

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 67, AFSCME, AFL-CIO

and

CITY OF RACINE

Case 548

No. 56650

MA-10362

Appearances:

Mr. John P. Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Guadalupe Villarreal, Deputy City Attorney, City of Racine, appearing on behalf of the City.

ARBITRATION AWARD

The Union and Employer named above are parties to a 1998-99 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 a dispute over reclassifications of the employees in the Department of Transportation. The undersigned was appointed and held a hearing on January 20, 1999 in Racine, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs by April 14, 1999.

ISSUE

The following issues are to be decided in this case:

Is the grievance on the issue of reclassifications of the HU-10 and HU-14 positions in the Department of Transportation arbitrable?

Did the City violate the collective bargaining agreement by refusing to reclassify six positions in the Department of Transportation? If so, what is the appropriate remedy?

BACKGROUND

The Department of Transportation used to be a stand-alone department until a few years ago when it became part of the City's Department of Public Works. The parties still refer to the Department of Transportation as a department, and within that department, there is a parking division and a traffic division. There are four employees including one lead worker in the parking division, and two employees including one lead worker in the traffic division. Chris Jerry was a working supervisor in the Department until he retired January of 1998, and the City decided not to fill his position. The Union contends in this case that the duties of that working supervisor were dispersed among the six employees, and as a result, the wage classification for them is incorrect. The Union believes that the two lead workers who are currently classified as HU-10 and HU-14 should be reclassified to the HU-24 category, and the other four employees who are classified as HU-10 should be reclassified to the HU-22 category.

The positions and employees at issue here are:

1. Parking System Maintenance Worker (HU-14) – Ed Burgess, lead
2. Parking Meter Maintenance Worker (HU-10) – Leonard Hand
3. Parking System Utility Worker (HU-10) – Roy Chacon
4. Parking Meter Collector (HU-10) – Jim Kaplan
5. Sign Mechanic (HU-10) – Santos Moreno, John Willett, lead

Leonard Hand, Roy Chacon, Jim Kaplan and Ed Burgess are in the parking division, and Burgess is the lead worker. Santos Moreno and John Willett are in the traffic division, and Willett is the lead worker. The pay for lead workers was increased from 15 cents to 40 cents an hour in the last round of bargaining.

When Jerry retired, the City informed the six employees in the department that it would review the situation for 90 days. Jeff Fidler, DPW General Supervisor, met with the employees and told them that the City was reviewing the department. Commissioner of Public Works, Rick Jones, decided to not replace Jerry. Another employee – Manuel Lopez – left in 1997 and was not replaced. His duties were spread around the remaining employees. Jones wanted to see whether the department could work without replacing those people.

Fidler took over supervision of the Department of Transportation employees upon Jerry's retirement and was responsible for the department's operations. He told the employees that he was not a working foreman, and that they would continue to do the actual physical work on the job. Fidler tried to stop in the department on a daily basis to see if there were any problems, and he gave instructions in person or by phone.

When Fidler first took over the supervision of the Department of Transportation, he spent a lot of time there. In the first three months, he spent around 75 percent of his time there or at least on matters related to that department. Currently, he spends around 25 percent of his time on supervisory responsibilities for the Department of Transportation, and the rest in Public Works. He is in the shop only around four to six hours a week.

Thomas Eeg, the Assistant City Engineer/Traffic Engineer, also has some supervisory responsibilities for the Department of Transportation. He spends about five percent of his time on supervisory duties for the Department, a slight increase since Jerry's retirement. His office now answers more questions from the employees about work orders or how something needs to be done. Eeg has also given employees training on computers.

Eeg testified that the City used to have all mechanical parking meters, with many moving parts, gears and springs. They needed to be wound routinely, about every two weeks. In 1994, the City decided to update the meters to electronic meters, which are run by a 9-volt battery. The basic maintenance on the new meters is replacing the batteries. At one time, it took two or three people to maintain the mechanical meters, but with the new meters, it takes only one person. About 1600 meters have been replaced with the new meters out of around 2400 meters. The City plans to continue to buy more electronic meters and continue to upgrade them.

Fidler and Eeg met with the employees after the 90-day review and told them that Jerry's position would not be filled. Fidler and Eeg continue to share supervisory duties in the Department of Transportation.

