

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**TEAMSTERS UNION LOCAL NO. 695**

and

**CITY OF STOUGHTON**

Case 28  
No. 58023  
MA-10817

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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney William H. Ramsey**, appearing on behalf of the Union.

Roethe, Krohn, Pope, McCarthy & Haas, LLP, by **Attorney Michael R. Haas**, appearing on behalf of the City.

**ARBITRATION AWARD**

Teamsters Union Local No. 695, hereinafter referred to as the Union, and the City of Stoughton, hereinafter referred to as the City, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the City, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the collective bargaining agreement. The undersigned was so designated. Hearing was held in Stoughton, Wisconsin, on March 22, 2000. The hearing was not transcribed and the parties filed post-hearing briefs which were exchanged on May 12, 2000. The parties reserved the right to file reply briefs but neither party did and the record was closed on May 31, 2000.

**BACKGROUND**

The parties stipulated to the following procedural facts:

Carles Fristed is employed by the City of Stoughton Street Department as Mechanic/Machine Operator. Mr. Fristed's hourly rate of pay for 1999 as established by the Collective Bargaining Agreement was \$17.06 per hour, and his position was listed as Grade 8, red circled, on the 1999 Public Works and Clerical Unit Salary Schedule.

Terry Gander, Richard Gullickson, John Halverson, Paul Johnson and Roger Strandlie are employed by the City of Stoughton Street Department as Machine Operators. The 1999 hourly rate for each of said employees is established as \$16.50 per hour and was listed as Grade 7, red circled, on the 1999 Public Works and Clerical Unit Salary Schedule.

On January 12, 1999, the Common Council of the City of Stoughton approved new position descriptions for the positions of Machine Operator and Mechanic/Machine Operator, which had been previously proposed by the above-named employees.

Pursuant to the wage appeal process in the Collective Bargaining Agreement, the above-named employees submitted grievances on February 23, 1999, requesting a change in placement on the City's Wage Matrix.

The City submitted the employee grievances to David M. Griffith and Associates (DMG) for a ruling based upon the City's classification and compensation study, which established wage rates based upon internal and external factors. DMG evaluated the position descriptions and in a letter dated March 23, 1999, recommended no grade change for the Machine Operator position and also recommended no grade change for the Mechanic/Machine Operator position unless new information was discovered during the completion of its pending Street Department Organization and Management Study.

The above-named employees appealed the DMG decision on April 15, 1999. The City of Stoughton, the employees and the Union entered into an extension on May 7, 1999, to allow for the completion of the Street Department Study by DMG.

On September 7, 1999, the City of Stoughton Personnel Committee voted to approve a change in the Machine Operator wage from Grade 7 to Grade 12, and in the Machine Operator/Mechanic position from Grade 8 to Grade 13, contingent upon DMG Maximus justification at the City Council meeting on September 14, 1999.

On September 14, 1999, the Stoughton Common Council considered the recommendation of the Personnel Committee and also reviewed the results of

the Street Department Organization and Management Study. Mr. Dan Hernandez of DMG-Maximus presented the findings of the study as well as the basis of DMG's recommendations not to increase the grade levels for the positions of Machine Operator and Mechanic/Machine Operator. The Common Council entertained several motions regarding the wage grievances and ultimately voted to not increase the grade placement for the above-named positions on the City's Wage Matrix.

On September 15, 1999, the above-named employees filed appeals of the Common Council's decision pursuant to the Grievance and Arbitration Procedure in the Collective Bargaining Agreement.

Additional facts:

The underlying basis for these employees seeking reclassifications was that the City Council on October 14, 1997, approved a new position description for the Apprentice Electric System Technician and reclassified the position from Grade 7 to Grade 12. DMG on September 26, 1997, sent a letter to the City's Clerk which stated, in part, as follows:

We have completed the evaluation for the position of Apprentice Electric System Technician. Based on an analysis of the duties and responsibilities, and subsequent application of the Griffith/Archer Matrix Point Factor Evaluation method, we recommend the position be placed in Grade 7 of the Represented Employee Pay Plan. However, due to unique market conditions for this field, we recommend you "market adjust" the position to Grade 12.

