

BEFORE THE ARBITRATOR

---

In the Matter of the Arbitration of a Dispute Between

**FOND DU LAC CITY EMPLOYEES UNION,  
LOCAL 1366, AFSCME, AFL-CIO**

and

**CITY OF FOND DU LAC, WISCONSIN**

Case 158

No. 58218

MA-10886

---

Appearances:

**Mr. Lee W. Gierke**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 2236, Fond du Lac, Wisconsin 54936-2236, appearing on behalf of Fond du Lac City Employees Union, Local 1366, AFSCME, AFL-CIO, referred to below as the Union.

**Mr. William G. Bracken**, Employment Relations Services Coordinator, Davis & Kuelthau, S.C., 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54903-1278, appearing on behalf of the City of Fond du Lac, Wisconsin, referred to below as the City or as the Employer.

**ARBITRATION AWARD**

The Union and the County are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Union requested, and the City agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a grievance filed on behalf of "IPS Operators." The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on February 16, 2000, in Fond du Lac, Wisconsin. The hearing was not transcribed. The parties filed briefs by March 28, 2000.

**ISSUES**

The parties did not stipulate the issues for decision. I have determined the record poses the following issues:

Did the City violate the Labor Agreement by denying out of class pay to the three Influent Pump Station Operators (Al Lietz, Brian Huelsman, and Tim Wilkens) when they were training new employee, Walter Kloske?

If so, what is the remedy?

**RELEVANT CONTRACT PROVISIONS**

**ARTICLE IX  
DIFFERENTIAL PAY**

. . .

Section 2 – Work Out of Class – Whenever an employee works at a higher rated job for three (3) consecutive hours or more, he shall receive the higher rate of pay for those hours worked in the higher rated job. Such higher base rate will be the wage step in the wage scale for the higher rated job which is commensurate with his years of service with the City. . . .

**ARTICLE XXVII  
MANAGEMENT RIGHTS**

Except as otherwise specifically provided herein, the Management of the City of Fond du Lac and the direction of the work force . . . together with the right to determine the methods, processes and manner of performing work, are vested exclusively in Management. . . .

**APPENDIX A**

<b>1999 Wage Rates Effective January 1 – December 31, 1999:</b>	<b><u>Hire</u></b>	<b>. . .</b>	<b><u>30 Mos.</u></b>
Influent Pump Operator	13.13	. . .	16.59
Operations Crew Leader	14.45	. . .	17.90

## BACKGROUND

The grievance form states the “applicable violation” thus:

On 5/4 and other dates, an IPS employee was asked to train a new employee. The new employee was assigned to the IPS Operator for the entire shift, with training responsibilities belonging to the IPS Operator. IPS Operator requested out of class differential and was denied.

The “new employee” was Walter Kloske, who started work for the City at its Sewage Treatment Plant on April 26, 1999 (References to dates are to 1999, unless otherwise noted). Kloske, as other employees classified as an Influent Pump Station Operator (IPSO), had a two-year degree as of his date of hire.

The Position Description for IPSO reads thus:

### Characteristic Work of the Class

**Nature:** Under general supervision to conscientiously monitor, operate, maintain and make minor repairs to a variety of process equipment generally associated with the initial treatment of plant influent and sludge, to monitor the plant weather station and to perform related work as required.

### Examples:

1. Operates, monitors and adjusts influent pumps.
2. Monitors and operates the chlorine application system and equipment and changes cylinders or supply sources.
3. Operates dechlorination system and monitors appropriate dosages.
4. Performs weekly preventative maintenance on process equipment.
5. Operates the primary clarifiers and sludge pumping equipment.
6. Collects industrial samples from outlying monitoring stations.
7. Monitors and operates the plant weather station.
8. Operates and cleans automatic sampling equipment and takes manual samples as required.
9. Performs routine buildings, equipment and ground maintenance as required.
10. Monitors and operates related odor abatement systems.

11. Operates, maintains and cleans vacuum filters.
12. Dewateres grit chambers and removes grit.
13. Cleans all process-related work areas and equipment.