Hand has been in his position for nine years. When he started, there were eight employees in the Department of Transportation, including the working supervisor. Hand estimated that when Jerry left, 50 to 70 percent of his duties also went to the remaining employees, although some of his duties went to Fidler. Employees picked up the non-supervisory duties of Jerry.

The job description for Hand's position as parking meter maintenance worker in pay grade HU-10 is the following:

TYPE OF WORK PERFORMED:

Under supervision of the Traffic Engineer and Labor Supervisor performs a variety of duties in the maintenance and servicing of parking meters, parking lots, parking ramps, and parking system properties.

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

Performs scheduled winding, repair of meter mechanisms, cases, timers, and installation of meter standards.

Maintains parking lots, ramps, and other system properties by performing general upkeep including but not limited to sweeping, painting, grass cutting, weed spraying, bush trimming, parking lot salting, snow plowing, and snow removal.

Maintains and repairs parking lot coin and gate mechanism.

Performs maintenance of parking ramp elevator and is responsible for calls on elevator malfunctions; repairs malfunctions if possible and informs supervisor if elevator is to remain out of service.

Conducts manual and machine traffic counts and performs maintenance of traffic counters.

Compiles and records data on a current basis pertaining to meter records and numbering system.

Assists in the collection and banking of parking meter monies.

Performs related tasks as assigned by supervisor.

MINIMUM QUALIFICATIONS REQUIRED:

Skill or experience in mechanical repair work.

Ability to perform repair of timing devices involving use of hand tools.

Ability to perform clerical tasks requiring accuracy and neatness.

Mechanical aptitude and dexterity in performing repair work.

Valid Wisconsin Driver's license and bondable to \$5,000.

Availability for emergency overtime when needed.

Physical ability to perform moderate physical tasks including walking, lifting, bending, in varied weather conditions.

Hand's job description was last revised in 1992. He felt it was an inaccurate job description, because he no longer works under the supervision of a labor supervisor. Hand stated there were additional duties in the area of snowplowing, training seasonal help and college students, dealing with the public, and having to supervise themselves. Despite the fact that the City has eliminated about two-thirds of its mechanical meters and replaced them with electronic meters, Hand felt that his workload had increased, because three people used to work on the mechanical meters and now he does all of them. As the old meters were replaced, a number of them were put in storage so that they could be used as needed when others broke down. Chacon and Burgess take care of the electronic meters.

Chacon testified that he took on the duties of ramp maintenance after Lopez left and was not replaced. He has the ability to repair both the electrical and mechanical meters. Since Jerry left, there is no one to help answer questions or deal with problems, and Chacon said that he would have to figure out solutions himself or call Eeg. He has learned to work with computers. His work on the electronic meters has increased since Lopez and Jerry left. Chacon testified that Kaplan's duties also increased along the same lines as his own.

The job description for Chacon, called the parking system utility worker with the pay grade of HU-10, is the following:

TYPE OF WORK PERFORMED:

Under supervision of the Traffic Engineer and Labor Supervisor performs a variety of duties in the maintenance and servicing of parking ramps, parking lots, parking meters and parking system properties.

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

Maintains parking ramps, lots and other system properties by performing general upkeep including, but not limited to, ramp and lot lighting maintenance, sweeping, (machine and hand) painting, grass cutting, weed spraying, snow plowing and snow removal. Also perform general parking ramp and lot clean up including ramp wash down.

Compiles and records data on a current basis pertaining to meter records and number system.

Performs maintenance of parking ramp elevator and is responsible for calls on elevator malfunction. Repairs malfunctions if possible and informs supervisor if elevator is to remain out of service.

Conducts manual and machine traffic counts.

Assists in scheduled winding repair of meter mechanisms, cases and timers and installation of meter supports.

Performs related tasks as assigned by supervisor.

MINIMUM QUALIFICATIONS REQUIRED:

Skill or experience in mechanical repair work.

Ability to perform repair of parking meter mechanisms, cases and timing devices involving use of small hand tools.

Aptitude and ability to adapt to new equipment, procedures and concepts.

Knowledge of landscaping techniques.

Mechanical aptitude and dexterity in performing repair work.