According to Bob Kardasz, it was his belief that the hiring rate for the Electric System Technician (market rated at Grade 14) would be insufficient to attract qualified journey-level technicians. Therefore an operational decision was made to fill the position at an apprentice level. According to Bob, he and Sean Grady predict that the hiring rate for Grade 12 will most likely be unable to attract linemen with significant training and/or experience, but should be able to attract persons with some electrical experience and/or training. If this is not the case, we would recommend further discussion between the City and DMG to provide potential solutions.

Without a mini-market study of apprentice-level Electric System Technician positions, we can not (sic) be sure that Grade 12 will offer a competitive range for the type of individuals the Utility is seeking, but we believe it is an appropriate starting point. It is also an internally equitable grade in contrast to the heavier responsibilities of the journey-level Electric System Technician

placed at Grade 14. The Utility expects it will take 2-4 years of apprenticeship, depending on the new employee's background and success in the new job, before the apprentice will be eligible for journey-level status.

### ISSUE

The parties stipulated to the following:

Did the City of Stoughton violate the collective bargaining agreement in the processing of and the decision not to raise the pay grades of the Machine Operator and the Mechanic/Machine Operator?

If so, what is the appropriate remedy?

### PERTINENT CONTRACTUAL PROVISIONS

#### APPENDIX A

#### WAGES, GUARANTEES AND APPEALS

**Wages:** Pages 17 – 29

**Guarantees:** Any incumbent employee currently red-circled or currently holding a position which may *become* red-circled through implementation of the classification and compensation study, will be grandfathered out of the matrix for the purpose of wage increases for the remainder of their employment with the City of Stoughton. In accordance with such grandfathered standing, all employees in red-circled positions shall receive the same across the board wage increases as all other bargaining unit employees in the future.

**Appeals Process:** Any employee in any classification whose job duties or responsibilities are significantly changed may appeal his or her placement on the matrix or red-circled status by filing an appeal with the City. All appeals shall be processed pursuant to the following steps:

**A.** An appeal received by the City within thirty (30) days of a significant change in duties or responsibilities, shall be submitted by the City to David M. Griffith & Associates (DMG) for a ruling within thirty (30) days.

**B.** If the employee disagrees with the ruling received in Step A, he or she may within thirty (30) days of such notification appeal DMG's ruling to the City's Personnel Committee. The Personnel Committee shall rule within thirty (30) days of receipt of appeal.

**C.** If the employee disagrees with the ruling received in Step B, he or she may within thirty (30) days of such notification appeal the Personnel Committee's ruling to City Council. The City Council shall rule within thirty (30) days of receipt of appeal.

**D.** If the employee disagrees with the ruling received in Step C, he or she may within thirty (30) days of such notification appeal the City Council's ruling to the Grievance and Arbitration Procedure set forth in Article 6 beginning at Section 1(b) of the Labor Agreement between the parties.

**E.** Any thirty (30) day time limit described above may be extended by mutual agreement of the parties.

### **UNION'S POSITION**

The Union contends that the City violated the collective bargaining agreement when it failed to keep the grievants' wages competitive with the comparable market. It asserts that commencing with the 1995 agreement, the Union gave up its right to maintain competitive wages through voluntary interest arbitration in exchange for the City's commitment to use DMG Maximus' "update service" to conduct a market re-survey of represented positions every 3-4 years. It submits that five years later, no new market survey has been conducted and the grievants' pay has fallen behind their counterparts in comparable communities. It notes that the grievants' annual pay increase accounts for inflation but not for the greater demand for competent, educated and trained public works employees. It asserts that the City is in a "growth mode" and the 1995 comparables may not be applicable. It insists that the City's continued failure to honor its end of the bargain should be remedied by sustaining the grievances and granting the grade changes.

The Union claims that the City failed to obtain justification from DMG for its inequitable treatment of the grievants vis-a-vis the Apprentice Lineman. It asserts that DMG addressed the inequity before the City Council but did not justify it. It claims that the City did not ask what factors were considered in raising the Apprentice Lineman's pay grade and did not ask or inquire into the reasons DMG ignored its own market survey upon which the classification compensation system was based. It notes that the grievants were not afforded the opportunity to present their arguments to the City Council and the City based its justification on the revised position descriptions remaining internally equitable under DMG's formula. The

Union does not deny that the position descriptions remain internally equitable but the City failed to keep its commitment to maintain wages that are competitive in the market place, thereby violating the agreement.

