

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 3306, AFSCME, AFL-CIO

and

CITY OF SHEBOYGAN (WATER UTILITY)

Case 105
No. 58382
MA-10937

Appearances:

Ms. Helen Isferding, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, for the Union.

Buchanan & Barry, S.C., by **Attorney Jere W. Wiedenman**, for the Employer.

ARBITRATION AWARD

On January 3, 2000, Local 3306, AFSCME, AFL-CIO, hereinafter Union, with the concurrence of the City of Sheboygan Board of Water Commissioners, hereinafter Employer or Utility, requested the Wisconsin Employment Relations Commission to appoint a member of its staff to act as impartial arbitrator in a dispute over the appropriate wage rate for the water plant operator position. A hearing in the matter was held on March 1, 2000, at Sheboygan, Wisconsin, at which time the parties were afforded the opportunity to adduce testimony and introduce documentary evidence. A stenographic transcript of the hearing was taken and the parties filed post-hearing briefs by April 4, 2000.

ISSUE

The parties were unable to stipulate to a statement of the issue. The undersigned frames the issue as follows:

Did the Employer's reorganization of the Water Utility and elimination of the Operator Helper classification substantially modify and reclassify the Operator's position by reason of the introduction of new methods and/or processes, thereby justifying an increase in the Operator's rate of pay of \$1.22 per hour for all hours the Operator works in the plant alone (after 4:00 p.m., and on Saturday, Sunday and holidays)?

PERTINENT CONTRACT LANGUAGE

ARTICLE X

WAGES

The wage rates for employees covered by this Agreement shall be set forth on Exhibit A, which is a part of this Agreement. If during the term of this Agreement, a new job (defined to include an existing job which has been substantially modified and reclassified by reason of the introduction of new methods and/or processes for its performance) is created, the wage rate (either upward or downward in the case of an existing job) therefor (sic) will be agreed upon between the Employer and the Union. If agreement cannot be reached, the matter will be subject to the grievance procedure, including arbitration, it being understood and agreed, however, that any change thereto shall not be retroactive.

BACKGROUND

The City of Sheboygan Water Utility is a surface water treatment facility drawing its water from Lake Michigan. The Utility supplies water to Sheboygan, Sheboygan Falls and Kohler, Wisconsin. Surface water treatment involves coagulation, settling and filtration of the surface water to prepare it for distribution and public consumption. The water treatment plant is operated twenty-four hours per day, and seven days per week. Prior to the Operations Department reorganization, that was effective January 1, 2000, the plant was run by an Operator, Operator Helper and Relief Operator. There was an Operator and Operator Helper that worked on the same shift and the Relief Operator filled in for absent Operators. The Utility reorganization plan resulted in the elimination of the Helper classification, creation of a day shift Laboratory Technician classification, an additional Relief Operator position and two temporary Operator Assistant positions. The Laboratory Technician classification assumed the laboratory and sampling work that had been performed by the Operator Helper. The other Operator Helper duties, exclusive of assisting the Operator, are now being performed by the

Relief Operator or Operator Assistants. The Utility's analysis of the amount of time, on average, an Operator Helper would assist the Operator, on an as-needed basis, was less than 8% of the Operator Helper's time.

The Utility presented its reorganization plan in or about late July, 1999. The Union thereafter demanded to bargain over the impact of the proposed elimination of the Operator Helper classification. The parties met to discuss the reorganization plan and bargain the impact of elimination of the Operator Helper. During these bargaining sessions, proposals were exchanged but no agreement was reached. The Utility offered to pay a third shift premium of \$1.22 per hour for each hour worked by the Operator without assistance. The Union rejected that offer and submitted the dispute to arbitration.

DISCUSSION

The initial question presented by the grievance is whether the Operator position was "substantially modified and reclassified by reason of new methods and/or processes for its performance" as a result of the reorganization of the Operations Department. The Employer insists the Operator position was not reclassified and the duties didn't change, nor was additional training or certification required under the reorganized department. The Utility argues that the several changes that were made to improve safety, and working alone on the third shift is not a basis for renegotiating the wage rate. The Employer also contends elimination of the Operator Helper classification was offset by the transferring of sampling and laboratory duties to the Laboratory Technician classification. Further, it asserts the Operator Helper's custodial duties were transferred to the Relief Operator and the Temporary Assistant. Lastly, the Employer concluded the assistance given to Operators by the Operator Helper was minimal, less than 10% of the Helper's time, and did not substantially modify the duties of the Operator position. The Union, on the other hand, argues that elimination of the Operator Helper position had a huge impact on the Operator by drastically changing his/her responsibilities, workload and working conditions during those hours he/she is working alone. While acknowledging the Utility improved safety for the Operator, those improvements did not replace the insurance of another live body in the huge facility that was lost with elimination of the Operator Helper classification. The Union argues an Operator is still alone in the facility from 4:00 p.m. until 6:00 a.m. and on Saturday, Sunday and holidays. Prior to the reorganization, the Union points out, when things went wrong with equipment, it took more than two hands to keep the plant operational. Consequently, the Union views the dispute as being over how much has the Operator Helper's elimination impacted upon the Operator, and how much is that impact worth in terms of a wage increase.