Ability to perform clerical tasks requiring accuracy and neatness.

Basic knowledge in use of cutting torch, welding equipment and core drill.

Valid Wisconsin drivers license, Commercial drivers license, and bondable up to \$10,000.

Availability for emergency overtime when needed. (Name will be placed on the after hours call list at the Police Department.)

Physical ability to perform moderate physical tasks including walking, lifting, bending, in varied weather conditions.

Employee will be locked into the Department of Transportation for 3 years from end of probationary period.

Chacon's job description was last revised in 1993. He believed it was no longer accurate because he does not work under the supervisor of a labor supervisor, and there are no more elevators or traffic counts as stated in the job description.

At one time, the Department of Transportation maintained its own vehicles, around 10 road vehicles and up to 20 pieces of small equipment such as lawn mowers and snow blowers. Burgess used to maintain the equipment. Currently, they are repaired at the DPW

garage. Burgess said that when the City started to get electronic meters in 1994, the equipment maintenance duties were removed from him and he took over learning the maintenance on the new meters.

The job description for Burgess, called the parking system maintenance worker at pay grade HU-14, is the following:

TYPE OF WORK PERFORMED:

Under supervision of the Traffic Engineer and Labor Supervisor performs a variety of duties in the maintenance and servicing of parking meters, parking lots, parking ramps, and parking system properties, and to perform light service work on Parking system and Traffic Division vehicles.

TYPICAL DUTIES PERFORMED: (Parking System)

These examples do not list all the duties which may be assigned.

Performs scheduled winding, repair of meter mechanisms, cases, timers, and installation of meter standards.

Maintains parking lots, ramps, and other system properties by performing general upkeep including but not limited to sweeping, painting, grass cutting, weed spraying, bush trimming, parking lot salting, snow plowing, and snow removal.

Maintains and repairs parking lot coin and gate mechanisms.

Performs maintenance of parking ramp elevator and is responsible for calls on elevator malfunctions; repairs malfunctions if possible and informs supervisor if elevator is to remain out of service.

Conducts manual and machine traffic counts and performs maintenance of traffic counters.

Assists in the collection and banking of parking meter monies.

Performs related tasks as assigned by supervisor.

TYPICAL WORK PERFORMED: (Vehicle maintenance)

Under supervision be able to perform light service work on the Parking System and Traffic vehicles. (per attached list)

MINIMUM QUALIFICATIONS REQUIRED:

Skill or experience in mechanical repair work and use of hand tools.

Mechanical aptitude, dexterity and ability to perform repair of parking meter timing devices.

Ability to perform clerical tasks requiring accuracy and neatness.

Valid Wisconsin driver's license and bondable to \$5,000.

Availability for emergency overtime when needed.

Physical ability to perform moderate physical tasks including walking, lifting, bending, in varied weather conditions.

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

Cleaning and/or changing spark plugs.

Changing oil, oil filters, p.c.v. valves, as well as servicing pollution control equipment.

Changing and/or replacing all filters (except transmission filters).

Adjusting carburetors (excludes disassembly).

General minor tune-ups.

Adjusting and adding fluid to brake systems.

Lubrication, including checking levels of and adding all lubricants.

Repacking front wheel bearings.

Draining, flushing, and filling radiators (excludes disassembly).

Changing tires.

The above job description was last revised in 1990. Burgess still does emergency maintenance on vehicles, particularly those that break down between 5:00 a.m. and 7:00 a.m. When Jerry was a supervisor, Burgess relayed orders from Jerry to other employees. Burgess now has to call out employees for overtime and check on the overtime equalization list. He

tries to keep the department running and find employees to get the work done. He finds the work that needs to be done and delegates it. Jerry used to pick up work orders from City Hall, and Burgess does that now. Eeg calls him to tell him where something needs repairing or where there have been complaints. The work orders describe the problem and the location. Burgess said that the other employees now do his work on an as-needed basis since Jerry retired.

Willett agreed that his job duties had increased. He felt responsible for the operation of the traffic division, making sure the other person has duties for the day. He answers phone calls from vendors and others who call. He works on the computer, runs painting machines and does the work to repair, replace or make signs from a scratch.

