
Green Bay		
-Dir. of Engineering	\$46,649	\$58,310
-Principal Engineer	\$38,294	\$47,867
Janesville	\$48,933	\$63,616
Kenosha	\$46,272	\$56,628
La Crosse	\$45,922	\$56,628
Madison	\$54,392	\$65,596
Waukesha	\$43,871	\$54,327
Wausau		
-City Engineer	\$40,261	\$56,508
-Chief Engrng Tech	\$32,150	\$45,122
Wauwatosa	\$56,878	\$76,116

West Allis	\$46,134	\$57,678
Average:	\$46,147	\$58,351
1996 PU-26	\$49,317	\$59,509
1996 PU-27	\$51,626	\$62,463
1996 PU-28	\$54,164	\$65,583

Kozina acknowledged that cross-city comparisons were difficult because duties varied, but he expressed the opinion that the salary paid to Kobbervig was well within the range for his duties and was appropriate. He noted that the Assistant City Engineer was the second highest paid bargaining unit job in the City, below only the more demanding job of Assistant City Attorney.

IV. The Positions of the Parties

A. The Position of the Association

The Association takes the position that Mr. Kobbervig is undercompensated for the work he is performing, and at a minimum should be compensated at the PU-27 classification. This is the only reasonable conclusion that can be drawn from the evidence in the record. Mr. Kobbervig's own supervisor, City Engineer James Blazek, is the City official best situated to judge the value of his efforts, and he has supported efforts to obtain an appropriate increase in pay for Mr. Kobbervig. Mr. Kobbervig has functioned as the deputy department head and, in fact, has performed some functions normally reserved for a department head. As an example of this, he has acted as secretary to the City Council's Public Works and Services Committee. Moreover, he had been the Engineering Department's computer consultant for 11 years and has, on his own initiative, designed valuable software programs for the Department.

The Association notes that a survey by the National Society of Professional Engineers shows that he is currently paid \$5400 less than the 1994 mean salary for an engineer of his rank and responsibility. The City's attempt to compare his job with that of assistant engineers in other Wisconsin communities is irrelevant for two reasons. First, there is no information in the record about the actual duties performed by persons holding those titles in other cities. Moreover, moving the grievant to a PU-27 classification would not affect his ranking among the comparables used by the City. Thus the City's own data provides no support for either party's position on this reclassification.

The Association points to a general rule in arbitrations over reclassification requests, that being that employees who perform the same quality and quantity of work should receive equal pay. Here the grievant has performed the duties of the Deputy City Engineer, but has been paid at a substantially lower rate. This is unreasonable, and the City is under the same obligation as any other employer to exercise its management rights in a fair, reasonable and non-discriminatory fashion. Having failed in that duty, the City should now be required to reclassify the grievant to a

PU-27 pay grade and make him whole to the date on which the City first refused to bargain an appropriate increase in pay.

B. The Position of the City

The City takes the position that the grievant is appropriately compensated in the PU-26 pay range. The Deputy City Engineer was not replaced when he retired in 1990, which was an exercise of the City's right to change methods of operation. This does not mean, and the record does not show, that the grievant assumed the duties of that office. The grievant himself admits that primary change in his duties after that retirement has been that he now attends and takes minutes at meetings of one City Council committee. This is essentially a clerical function, and he is entitled to compensatory time under the Agreement for the time he devotes to this task. Given that he is eligible for compensation at his engineer's rate of pay for doing the lower rated clerical work, this additional task hardly justifies an increase in pay.

The grievant is a good employee, and it is to be expected that his supervisor would support his effort to get a pay increase. The arbitrator should not attach any particular significance to this courtesy. The City notes that the Director of Public Works strongly opposes the request for either a PU-27 OR PU-28 pay rate, since it would interfere with his ability to reevaluate the entire department, and would create a serious internal conflict by paying the grievant as much or more than the Assistant Director of Public Works, a higher ranking and more responsible position. His view is amply supported by the salaries paid in comparable cities and those paid to other employees of the City. There is no basis for an increase in pay, and the grievance should be denied.