## **Qualifications**

### **Essential Knowledge and Abilities:**

1. General knowledge of the basic mechanical functioning of assigned process and related equipment and the ability to conscientiously apply that knowledge in its operation.
2. Ability to operate and maintain process and related equipment in accordance with standard procedures and schedules.
3. Ability to conscientiously monitor equipment charts, dials and gauges, and to start, stop, or adjust equipment as indicated.
4. Ability to detect equipment malfunctions and to report and/or correct such malfunctions.
5. Ability to consistently and correctly record operating data.
6. Considerable knowledge of work hazards and safe work practices and the ability to consistently apply that knowledge in the performance of the work.
7. Required physical abilities:
  - a. Vision correctable to 20/20.
  - b. Essentially unimpaired hearing.
  - c. Ability to work from standing and walking positions for considerable periods of time.
  - d. Ability to perform heavy manual work for limited periods of time when required.
  - e. Ability to work under adverse weather conditions.
8. Ability to efficiently clean and maintain equipment and work areas in accordance with established standards and schedules.
9. Considerable ability to understand and effectively carry out oral and written instructions.
10. Ability to safely and effectively operate a variety of plant-related equipment and vehicles.

### **Special Requirements:**

1. Possession of a valid wastewater treatment plant operator's license or the ability to obtain such within one year of time of appointment.

2. Possession of a valid Wisconsin Commercial Driver's License (CDL).

**Primary Work Areas:**

- 1, 2, 8, 9, 10, 12, and 15.

The position description for Operations Crew Leader reads thus:

**Characteristic Work of the Class**

**Nature:** Under general direction to serve as a first-line supervisor of an operations shift at the Wastewater Treatment Plant, to perform operations work as required, and to assist management in the performance of general plant duties.

**Examples:**

1. Serves as substitute influent pump station operator, Zimpro process operator and secondary treatment operator as required.
2. Troubleshoots plant and outlying pump station operational problems and investigates alarms.
3. May be responsible for replacement parts inventory. May order parts, receive shipments and stock supplies.
4. May monitor all outlying meters and sample points, take samples and run lab tests.
5. May train new personnel in any plant operation activity.
6. **Is responsible for serving as shift crew leader**
  - a. **Directs shift activities.**
  - b. **Monitors operations and assigns personnel.**
  - c. Maintains visitor logs.
  - d. Assists in conducting plant tours.
  - e. Prepares reports.
  - f. **Assigns personnel during plant emergencies.**
  - g. Monitors outlying pump stations.
7. Reports injuries, accidents and shift employee performances to management.
8. Establish training programs for personnel concerning safety in general and safety procedures that relate to specific jobs or functions.

## Qualifications

### Essential Knowledge and Abilities:

1. Considerable knowledge of the basic mechanical functioning of the equipment used in the various plant processes and the ability to effectively apply that knowledge in operations.
2. Considerable knowledge of the chemical and physical processes taking place in the various plant operations and the ability to effectively apply that knowledge in operations.
3. Considerable ability to operate all plant equipment, to interpret operating feedback data, and to regulate equipment controls to produce the required results.
4. Considerable ability to identify equipment malfunctions and to report and/or correct such malfunctions.
5. Ability to safely and effectively operate a variety of plant-related equipment and vehicles.
6. Considerable knowledge of plant lab testing, sampling, and operating procedures and ability to competently perform them.
7. Considerable knowledge of work hazards and safe work practices and the ability to consistently apply and effectively communicate that knowledge to others in the performance of the work of the shift.
8. Considerable ability to understand, carry out and effectively communicate oral and written instructions.
9. Considerable ability to read, understand, apply and communicate work-related equipment and laboratory manuals.
10. Ability to correctly and efficiently perform calculations, maintain records and make reports.
11. Ability to assume a leadership role in directing the activities of a shift and in dealing with operational emergencies.
12. Required physical abilities:
  - a. Vision correctable to 20/20.
  - b. Essentially unimpaired hearing.
  - c. Ability to work from standing and walking positions for considerable periods of time.
  - d. Ability to perform heavy manual work for limited periods of time when required.
  - e. Ability to work under adverse weather conditions.
13. Ability to efficiently clean and maintain equipment and work areas in accordance with established standards and schedules.

**Special Requirements:**

1. Graduation from a two-year specialized training program in wastewater treatment including laboratory procedures and an internship at a wastewater treatment facility or equivalent training and experience.
2. Possession of a valid wastewater treatment plant operator's license or the ability to obtain such within one year of time of appointment.
3. Possession of a valid Wisconsin Driver's License.
4. Possession of a valid Commercial Driver's License (general, air brake and tanker) issued by the State of Wisconsin.