Willett's job description was updated in 1998. The job description is for sign mechanic, and the pay grade is HU-10. Moreno also works under that job description. The updated version is the following:

TYPE OF WORK PERFORMED

Performs a variety of duties in the manufacture, installation, repair and maintenance of traffic control devices, under the supervision of the Commissioner of Public Works and his designees.

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

Performs various operations utilizing screening, decal forming equipment, computers and related equipment in the design, layout, screening, and fabrication of signs.

Produces desired markings and signs through the application of painting techniques including surface preparation, measuring and mixing ingredients and painting to specifications.

Performs pavement marking layout and applies appropriate paint, tape, thermoplastic or other pavement marking material.

Operates, maintains and repairs large and small automatic paint lining machines to produce markings on roadways, City property and Parking System Facilities.

Constructs and installs road signs using various hand tools and power equipment including pipe threaders, bench and band saw, sanders, sheeting applicators and other related equipment.

Performs stand-by snow removal duties on an on-call basis.

Must maintain a consistent and reliable attendance pattern.

ASSOCIATED DUTIES:

Performs related duties as assigned.

KNOWLEDGE, SKILLS AND ABILITIES REQUIRED:

Basic math skills, knowledge of measuring tools and equipment, and ability to use a calculator are required.

Ability to learn computer operation and to use computer-assisted layout techniques.

Ability to follow moderately complex instructions both orally and in writing; ability to read and comprehend instructions outlined in City, State and Federal manuals covering application and installation of traffic control devices.

Ability to operate and work from an aerial truck.

SPECIAL REQUIREMENTS:

Must have a valid Wisconsin Class A Commercial Driver's License.

MUST BE AVAILABLE ON A 24-HOUR EMERGENCY ON-CALL BASIS.

PHYSICAL DEMANDS OF THE POSITION:

Physical ability to operate line painting machinery involving considerable walking, bending, stooping and lifting, and install 125 pound sign post blocks involving digging holes, maneuvering the block and installing the signs at the heights required.

Physical ability to operate painting machinery on roadways and thoroughfares in a safe, efficient manner while maintaining a high degree of workmanship.

Standing, walking, sitting and stooping. Kneeling, crouching, climbing, balancing and bending/twisting. Reaching, feeling, talking and hearing. Lifting, carrying, pushing/pulling up to 50 pounds. Handling, grasping.

ENVIRONMENTAL/WORKING CONDITIONS OF POSITION:

Must be able to work in all outside weather conditions.

Must be able to work on stepladders, on extension ladders and aerial trucks.

EQUIPMENT USED:

(These examples do not list all equipment to be used but are to be used as a guide.)

Service truck, aerial truck, 5 yard dump trucks, front end loaders, hand tools, drills, saws, cranes, rollers, cutters, pipe threaders, sanders, sheeting applicators, screening equipment, computers, painting equipment, heat guns and associated equipment.

Most of the employees thought they should be classified in the HU-22 level and pointed to similar duties in the Electrician's job description. The City's job description for Electrician-Parks, at the HU-22 pay rate, is the following:

POSITION PURPOSE:

This position reports to the Building Maintenance Supervisor and is responsible for installation, maintenance and repair of electrical fixtures, appliances and systems within various facilities of the Parks, Recreation and Cultural Services Department.

ESSENTIAL DUTIES:

Installs and repairs wiring, electrical fixtures, control panels, timers, and assorted electrical transfer equipment including electronic controls.

Maintains electrical systems for recreation facilities, ball diamond lighting and buildings under the jurisdiction of the Parks, Recreation and Cultural Services Department.

Plans new or modified installation to minimize power problems and provide consistency with specifications and local electrical code.

Performs various repair and replacement duties utilizing blueprints and electrical drawings.

Connects power cables to equipment, lighting fixtures, electrical motors.

Tests continuity of circuitry to insure electrical compatibility and safety of all components using standardized instruments.

Troubleshoot problem areas utilizing electrical knowledge and experience to repair faulty equipment or systems.

Maintains a consistent and reliable attendance record.

ASSOCIATED DUTIES

Performs related duties as assigned.

KNOWLEDGE, SKILLS AND ABILITIES REQUIRED:

Journeyman electrician status with five years of progressive installation and repair experience.