V. Discussion

The parties agree that this case is subject to grievance arbitration, although the contract is silent as to how disputes over pay levels should be resolved. Generally speaking, there are two theories under which a pay increase may be justified. The first is that there has been a material, uncompensated increase in the duties and responsibilities of the position since the rate was initially established. The other is that the pay for this position is clearly substandard when compared to other jobs in the same organization requiring essentially the same levels of effort, expertise and responsibility. Both arguments have been raised by the Association in support of the grievant's reclassification request.

A. Material, Uncompensated Increase in Duties

The grievant's effort to obtain a reclassification was initiated in response to a downsizing and reorganization of the Engineering Department, in which the sewer design function was transferred to the Water and Wastewater Commission, along with several staff jobs, and the

Deputy City Engineer's position was abolished. The grievant conceded at the hearing that the primary effect of this reorganization on his duties was to require him to attend meetings of the Public Works committee and take minutes. He also acknowledged that taking minutes did not require any specialized skill and that it was, in fact, essentially a clerical function. The addition of note-taking duties to a professional engineer's position cannot be termed a material increase in the duties and responsibilities of the position, and attendance at committee meetings is specifically included in the existing job description:

- * Attends public hearings, committee meetings, design or construction conferences, meets with the public to explain and coordinate public works projects.

At most, this added duty constitutes an additional demand on the grievant's time. The grievant testified that he has not received any compensation for this additional time. However, he did not say whether he had ever requested compensation under the existing contract provisions for working excess time, and the City concedes in its brief that he is entitled to receive compensatory time for his attendance at these meetings, under Article XXV of the contract.^{3/} Thus, even assuming that the additional time demanded by these occasional clerical duties might constitute a material change in his job, compensation is already available under the contract at a rate which is well above the actual value of the additional work being performed.

The grievant noted several other functions that he performed beyond his job description, including writing and maintaining computer databases and providing land surveying services. These were the two factors singled out for particular note by City Engineer Blazek in his letter supporting the reclassification request. The grievant's computer work and his registration as a land surveyor predate the departmental reorganization and the reclassification effort by many years. The computer work has been going on long enough for it to have become outdated as the City has developed an in-house computer capability. The land surveyor's license was obtained in 1974, before he became an Assistant City Engineer.

The citation of these distinct personal attributes starkly illustrates the problem of differing outlooks in pay rate disputes. The employee looks to what he personally brings to the job, while the employer looks to the value of the job itself. Given the flexibility inherent in a professional position, each individual brings his own strengths to the job and thereby defines the job somewhat differently than another might. Notwithstanding that, a formal classification and pay range system cannot perfectly reflect the value of each individual, and the issue is whether the placement of a

3/ City brief, at page 3: "The labor contract, joint exhibit #1, in Article XXV, at page 22 provides that the grievant is entitled to compensatory time for performing those clerical functions."

particular job within the system is appropriate. The grievant's personal talents certainly add value to him as an employee, but they do not modify the basic demands of the Assistant City Engineer's position. If there were five people in that classification, the grievant's certification as a surveyor and his talent with computers would not cause the overall class to be upgraded. Performance of these functions is appropriate for a person in his job, but it does not constitute a material increase in the overall duties and responsibilities of the position.

B. Comparison with Compensation for other Positions

The Association argues that the grievant is undercompensated when compared with other jobs in the City, and with similarly situated engineers in Wisconsin. The Employer argues that reclassifying him would disrupt the relationship between his job and other, more responsible positions such as Assistant Commissioner of Public Works and Assistant City Engineer/Traffic Engineer, and would be inconsistent with salaries paid by other cities.

At the outset, it must be noted that the external comparisons cited by the grievant and the City may well have been relevant to the bargaining process, but they do not carry great weight in this grievance arbitration proceeding. Even putting aside the difficulty in making reliable comparisons to the private sector and to other municipalities in which the engineering

function may be organized and staffed differently, outside comparisons are a poor reflection of what is fair under this specific contract. Industry standards may be relevant in an interest arbitration, but this is a grievance and the issue here is whether the pay rate is justified under the compensation scheme that these parties have already negotiated. That necessarily requires a focus on the relationship between the pay for this job and that of others within the same compensation plan.

There are no other jobs in the PU-26 pay range. There are two unrepresented positions which have been identified as being paid at a range roughly equivalent to the contract's PU-27 range -- the Assistant Commissioner of Public Works and Assistant City Engineer/Traffic Engineer. The only job in PU-28 is the Assistant City Attorney.

