BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LA CROSSE CITY EMPLOYEES' UNION LOCAL 180, SEIU, AFL-CIO, CLC

and

CITY OF LA CROSSE (HIGHWAY)

Case 300
No. 57991
MA-10799

Appearances:

Davis, Birnbaum, Marcou, Seymour & Colgan, by **Attorney James G. Birnbaum,** 300 North Second Street, Suite 300, P.O. Box 1297, La Crosse, Wisconsin 54602-1297, appearing on behalf of the Union.

Assistant City Attorney Matthew J. Fleming, City Hall, 400 La Crosse Street, La Crosse, Wisconsin 54601, appearing on behalf of the City.

ARBITRATION AWARD

La Crosse City Employees' Union Local 180, SEIU, AFL-CIO, CLC, hereafter Union, and City of La Crosse (Highway Department), hereafter City or Employer, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances arising thereunder. The Union requested, and the City concurred, in the appointment of a Commission staff arbitrator to resolve a pending grievance. The undersigned was so designated and an arbitration hearing was held in La Crosse, Wisconsin on March 20, 2000. The hearing was not transcribed. The record was closed on May 18, 2000 upon receipt of post hearing written argument.

ISSUE

The parties stipulated to the following statement of the issue:

Did the City violate Article 10, and Memorandum of Understanding #7, and the wage scale provisions of the collective bargaining agreement when it

failed to include the new Log Loader under the Equipment Operator III classification?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE 2
GRIEVANCE PROCEDURE

Matters involving the interpretation, application or enforcement of this contract shall constitute a grievance under the provisions set forth below:

Step 1. The employee shall meet with and discuss the grievance with their immediate supervisor, with union representative present, within thirty (30) calendar days or by the first regular working day following thirty (30) calendar days, of the date the employee should have known of the grievable matter. If no solution is reached the employee may,

Step 2. Reduce the grievance in detail to writing within seven (7) calendar days following the meeting, using an "Initiation of Grievance Form" and submit it to the supervisor who will forward it to the Director of Personnel, who, with the Department Head, within ten (10) working days (Monday through Friday, excluding holidays) shall attempt to resolve the grievance and answer the grievance in writing. Within those ten (10) working days, representatives of the Union, the grievant, the Personnel Director, the Department Head and the supervisor shall meet to attempt a resolution of the disputed matter.

Step 3. If a satisfactory solution cannot be reached, the Union may, within thirty (30) calendar days of the grievance meeting, appeal to the Wisconsin Employment Relations Commission who will appoint a neutral arbitrator. The Union shall copy the City on all requests for grievance arbitration, the findings of the arbitrator to be final and binding on the parties hereto.

It is understood that the 30 calendar day requirement to file a grievance in Step #1 above shall be interpreted to mean the next regularly scheduled working day that both the employee and supervisor are present at work.

The parties may by written agreement extend the time limits contained in the grievance procedure.

The arbitrator shall not add to, or subtract from the terms of this agreement.

The City and the Union agree that the decision of the arbitrator shall be final and binding on both parties.

The grievance procedure set forth herein shall be the exclusive complaint of any employee as to any matter involving the interpretation or application of this agreement.

All complaints originating in all City departments shall be handled in the manner outlined above and no deviation therefrom will be permitted. Specifically, employees are prohibited from presenting such complaints, formally or informally to officers of the City of La Crosse not included in this procedure.

Members, stewards, officers/or representatives of the Union are permitted to discuss and/or adjust the grievances between an employee and his/her supervisor during or after regular working hours. In carrying out the above duties the parties shall not interfere with the normal and efficient operation of the department. A person(s) acting in the above capacity shall suffer no loss of pay for said action. A grievance shall be adjusted on an individual basis unless otherwise agreed to by the parties. No members, stewards, officers/or representatives of the Union shall be harassed during the performance of their duties in discussing and adjusting grievances.

. . .

ARTICLE 10
WAGES AND SALARY SCHEDULE

. . .

H. **New Equipment**

The City shall notify the Union, upon receipt, of the purchase of a new piece of equipment for the purpose of negotiating the equipment's appropriate placement in one of the existing pay categories contained in Memorandum of Understanding #7, attached.