Knowledge of the methods and modern practices involved in installing, repairing, and maintaining a variety of power sources, equipment, electrical accessories.

Ability to logically solve problems of moderate difficulty with a minimum of supervision and direction.

Ability to read blueprints and drawings necessary to proper installation of repair of equipment.

Valid Wisconsin Driver's License.

To be available and subject to call during emergency and storm situations for repairs and snow and ice removal.

Ability to understand and follow written and oral instructions.

Ability to communicate effectively, exercise good judgment, courtesy and tact when dealing with the general public.

Physical Demands of Position:

Standing, walking, sitting and stooping.

Kneeling, crouching, climbing, balancing and bending/twisting.

Reaching, feeling, talking and hearing.

Lifting, carrying, pushing/pulling up to 50 pounds.

Handling, grasping.

Environmental/Working Conditions of Position:

Must be able to work in all outside weather conditions.

Must be able to work on stepladders from six and ten feet in height, on extension ladders up to 24 feet and aerial trucks up to 50 feet in height.

Working in areas of high voltage gear and equipment.

Equipment Used:

(These examples do not list all equipment to be used but are to be used as a guide)

Aerial truck, electrician hand tools, drills, cutting tools, computers and associated testing equipment related to the electronic field.

Referring to the Electrician's job description, Hand testified that he did some of the duties of the HU-22 position, such as installing, repairing, maintaining, planning new and modified installations, performing various repairs, troubleshooting problems, as well as maintaining a consistent and reliable attendance record. He also reads blueprints and drawings and is available during emergency and storm situations. He can follow written and oral instructions. Hand is not an electrician, and his position does not require any license or apprenticeship program.

Chacon does not perform any electrical work or know electrical codes. He is not an electrician and his current position does not require a journeyman's license or an apprenticeship program. He performs other duties as listed on the electrician's job description.

Burgess also felt that his rate of pay should be at the HU-22 level, and testified that he performed most of the duties on the job description noted above. The ball diamond lighting compares to the high-pressure sodium lamps on top of the ramps, which he has always changed. He does not have a journeyman electrician's card but has been looking into testing for an electrician's license for his own sake. Burgess' current position does not require a license or apprenticeship. He stated that his job requires an aerial lift training license and a forklift training license, which he intends to get.

Willett compared his job to the position description for carpenter, at pay grade HU-22. He noted several duties in the carpenter's job description that he currently does, such as working from sketches, blueprints and working drawings. He keeps power equipment and hand tools in proper working condition. He keeps an inventory and requisitions materials and supplies. While the carpenter works with wood, Willett works with metal. He testified that the other person in the traffic division, Moreno, has the same duties as he does.

Willett was aware that the HU-22 classifications included the positions of carpenter, plumber and electrician. He is not a carpenter. His position does not require an apprenticeship program. It requires licenses for aerial lift and forklifts, and those certifications are obtained through the City. Willett acknowledged that he had more contact with Eeg since Jerry left. He usually contacts Eeg by phone.

The City has eliminated several positions in the past. Hand's prior position of animal control officer was eliminated.

The grievance was filed on May 8, 1998, after the City finished its 90-day review of the situation. During that period of time, the Union and the City reached a tentative agreement on the labor contract. No one promised more money to employees when Jerry's position was not refilled. Fidler was aware that the employees were unhappy and were going to file a grievance.

Personnel Director James Kozina was involved in negotiating the labor contract with Local 67, and those negotiations did not involve any reclassifications for the positions at issue in this grievance. The negotiations started in the fall of 1997 and ended around the end of April or the beginning of May in 1998. Kozina stated that the City believes that reclassifications are to be handled in the negotiation process, not through the grievance process. The Union submitted a request for the reclassifications of building complex maintenance workers in 1987, which was not granted. However, the parties agreed in a side letter to meet and confer during the term of the contract on possible reclassifications, and the building complex workers were eventually reclassified. By the terms of the side letter, the Union did not relinquish its right to file and pursue grievances pertaining to employees allegedly working out of their respective classifications. Kozina also noted that the issue of reclassifications might occur outside of regular contract negotiations if there were a major restructuring in a department that caused significant changes in duties and responsibilities.