Al Lietz has worked for the City for roughly two years as an IPSO, and was working the second shift on April 26.

Lietz testified that when he started work as an IPSO, an OCL trained him. There is not necessarily an OCL for every shift, and for Lietz' first shift there was no IPSO on duty. James Williams is Lietz' immediate supervisor, and on April 26 brought Kloske to Lietz' work station, informing him that Kloske would be working with him. Lietz discussed safety procedures and plant equipment, and then Kloske watched Lietz perform his duties. At the close of that shift, as at the close of each shift, Lietz filled out a time card. The time cards used by the City require an employe to log the location of their work, the time spent at that location and the activity performed during that time. To log activities, the City maintains numbered "Activity Codes." Included in those codes are:

. . .

17. Training

. . .

23. Supervision
  - a. Maintenance
  - b. Operations

Lietz also instructed Kloske on how to fill out time cards. He informed Kloske Activity Code 17 was "probably" the appropriate code. No one instructed the Grievant to use Activity Code 23. Between April 26 and May 13, Lietz logged hours spent with Kloske under Activity Code 23a and b, and Kloske reported hours under Activity Code 17. Lietz also noted "Out of Class" on those time cards. Brian Huelsman, another IPSO with whom Kloske worked, did not specifically log in Activity Code 23 on his time cards, but did write "crew leader pay" on

his time cards. Lietz typically logged eight hours per shift under Activity Code 23 when he worked with Kloske, but did not use that Code if he felt he had not assumed responsibility for overseeing Kloske. The parties do not dispute that Lietz spent 55 hours working with Kloske, Huelsman spent 16 such hours and Wilkens spent 4. Lietz acknowledged that he used Activity Code 23 to reflect the training he provided Kloske, and that he performed no other OCL duty during that period. In his view, Section 5 of the “Examples” subsection of the “Characteristic Work of the Class” section of the OCL position description, established training as an OCL function. That no such reference appears in the IPSO position description makes this function exclusive to the OCL classification.

The purpose of having Kloske work with these ISPOs was to have him gradually work his way into the duties of an ISPO. Kloske thus rotated across the City’s three shifts of operation, until he was capable of occupying the position independently.

John Leonhard has served the City as its Utilities Director for the past two years. Prior to that he served as Superintendent of the City’s Waste Water Treatment Plant for fifteen years. Leonhard testified that the City likes to start new employes on the day shift “shadowing” an IPSO or OCL. Typically, training will take three weeks, through which a new employe works each shift, and sees a number of employes perform the work the new employe must learn to perform independently. The new employe will work “hands-on” only when capable of doing so, and only to the degree permitted by the IPSO or OCL. The “training” reference on the OCL position description connotes, to Leonhard, training in non-routine functions. The purpose of job shadowing, in Leonhard’s view, is to place the new employe with the most experienced worker available, to demonstrate “hands-on” how daily work is performed.

Leonhard stated that the job shadowing process dates back at least to 1984, and the City has never, “that I’m aware of,” paid an IPSO out of class pay for doing it. In his view, the IPSO is expected to do nothing outside of their normal duty, other than to verbalize what they are doing and why to the new hire. From Leonhard’s perspective an IPSO is the best possible trainer to teach a new hire how to become an IPSO. Leonhard acknowledged that an employe once classified as an IPSO took a demotion to a maintenance position to secure work on the day shift. When that employe performs work as an IPSO, the employe receives out of class pay.

Further facts will be set forth in the **DISCUSSION** section below.



## THE PARTIES' POSITIONS

### The Union's Brief

The Union notes that Kloske “was hired for the position of an Influent Pump Station Operator . . . (on) April 26, 1999.” Beyond this, the Union notes that the position description for OCL, unlike that for IPSO, expressly lists a training function. From Kloske’s date of hire, Kloske and the incumbent IPSOs listed training on their time cards.

With this as background, the Union argues that “the function of training new personnel is reserved exclusively” to the OCL position, and “is one of the key elements of the OCL job that warrants the higher pay it receives.” Lietz’ testimony underscores this point by demonstrating that training has historically been performed by an OCL. City argument to the contrary “rests on semantics” and obscures that Kloske’s training was effectively done only by IPSOs. The City’s characterization of the training as “job shadowing” ignores that those terms generally refer to “career sampling for students,” not on-the-job training. The evidence establishes that the Grievant needed and received not an orientation to the job, “but the basic nuts and bolts training that a new employee needs.”