It cites PORTAGE COUNTY, CASE 117, NO. 51883, MA-8768 (McLAUGHLIN), 1996) as support for its position. It submits that where duties performed by two individuals are the same, then reclassification cannot be denied. It states that the grievants perform duties that justify the same pay grade as the Apprentice Lineman. It also claims that in both cases inaccurate and unpersuasive information was presented by third parties and had the City Council heard the justification for denying the reclassifications, it would have granted them.

The Union argues that the City has created a practice of making equitable market adjustments to classifications based on the affected employees' supervisor's opinion. It submits that the objective market survey was ignored by DMG and the decision to raise the Apprentice Lineman was based on the observations and recommendation of the Apprentice Lineman's supervisor. It asserts that the supervisor and DMG determined the grade change was necessary to attract and retain quality employees and thus the City established a practice of making equitable adjustments to account for market conditions. The Union observes that a one-time occurrence can be construed as a past practice and can be used to fill in the contract's gaps and to determine what constitutes fair and equitable treatment of all employees. It contends that the City forgot its obligation to keep the market survey updated. It observes that if the City is held to abide by its practice of making grade adjustments based on the recommendation of supervisors, it is clear the grievants deserve the grades they requested. It claims that the grievants' supervisor believes that his employees are underpaid for the work they do, and based on the supervisor's testimony, the grievants deserve the grades they requested.

In the alternative, the Union asks that the City be ordered to conduct a revised market survey because it failed to maintain the classification and compensation system it is required to maintain under the agreement. It insists that the City is using an outdated and irrelevant market survey to determine whether the grievants are adequately compensated. It further claims that the City did not give the grievances the consideration required under the contract. It requests that the grievance be sustained and the grievants made whole.

### **CITY'S POSITION**

The City contends that the Union's attempt to force an external market review should be rejected for several reasons. It observes that it is not mandated by the contract, DMG does not routinely conduct a new external market comparison unless there is a specific request or reason to do so and there was no evidence of significant market factors which would have triggered a separate external market study. It submits that DMG had concluded that unique labor market conditions existed in the Utilities Department based on unique considerations in the utilities labor market and the recognition of specialized skills and a large investment in

training. It refers to DMG's conclusion that similar considerations did not weigh as heavily in the Street Department positions. It notes that in the judgment of DMG, the new duties of the Machine Operator position did not affect the ratings previously given to that position. The position of Mechanic/Machine Operator, according to the City, might have changed pending a management study, but after completion of that study, the initial determination of DMG did not change.

The City recognizes that the opinion of the supervisor was that these positions were compensated at a lower rate than comparable positions in other municipalities and there was a decrease in applicants for a vacant position in 1999 than in 1990. The City observes that there have been only two vacancies since 1990, and other municipalities were experiencing similar difficulties in recruiting, so logic would dictate that the disparity in wages did not create the shortfall in applicants but was due to the economy which is stronger than it was ten years ago as well as a tight labor market.

In conclusion, the City argues that the evidence failed to show that the City violated the agreement or acted in an arbitrary manner in denying the grievances. It asserts that through its employment of DMG it attempts to maintain a consistent pay grade scale for all employees based on objectivity and position responsibilities, and which attempts to minimize historical inequities in the pay scale. The City provides a mechanism for employees to seek a change in the grade placement but the procedure does not guarantee a change in pay grade. It submits that the City had a reasonable and rational basis for its decisions, distinguishing the Street Department employees from the Utilities Department employees and exercised its authority properly. It asks that the grievances be dismissed.

### DISCUSSION

Appendix A of the parties' agreement provides that any employee whose job duties or responsibilities are significantly changed may appeal his placement in the wage matrix. After the appeal is received, it is submitted to DMG for a ruling which may be appealed to the City's Personnel Committee, then to the City Council and finally to arbitration. Here, the grievants have appealed DMG's ruling that the Machine Operator should remain at Grade 7 and the Mechanic/Machine Operator should remain at Grade 8. The grievants' contend that the positions should be at Grades 12 and 13, respectively. The underlying basis for the grievant's appeal involves the placement at Grade 12 of the Apprentice Electric System Technician.