Kozina stated that the pay for lead workers was increased in the last contract partly to attract candidates to the positions. Lead workers are a liaison between supervisors and workers in terms of carrying out instructions, relaying information and instructions or any expertise that a person might bring to those positions. The labor supervisor or working supervisor was to help out in emergencies or overload situations but not to replace bargaining unit work. The Union has filed grievances in the past over supervisors doing what was considered to be bargaining unit work. The Union has also previously grieved classifications of positions.

Kozina recalled that the position of electrician was created to be a journeyman electrician in the Parks Department, but the International Brotherhood of Electrical Workers complained that such a position was their bargaining unit work. So the City eliminated that position and it does not exist. However, there is now a person under the jurisdiction of the Electrical Inspector that has passed the licensure test to qualify for the position that replaced the electrician. The position would not require journeyman status.

The HU-22 classification is the third highest-ranking classification in the contract and all the positions in it require a journeyman status.

THE PARTIES' POSITIONS

The Union

The Union takes exception to the City's contention that the grievance is not substantively arbitrable. The Union notes that the parties have settled a reclassification grievance in the past and the City did not raise that issue. That issue was also not raised in a reclassification grievance with Local 2239, AFSCME.

Additionally, the Union notes that many awards and decisions rendered by the Commission, ad hoc arbitrators and courts support its position that the grievance is arbitrable. The Union cites several arbitration awards as well as prohibited practice cases where the issue of arbitrability of reclassifications has been addressed and such arguments have been rejected. The Union concludes that the grievance is arbitrable, period.

Looking at the rationale for the reclassification requests, the Union notes that Hand gave examples of his increased duties. He is now required to plow snow, train and assign seasonal employees and deal with the public by phone and in person. His current job description is not an accurate account of his job duties. While Hand is paid at the rate of HU-10, he performs all the duties of the pay grade of HU-22 except ball diamond work. He is responsible for installations, repairs, maintenance, planning new and modified installations and trouble shooting, as called for in the HU-22 electrician's job description. While the City insinuated that new technology had reduced his workload, he felt it resulted in a shift and increase in his job duties.

The Union notes that Chacon's job description does not reflect his actual assignment of duties. He does not work under a supervisor and the City does not use elevators. Barring a couple of duties listed in the electrician's job description, he performs all of the rest of the requirements, and he requests an upgrade to that of an HU-22. The unrefuted testimony shows that Kaplan's duties have increased in proportion with other employees in the department, and his position should also be upgraded to that of HU-22.

The Union also states that Burgess gave several examples of his increased duties resulting from the elimination of positions in the department. He now maintains the electronic meters in the field and tests and maintains the mechanical meters. His job description was not accurate either. Although he held the position of lead worker before the supervisor retired, Jerry's retirement resulted in Burgess being responsible for distributing overtime to employees in the department and many additional duties. Jerry's departure now requires him to pick up work orders and communications. Burgess performs most of the duties of the HU-22 pay grade as found in the electrician's job description, except ball diamond lighting. Burgess is responsible for high-pressure sodium lights, which is comparable to ball diamond lighting. He is pursuing an electrician's license for his own protection. He now does the base duties of the retired supervisor while making \$1.50 per hour less than Jerry, and he seeks an upgrade to pay grade HU-22.

Willett reaffirmed the other witnesses in testifying that the unfilled vacancies resulted in increased work duties for the remaining employees. Willett is now responsible for the traffic division. He assigns duties, answers phones and works on a computer. An accurate account of his job duties is found in the HU-22 carpenter job description. He works from sketches and blueprints, makes drawings, keeps equipment in repair, maintains inventory, handles requisitions, and alters and repairs metal, as opposed to wood. He seeks an upgrade to the classification of carpenter, pay grade HU-22. The evidence suggests that the duties of Moreno parallel those of Willett, and Moreno also seeks an upgrade to HU-22 carpenter.

The Union asks that all the workers in the DOT be upgraded to pay grade HU-22 effective with the date of the grievance.