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MEMORANDUM OF UNDERSTANDING #7
EQUIPMENT/JOB CLASSIFICATION LIST

November 9, 1999

Ken Iverson, President
SEIU Local #180, AFL-CIO
812 Kane Street
La Crosse WI 54603

RE: Memorandum of Understanding #7
Equipment/Job Classification List

Dear Ken,

This letter is to confirm the understanding reached by the parties during negotiations for the 2000-2001 collective bargaining agreement. The following was agreed to:

Equipment Classifications
SEIU Local 180 – City of La Crosse

. . .

H. EQUIPMENT OPERATOR II

Articulated end loader, 130 horsepower, 26,000 lb or greater
Street sweeper – heavy – approx. 76 horsepower, 16,900 lb. or more
Tracked dozer or loader
Roller, self propelled, approx. 89 horsepower, 16, 900 lb. or more
Vacuum catch basin cleaner truck w/attachments
Motor grader – used for alleys or snow plowing
Screed operators, paving machine
Log loader
Airport big fork lift

I. EQUIPMENT OPERATOR III

Oshkosh snowblower/broom – Airport
Norland snow blower – Airport

Combination sewer flusher/vacuum truck
Large crash truck – Airport (non-operational/driving only)

BACKGROUND

At the time that the parties entered into their 1998-99 collective bargaining agreement, the City owned and operated a Log Loader. Memorandum of Understanding #7 attached to the 1998-99 collective bargaining agreement assigned the Log Loader to the Equipment Operator II classification. The Equipment Operator II wage rate was set forth in the wage scale provisions of the 1998-99 agreement.

The City purchased a Log Loader in 1999 and sold the old Log Loader. When the Union learned of this purchase, the Union sought to have the newly purchased Log Loader assigned to the Equipment Operator III classification. Equipment Operator III is a higher wage classification than Equipment Operator II.

The City and the Union negotiated on the issue of the appropriate placement of the newly purchased Log Loader in Memorandum of Understanding #7. The City did not agree to assign the newly purchased Log Loader to the Equipment Operator III classification and advised the Union that Log Loader would remain in the Equipment Operator II classification.

On August 26, 1999, the Union filed a grievance challenging "the placement of the new Log Loader in the Equipment Operator II level." The grievance was denied at all steps and, thereafter, submitted to arbitration.

On January 6, 2000, the Union and the City signed their successor 2000-01 collective bargaining agreement. On January 7, 2000, the Union and the City signed a Memorandum of Understanding #7 that assigned "Log Loader" to the Equipment Operator II classification.

POSITIONS OF THE PARTIES

Union

The parties, by contract, have agreed to allocate certain pieces of equipment to various pay classifications. In addition, the parties have agreed that when the City acquires a new piece of equipment, upon its receipt, the City is required to notify the Union so that an appropriate pay classification may be negotiated.

Prior to 1999, the City possessed and used a single function Log Loader. In 1999, the City divested itself of this single function Log Loader and acquired a new piece of equipment, which among other things loaded logs. The new Log Loader differs substantially from the old Log Loader. Operating the new Log Loader requires greater skill, effort and responsibility thereby compelling Equipment Operator III pay. Additionally, the internal comparable equipment classification supports the inclusion of the new Log Loader in the Equipment Operator III classification.

The appropriate remedy is to include the new Log Loader in the Equipment Operator III classification. Additionally, employes that have operated the new Log Loader should be reimbursed at the Equipment Operator III classification rate for all time operating the new Log Loader. To do less, would be to award the City for failing to notify the Union of the acquisition of a new Log Loader and would be unfair to employes who have actually performed the required duties.

City

The weight of the evidence demonstrates that there are no significant differences between the two machines that would justify the conclusion that the Log Loader purchased in 1999 is a "new piece of equipment" under Article 10(H). Thus, the City is not required to negotiate its placement in Memorandum of Understanding #7. The appropriate classification of Equipment Operator II was negotiated and agreed upon by the parties when they adopted Memorandum of Understanding #7.

If the new Log Loader were a "new piece of equipment," then the City, under Article 10(H), would be only required to negotiate the appropriate placement of the machine. The parties negotiated to impasse. Following this impasse, the City exercised its managerial rights and placed the Log Loader in the Equipment Operator II classification.