The collective bargaining agreement does not establish what standard the Arbitrator must apply to the ruling of DMG. Inasmuch as the contract is silent on the standard, the undersigned will apply the reasonableness standard and if DMG's ruling is not arbitrary and capricious, the decision must stand.

A review of the evidence indicates that as far as the point factor evaluation system is concerned, the Apprentice Electric System Technician should be placed at Grade 7 (Ex. 12) which is the same grade as the Machine Operator. In 1997, the position of Apprentice Electric System Technician was placed at Grade 12 due to “unique market conditions.” (Ex. 12) The Union claims that the City should have updated the market survey before denying the grievants’ reclassifications.

In DMG’s final report to the City dated January 6, 1995, on the Classification and Compensation study, the report states at page 15:

After a thorough analysis of the market practices as they relate to Utilities positions, it is our conclusion that Utilities positions appear to have a somewhat unique labor market, with wages notably higher than positions in other City departments of similar job worth (as measured by job evaluation scores). This finding generally held across all the cites included in the market analysis. This finding was true also in the Non-Represented Employee Classification and Compensation study, which led to the market rating of two key Utilities positions because of the unique nature of the Utilities labor market and resulting pay rates.

...

<u>Utilities Position</u>	<u>Market Estimate</u>	<u>Market-Rated Grade Assignment</u>
Electric System Technician	16.75	14

With this market adjustment, the Electric System Technician will be adjusted five grades – again due only to unique market conditions.

There is no evidence the Union objected to the five-grade change or that Street Department employes should have gotten the same five-grade change in 1995. It does not appear that there was an Apprentice Electric System Technician employed by the City in 1995 as this classification is not listed in the study. See page 15, Appendix A.3, D.1, C.1, I.1.2 and Ex. 12. It is noted that the Apprentice Electric System Technician was adjusted five grades to Grade 12 due to the same unique conditions for which the Electric System Technician was adjusted five grades from Grade 9 to Grade 14. (Ex. 12) All of this occurred within three years of the 1995 market survey.

The Union’s assertion of a past practice of accepting the recommendation of the supervisor as a basis for reclassification carries little weight given that the same rationale for



the grade change for the Technician used in the initial study was applied to the Apprentice and the same change in number of grades was also applied to the Apprentice, all within three years of the survey. The recommendation of the supervisor is little more than asserting the report be applied in the same fashion to the Apprentice as it was to the Electric System Technician and, as it is part of a progression, i.e. Apprentice to Journeyman Technician, the supervisor's recommendation cannot be said to establish any binding past practice.

DMG did review the new position descriptions in 1999 and by letter of February 23, 1999, recommended no grade change for the Machine Operator class (Ex. 5). After the Management Study of the Street Department on August 30, 1999, the Mechanic/Machine Operator class was determined to be properly graded at Grade 8.

No evidence was presented of unique market conditions for Street Department employes that would require the same grade level adjustments as Utility employes. While the grievants' supervisor felt market conditions warrant a reclass, DMG was of the opinion that there were no unique market conditions applicable to the grievants or that any change in market conditions apply to warrant the reclass. DMG has not been shown to have acted unreasonably and has provided a logical justification for the grade differential between the Apprentice Electric System Technician and the Street Department employes seeking to be reclassified. The evidence failed to establish a change in market conditions justifying the requested grade changes. Thus, it is concluded that the ruling of DMG was reasonable and was not arbitrary and capricious.

Based on the above and foregoing, the record as a whole and the arguments of counsel, the undersigned makes the following

**AWARD**

The City of Stoughton did not violate the collective bargaining agreement in the processing of and the decision not to raise the pay grades of the Machine Operator and the Mechanic/Machine Operator, and therefore, the grievances are denied.

Dated at Madison, Wisconsin, this 15<sup>th</sup> day of June, 2000.

Lionel L. Crowley /s/  
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Lionel L. Crowley, Arbitrator