The City

The City first argues that the grievance is not arbitrable. The collective bargaining agreement does not provide a mechanism for reclassification of a group of employees that make up an entire department. The Union has arbitrarily picked out a non-existent classification of electrician with the pay rate category of HU-22 and argued that the employees should be reclassified as electricians. The only provision on the bargaining agreement that vaguely resembles the Union's argument is found in Article V under Temporary Assignments, when an employee is entitled to a higher rate of pay when a temporary assignment is made to a higher pay classification. In this case, the Union wants a permanent reclassification to a classification that is 12 pay levels higher than the HU-10 rate. The arbitrator would have to modify or add to the express terms of the bargaining agreement. The Union did not present any evidence to dispute Fidler's assertion that he never assigned any of these employees to perform duties outside their job classifications.

The electrician's position was never filled and was eliminated shortly after it was posted in 1998 because of a dispute with the International Brotherhood of Electrical Workers.

The City notes that the six employees have similar job descriptions and tend to fill in for each other when necessary. Two of them have lead worker duties and are compensated with an extra 40 cents an hour, which was increased by 25 cents during the last negotiations. The lead men are expected to assist supervisory personnel and act as a go-between management and the work crew. Willett has only one crew member at his direction, and Burgess has three employees as his work crew.

The City asserts that the Union failed to show that the employees are performing duties outside their respected job descriptions. The City finds it incredible that they are requesting that they should be reclassified as electricians when they are not electricians nor do they hold journeyman status or any licenses as electricians.

Moreover, all of the vehicle maintenance responsibilities have been taken over by the DPW. Burgess retained his HU-14 pay rate even though he is no longer responsible for vehicle maintenance within the DOT, and he also gets the lead man's extra pay even though he has only three employees under his wing.

The City points out that two-thirds of its 2400 mechanical parking meters have been replaced by battery operated digital meters. These new electronic meters do not have all of the moving parts, gears and springs contained in the mechanical meters. The new digital meters are not required to be repaired by DOT personnel and malfunctioning meters are shipped to the manufacturer for repairs. Thus, only one person is needed to rebuild and maintain the older meters versus two employees in the past.

The Union has claimed that the DOT employees are somehow performing supervisory duties when in fact two of the six employees are paid extra exactly for the kind of duties that the Union says are new or supervisory in nature. The Union claims that because Fidler is not at the DOT every hour of the day, employees are supervising themselves or each other. The Union further claimed that since the job descriptions provide that employees work under the supervisor of a labor supervisor, the Employer is somehow violating the collective bargaining agreement. The City finds it incredulous to reach that conclusion, given the facts established at the hearing.

DISCUSSION

Arbitrability

The collective bargaining agreement contains, in Article XI, Hours and Wages, Section F, Wage Rates, the following:

1. The rate scheduled marked Exhibit "A" is hereby made a part of this Agreement and shall govern the wages to be paid employees covered by this Agreement.

Exhibit A lists the pay grade, the pay range, and class titles of all employees covered by this contract. The pay grades start at HU-0 and run up through HU-24. The contract has no specific language for a reclassification procedure.

The contract defines as grievance in Article III, Section A, as the following:

Should a difference arise between the City and the Union or an employee concerning the interpretation, application, or compliance with this Agreement; the reasonableness of disciplinary action taken against any employee or employees; or the violation of a City, County, State or Federal Law which would have a direct detrimental effect upon employees in the bargaining unit, such differences shall be deemed to be a grievance and shall be handled according to the provisions herein set forth.

The grievance is a matter of a difference between the City and employees concerning the application of the Agreement, or specifically, the application of the wage rates and pay grades found in Exhibit A. Therefore, the grievance is arbitrable.

While the reclassification of these employees could have been raised during contract negotiations, the employees were uncertain about their duties and workload until the City decided that it would not replace the working supervisor, Chris Jerry. About the same time, the Union and the City had reached a tentative agreement on the contract terms, and it was too late to deal with these reclassifications in negotiations. While the City may prefer to deal with reclassifications as part of contract talks, it is not the only avenue, and the parties have dealt with reclassifications previously in grievances.

The Merits

The generally accepted rule for determining pay rates in changed operations is that an increase in hourly rates should accompany any material increase in the workload. In a case also involving this Employer and a request for a reclassification outside contract negotiations, Arbitrator Nielsen stated that there are two theories to justify a pay increase:

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. RACINE PROFESSIONAL EMPLOYEES' ASS'N., Case 498, MA-956 (Arb. Nielsen, 4/97)

Clearly, the work and duties have changed over the years for these employees. It is not at all clear, however, that the workload has significantly increased. Some job duties have been eliminated or reduced, others have been added or increased. On balance, it cannot be said that these employees have such a significant or material change in their overall work that a reclassification is warranted.