There is no record evidence that the Operator position was reclassified by the Employer, nor does the Union claim that occurred. Rather, it is the Union's claim that the elimination of the Operator Helper classification significantly impacted the Operator warranting an increased wage rate. The record evidence establishes that the duties of the

Operator Helper were not given to the Operator but rather, were distributed among other classifications. The sampling and laboratory work was transferred to the new Laboratory Technician, and the janitorial duties of the Helper have been assumed by the Temporary Assistant and the Relief Operation classifications. Also, the dumping of chemicals, ground work and running errands have been reassigned to other classifications working on the first shift. Finally, the calls for customer assistance have been given to the employe on call and not the Operator on duty.

It is true, as argued by the Union, that after the reorganization the Operator is working alone after 4:00 p.m., and on Saturday, Sunday and holidays. In the past, there was an Operator Helper also working at those times. This does present the issue of the Operator's safety when in the plant alone. As acknowledged by the Union, the Employer has adopted additional security measures and made the plant safer for a lone Operator. However, the Union believes that the wage adjustment it proposes is warranted because of the increased responsibility and hazard to the Operator working alone.

The Employer proposed to increase the rate of pay for an Operator when working on the third shift by \$1.22 per hour. The Union has proposed \$1.22 per hour for all hours an Operator works alone in the plant (after 4:00 p.m. on weekdays and on Saturday, Sunday and holidays). In order for the Union to prevail in this case it first must establish that the job of Operator was so substantially modified and reclassified by reason of the introduction of new methods and/or processes for its performance that the subject dispute comes within the purview of Article X. As noted earlier herein, it is undisputed the position was not reclassified. The Employer argues that on that basis alone the grievance must be denied. The parties introduced no bargaining history relative to the adoption of language of Article X. While one can argue, as the Employer has, that the plain meaning of "substantially modified and reclassified" supports the Employer's argument of no violation because there has been no formal reclassification, a more reasonable construction of the language is that it becomes operative where the duties have changed so substantially that a reclassification should occur. If the Employer's construction is adopted, the Employer could substantially alter the job duties of a classification and thereby undeniably significantly increase the level of responsibility, yet block consideration of any grievance and/or arbitration with regard to appropriate rate of pay by not formally reclassifying the position. In this case, the Operator is the highest ranking position (in terms of pay) in the Operations Department. There is no higher level position to reclassify it to. Further, it would still be an Operator and would not need to be re-titled merely because of increased responsibility. Thus, the undersigned is not persuaded that the grievance must be denied merely because no formal "reclassification" occurred.

It is also true that the elimination of Operator Helper has changed the conditions under which Operators will be performing their tasks after 4:00 p.m. on weekdays, and on Saturday,

Sunday and holidays. They will be working alone, which poses safety issues, as the Union notes. The Employer acknowledges this fact by its actions to enhance security and safety in the plant. Further, elimination of the Operator Helper classification changes the working conditions for the Operator. However, as noted earlier, the record does not establish that the Operator has been asked to assume additional or added responsibility that substantially modified the Operator classification as a consequence of the elimination of the Operator Helper position. The Operator continues to perform the same duties as before, and there has been no showing that because he will, at times, be in the plant alone, there is a concomitant increase in responsibility.

The Union's proposal of \$1.22 per hour for those hours when an Operator is alone in the plant (after 4:00 p.m. and on Saturday, Sunday and holidays) is logical in the context of its contention that the Operator's level of responsibility has thereby been increased when working alone, but it is not supported by the evidence. It has not been shown, in this case, that an Operator working alone had an increase in responsibility nor has it been shown that there was a substantial modification of the Operator position. Thus, the undersigned is persuaded the Employer's decision to increase the pay of Operators assigned to work third shift by \$1.22 per hour was reasonable, and not violative of Article X of the parties' collective bargaining agreement.

Based on the above and foregoing, the Arbitrator issued the following

AWARD

The Employer's reorganization of the Water Utility and elimination of the Operator Helper classification did not substantially modify and reclassify the Operator's position by reason of the introduction of new methods and/or processes, thereby justifying an increase in the Operator's rate of pay of \$1.22 per hour for all hours the Operator works in the plant alone (after 4:00 p.m., and on Saturday, Sunday and holidays).

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

Thomas L. Yaeger /s/

Thomas L. Yaeger, Arbitrator