The job description for the Assistant Commissioner specifies the following duties:

- * Assists the Commissioner of Public Works with the administration of the Streets, Solid Waste, and Bridges divisions of the Department of Public Works. (20 %)
- * Directs the Building Complex Division and Bridges Division on a day-to-day basis. (30%)

- * Prepares plans and specifications and acts as Project Engineer on projects outside of the scope of the operations of the City Engineer. (30%)
- * Coordinates underground storage tank program for the City of Racine. (10%)
- * Coordinates projects for various departments, consulting firms, railroads, and utilities when contractors are involved. (5%)
- * Prepares operating and outlay budgets and the Capital Improvement Program for the Bridge and the Building Complex divisions; assists in the preparation of the total budget for the department.
- * Develops, collects, evaluates and coordinates information on methods and costs of various operations.
- * Investigates complaints regarding services and recommends actions; answers questions regarding services.
- * Coordinates special events, processes requisitions of supplies and materials, equipment and services as required.
- * Prepares Annual summary of work, completed by departments, prepares billings for work done by other city employees.

It is evident that, while requiring the same educational background and professional certification, this position carries with it a much greater managerial and supervisory role than does that of Assistant City Engineer. Those are factors which are traditionally understood to carry higher levels of compensation, and a comparison of this job description with the grievant's demonstrates a clear and rational basis for classifying this job in a higher pay range.

The Assistant City Engineer/Traffic Engineer is a slightly closer question. The job posting for this position is in the record, and reflects the following essential duties:

- * Plans, directs and coordinates the activities of Transportation Department field operations, including street lighting, traffic signals, traffic sign shop, parking system operation, and transit system;

- * Under direction of the City Engineer, supervises and performs traffic engineering design and engineering work related to all of the above areas;
- * Establishes traffic engineering plans and directs the development of traffic surveys, accident studies, long range requirements for traffic; recommends remedial changes to improve conditions;
- * Reviews streets, street lighting needs and determines all facets of equipment, location, installation and maintenance.
- * Prepares proposed ordinances establishing new traffic patterns and modifying existing traffic regulations; presents these proposals to City administration;
- * Attends meetings with citizens, organizations, contractors, utility companies, planning commission, and State and Federal agencies which relate to traffic, roadway construction, and traffic detours.

Although the job is similar in title to that of the grievant, this position description sets forth greater responsibility for direct supervision of field operations and a much greater degree of control of department operations than that enjoyed by the Assistant City Engineer in his department. That conclusion is buttressed by the testimony of Jones, to the effect that this job is essentially the department head for the Traffic Department and is the successor to the former position of Traffic Engineer, which was paid in the NR-28 pay range. As noted above, greater supervisory and managerial responsibility are customarily associated with higher levels of compensation.

The placement of the Assistant City Engineer in the PU-26 pay range is consistent with the pay for other top professional jobs in the Public Works Department. While all of the cited positions require specialized professional knowledge at essentially the same level, the higher pay for the Assistant Commissioner of Public Works and the Traffic Engineer result from greater levels of supervisory and managerial responsibility. As for the Assistant City Attorneys, the Association has essentially withdrawn its request for placement in the PU-28 pay range, arguing only the PU-27 range in its brief. This change of position is clearly warranted, in that an accurate comparison of the value of engineering and attorney jobs would require a much more detailed and sophisticated job analysis than is available in this record. In any event, as the record does not support placement of the Assistant City Engineer in the PU-27 range, placement in the higher PU-28 range would obviously be inappropriate.

The question in this case is not whether the grievant is a valuable employee. Clearly he is, and the record amply reflects the various contributions he has made to the City's Engineering Department. The issue instead is whether his position is so misclassified in the City's compensation system as to demand an upgrade outside of contract negotiations. The weight of the record evidence does not support that conclusion, and the grievance must therefore be denied.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The grievant is appropriately classified in the PU-26 pay range. The grievance is denied.

Dated at Racine, Wisconsin this 3rd day of April, 1997.

By Daniel J. Nielsen /s/
Daniel J. Nielsen, Arbitrator