The City and the Union are not required to reach an agreement on the placement of a "new piece of equipment." By asking the Arbitrator to place the new Log Loader in the Equipment Operator III classification, the Union is asking the Arbitrator to go beyond the terms of the contract and impose a new contract term upon the City. Thus, acceptance of the Union's position is beyond the powers granted to the Arbitrator under Article 2 of the parties' collective bargaining agreement. Moreover, inasmuch as the contract does not provide any criteria for determining appropriate classification, any decision of the Arbitrator would be speculative.

The City has fulfilled its obligations under the contract. The grievance is without merit and, therefore, should be denied.

DISCUSSION

The parties' contractual grievance arbitration procedure provides the Arbitrator with authority to interpret, apply and enforce the parties' collective bargaining agreement. In the present case, the Arbitrator has been asked to interpret, apply and enforce Memorandum of Understanding #7, Article 10, and the wage scale provisions contained in the parties' collective bargaining agreement.

The Union, contrary to the City, argues that the Log Loader purchased in 1999 is a "new piece of equipment." By adopting Article 10(H), the parties have agreed upon the procedure to be followed when the City purchases a "new piece of equipment." Specifically, Article 10(H) requires the City to notify the Union of the purchase of a new piece of equipment "for the purpose of negotiating the equipment's appropriate placement in one of the existing pay categories contained in Memorandum of Understanding #7. . . ."

Article 10(H) provides a procedure for "negotiating" the "appropriate placement" of a new piece of equipment. Article 10(H) does not require the City to accept the Union's negotiation position. Nor does it require the City and the Union to reach any other agreement during negotiations. Indeed, Article 10(H) does not provide any procedure for resolving an "impasse" in Article 10(H) negotiations.

To accept the argument that a grievance arbitrator has jurisdiction to resolve an impasse in Article 10(H) negotiations would be to add a procedure to the contract that was not negotiated by the parties. Article 2 of the parties' collective bargaining agreement expressly prohibits the grievance arbitrator from adding to, or subtracting from the terms of the agreement. Accordingly, the undersigned does not have authority to determine the appropriate placement of a "new piece of equipment" in Memorandum of Understanding #7.

In its reply brief, the Union argues that "the parties specifically agreed at the onset of the arbitration that this arbitrator would indeed act as an interest arbitrator if in fact that was required. (See Stipulation of Assistant City Attorney Matt Fleming)." Notwithstanding the Union's argument to the contrary, the undersigned is not aware of any stipulation that would render moot, or waive, the City's argument that the grievance arbitrator lacks contractual authority to place the newly purchased Log Loader in the Equipment Operator III classification.

If Article 10(H) negotiations fail to produce an agreement as to the appropriate placement of a "new piece of equipment," then the Union has the right to negotiate appropriate placement when it bargains a successor agreement. At that time, either party has a statutory right to have negotiation impasses resolved by an interest arbitrator.

In summary, it is undisputed that the City has negotiated with the Union on the issue of the newly purchased Log Loader's appropriate placement in one of the existing pay categories contained in Memorandum of Understanding #7. Assuming arguendo that the newly purchased Log Loader is a new piece of equipment within the meaning of Article 10(H), the City did not violate Article 10 when it failed to include the newly purchased Log Loader under the Equipment Operator III classification. 1/

1/ The undersigned need not, and does not, address the issue of whether or not the new Log Loader is "a new piece of equipment" within the meaning of Article 10(H). The issue of whether or not the City violated Article 10(H) by not notifying the Union of the purchase upon the "receipt" of the new Log Loader is outside the parameters of the parties' stipulated issue.

The parties' 1998-99 agreement and its successor 2000-01 agreement had an attached Memorandum of Understanding #7. Under each of these agreements, the attached Memorandum of Understanding #7 lists Log Loader under the Equipment Operator II classification. Given the placement of Log Loader under the Equipment Operator II classification, the City did not violate either the Memorandum of Understanding #7 or the wage scale provisions of the parties' collective bargaining agreements when it failed to include the newly purchased Log Loader under the Equipment Operator III classification.

Based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

1. The City did not violate Article 10, Memorandum of Understanding #7, or the wage scale provisions of the contract when it failed to include the new Log Loader under the Equipment Operator III classification.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 14th day of June, 2000.

Coleen A. Burns /s/
Coleen A. Burns, Arbitrator

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