Nor can out of class pay be denied because the IPSOs performed only one aspect of the duties of an OCL. The Union puts the point thus:

This argument fails on three levels: 1.) The contract does not specify how much of another classification you have to do to receive the out of class pay, 2.) The City’s sole witness testified that when a classified maintenance operator does operations work that they receive the higher pay even if they are only doing one aspect of the operations job, and 3.) The IPS operator in reality is doing more than one aspect of the OCL job. There is considerable overlap between the two jobs, but only the OCL operator has the responsibility to train new personnel, which is one of the core elements of the OCL job for which it receives the higher pay.

Since there is no dispute the IPSOs worked more than three hours per day in training, and since there is no dispute on the duties performed, the Union concludes that there can be no dispute that the grievance has merit. If the IPSOs did not train Kloske, then no one did, yet Kloske knew, at the close of his “job shadowing,” the basic requirements of his job, the necessary safety and health procedures, and how to fill out time cards. Since no supervisor objected to the usage of the training activity code on relevant time cards, it follows, according to the Union, that a remedy should be ordered.

On a general level, the Union asks “that the Arbitrator sustain . . . the grievance, and make . . . the affected employees whole for any and all losses.” More specifically, the Union seeks 55 hours of out of class pay for Lietz, 16 hours for Huelsman, and 4 hours for Wilkens.

### **The City’s Brief**

The City states the issues for decision thus:

Did the City violate Article IX, Differential Pay, Section 2, Work Out of Class, when a new employee “job shadowed” the Grievants? If so, what is the remedy?

After a review of the evidence, the City asserts that the labor agreement clearly and unambiguously requires “that the employee work at a ‘higher rated job’ to receive out of class pay.” Here, the Grievants seek out of class pay for doing their normal duties and “simply verbalizing those duties to a new employee.”

Leonhard’s un rebutted testimony establishes that the City has, for the past twenty years, oriented new employes by having them “job shadow” an incumbent employe. There is no evidence the City has ever rewarded the incumbent employe with out of class pay.

The “training” referred to in the OCL position description refers to something beyond the normal performance of IPSO duties. Rather, such training refers to “when . . . unique, infrequent operations are being conducted.” Illustrative of such unique duties is “pulling a clarifier out of operation or diluting the grit chamber.” The “training” referred to in the OCL position description is less applicable to the grievance than the requirement of the IPSO position description that IPSOs “perform related work as required.”

The City then argues that the Union’s position is unreasonable, and reflects “a contrived reach for out of class pay when the employee has not earned it.” The performance of a single, isolated duty on days for which an OCL was on the job cannot be justified under the contract. Rather, out of class pay should be granted “only when an employee assumes all or a significant portion of the duties of the higher rated position.” To accept the Union’s position would overturn an established practice and grant the Union a benefit through grievance arbitration that it never secured through negotiations.

Viewing the record as a whole, the City “requests that the grievance be denied in its entirety.”

## DISCUSSION

The parties' conflicting statement of the issue on the merits of the grievance turns on whether IPSO involvement in Kloske's orientation constitutes "training" or "job shadowing." I have adopted the Union's statement of the issue as that appropriate to this record. This reflects, in part, that characterizing the work at issue as "training" or as "job shadowing" has no determinative bearing on whether it should be considered "work out of class" under Article IX, Section 2.

The parties question whether the training imparted from Lietz, Huelsman and Wilkens constitutes "hours worked at a higher rated job." There is no dispute that OCL is a higher rated job, and that each IPSO worked "for three (3) consecutive hours or more" in the training. Thus, the dispute is whether the unit employees worked at the job of an OCL, or simply performed duties overlapping the two classifications.

As preface to an examination of this dispute, it is necessary to point out that the application of Article IX, Section 2 to the grievance cannot be considered clear and unambiguous. The "Qualifications" and "Characteristic Work of the Class" sections of the OCL and the IPSO position descriptions demonstrate pronounced overlap between the two positions. This overlap necessarily blurs the lines between the two positions. Beyond this, Article IX, Section 2, is silent on how completely an employee must assume the duties of "a higher rated job" to warrant the differential pay.