For example, Hand's duties have not significantly changed with the replacement of mechanical meters with electronic meters. He believes that since there used to be three employees that handled the mechanical meters, his workload has increased because he now does all of the mechanical meters. However, there is only one-third of the work that there used to be in maintaining mechanical meters, since two-thirds of the meters were replaced by electronic meters that need less maintenance. Another example, as the City notes, is that the vehicle maintenance work has been eliminated and transferred to DPW employees.

The fact that job descriptions are not accurate accounts of employees' actual duties does not in itself warrant a reclassification. The City does not review job descriptions for every position on a continuous basis, and to do so would be unduly cumbersome to most employers. The City's practice is to review a job description when filling a position and update it at that time. Accordingly, most employees who have been in a position for any length of time could argue that their job descriptions do not match their actual duties.

The job descriptions – even if outdated -- do not show that the employees have a material increase in their workload to warrant a reclassification. The lack of a labor supervisor in the department has not caused a major increase in work. Fidler and Eeg take some responsibility for the department, although Burgess and Willett have taken on some of the duties that Jerry had. However, as the City points out, those duties are consistent with being a lead worker and the City already compensates them for their lead worker duties.

Even if not all of the portions of the job descriptions are accurate because of the lack of a working supervisor or lack of elevators, the duties listed are still those which the employees perform. Chacon testified that he had to take on the duties of ramp maintenance after Lopez left and was not replaced. However, his job description includes maintaining parking ramps, lots and other system properties.

Burgess appears to have taken on more lead worker responsibilities and has delegated some of his duties to others. The differences in duties he cited were those such as picking up work orders from City Hall and calling employees for overtime and checking the overtime equalization list. It may be questionable whether calling employees for overtime and equalizing overtime are bargaining unit duties, but with only three employees under him, it may be more practical than to have someone from the DPW do these job. Burgess has delegated some of his other work to employees. His current workload seems to be in line with his position as a lead worker, and there is no material increase in his workload. Moreover, Burgess is already paid at the HU-14 rate while everyone else in the DOT is paid at the HU-10 rate.

Employees have two lead workers in the department as well as two supervisors, Fidler and Eeg. There is no lack of supervision for these employees. It is unclear why they have complained about the lack of a working supervisor, given all the supervision and lead workers available. If they had to take on some of Jerry's duties, they are still not being unduly burdened or working in a much higher classification for taking on some of those duties.

There has not been a major change in the work of the department but a gradual evolution as technology and materials changed. The employees use computers more – a fact of working in the '90's. The City has no elevators to maintain, more electronic meters, fewer mechanical meters, etc. Nothing in the record shows that the workload has materially increased for any of the employees in this grievance.

The employees have not needed greater skills or more education to perform their jobs. They are not electricians or carpenters and do not hold such licenses. The parties have negotiated a higher classification that is intended for those skilled trades, and the employees here do not exhibit those skills. While there may be some overlap in many job descriptions, the employees have not shown that they are indeed capable of performing the essential duties of the electrician or carpenter positions. The employees used general portions of the job description, such as troubleshooting problems, while the specific duty for the electrician's position was troubleshooting problem areas utilizing electrical knowledge and experience to repair faulty equipment or systems. Most employees, if not all, are expected to maintain a consistent and reliable attendance record and follow written and oral instructions. Many of them are expected to respond to emergencies and storms. The record does not show that the employees have the skills to perform the essential duties of the HU-22 electrician's job description, or that they need to perform those duties on a regular basis. The fact that Burgess is getting an electrician's license for his own use is irrelevant, since the City does not require it for his position.

There is no persuasive evidence on the record to show that any of the reclassification requests are warranted at this time.

AWARD

The grievance is arbitrable but is denied and dismissed.

Dated at Elkhorn, Wisconsin this 28th day of June, 1999.

Karen J. Mawhinney /s/

Karen J. Mawhinney, Arbitrator