The most appropriate form of analysis for out of class pay disputes is, in my opinion, that stated by Arbitrator Daugherty in *WILSON JONES CO.*, 51 LA 35, 37 (1968):

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?

Daugherty also addressed the governing considerations when the work of the questioned classifications overlap:

In many such cases there are substantial areas of overlap in the operations specified for two or more jobs . . . 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 . . . are key and relatively exclusive to the latter classification.

Application of these broad standards to the grievance is not without difficulty.

The Union asserts that training is a core function to an OCL, under the OCL and IPSO position descriptions. Since there is overlap between the positions, and since there can be no dispute the IPSOs trained Kloske, the Union concludes that OCL core duties were performed by the IPSOs.

Training is the only “core” duty alleged by the Union to warrant the differential pay. That the duties of an OCL and an IPSO overlap states fact, but cannot warrant differential pay. The position descriptions acknowledge substantial overlap, but the basis for the differential in pay must rest on duties not shared by the positions. The payment of a wage differential presumes difference between the positions.

Training can be considered a core function of an OCL, but the type of training posed in this grievance is insufficient, standing alone, to warrant differential pay under Article IX, Section 2. As background, it can be noted that the position descriptions call for a higher level of knowledge regarding basic mechanical, chemical and physical processes from an OCL than from an IPSO. Beyond this, the position descriptions reserve to an OCL quasi-supervisory work assignment and oversight responsibilities. The “Nature” and “Examples” entries under the “Characteristic Work of the Class” sections of each job description highlight this difference. The grievance asserts that the training function performed by the IPSOs, standing alone, warrants the premium. This is a tenuous argument under the Daugherty standard.

More specifically, the training cited by the Union can only be considered a core function of the OCL classification to a limited degree. None of the IPSOs had to perform any duty they would not have performed on their shift beyond discussing their work with Kloske. Thus, virtually all of the work performed on the shifts at issue here was that of an IPSO, not that of an OCL. Beyond this, the significance of the training function cited at Section 5 of the OCL position description is more easily overstated than understated. That section states only that an OCL “(m)ay train new personnel in any plant operation activity.” By its terms, the section is less than an exclusive grant of training authority to an OCL. Read alone, it does no more than make training a potential part of the OCL job.

The most fundamental weakness in the Union’s position, however, rests less on the terms of Article IX, Section 2 than on the parties’ implementation of it. It is arguable that training could be sufficiently significant standing alone to warrant differential pay. As a matter of contract interpretation, however, the issue is not whether such payment should be made, but whether the parties have agreed to do so. As noted above, Article IX, Section 2 does not clearly address this point. Evidence of practice establishes that since 1984, the City has used “job shadowing” to train, yet has never paid out of class pay for it. There is no evidence of bargaining to bring training within Article IX, Section 2.

In sum, the application of Article IX, Section 2 to the grievance cannot be considered clear and unambiguous. There is no evidence of bargaining history to establish the parties agreed to bring “job shadowing” within Article IX, Section 2. Evidence regarding past practice establishes that the City has used “job shadowing” to train new employees since 1984 and has never paid differential pay for it. Thus, the record affords no basis to conclude the parties have ever agreed to afford out of class pay for job shadowing. Application of arbitral precedent to the grievance underscores that the training posed here must be considered part of the overlap between the positions of OCL and of IPSO. There is, then, no basis to grant the IPSOs the differential they seek under Article IX, Section 2.

That an OCL trained Lietz affords no persuasive basis to question the conclusions stated above. It is not clear whether this reflects anything more than the absence of an IPSO on the shift. Nor does the provision of out of class pay to the employe who took a voluntary demotion afford a persuasive basis to grant the grievance. The evidence indicates no more than that the City considers that employe’s assumption of operator duties to be higher rated work than his maintenance duties. The evidence is not sufficiently detailed to permit a conclusion that the employe received out of class pay for performing a single duty of the higher rated classification.

#### AWARD

The City did not violate the Labor Agreement by denying out of class pay to the three Influent Pump Station Operators (Al Lietz, Brian Huelsman, and Tim Wilkens) when they were training new employee, Walter Kloske.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 11th day of April, 2000.

Richard B. McLaughlin /s/

---

Richard B. McLaughlin, Arbitrator

RBM/gjc  
6047

