BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF STANLEY

and

TEAMSTERS GENERAL UNION LOCAL 662

Case 15
No. 64533
MA-12927

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Jill M. Hartley**, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, WI 53212, on behalf of Local 662.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney James M. Ward**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, WI 54702-1030, on behalf of the City.

ARBITRATION AWARD

According to the terms of the 2004 collective bargaining agreement between the City of Stanley (City) and Teamsters General Union, Local 662 (Union), the parties jointly selected Arbitrator Sharon A. Gallagher through the Wisconsin Employment Relations Commission to hear and resolve a dispute between them regarding whether the City has the right to assign non-unit employees to perform Fall Clean-Up work. By agreement of the parties, a hearing was held in this matter at Stanley, Wisconsin on April 5, 2005. No stenographic transcript of the proceedings was made. The parties agreed to postmark their briefs to the Arbitrator for her exchange on May 17, 2005, and they waived the right to file reply briefs. The Arbitrator received the parties' briefs by May 18, 2005, whereupon the record was closed.

ISSUES

The parties were unable to stipulate to the issues to be determined herein. However, they agreed that the Arbitrator could frame the issues based upon the relevant evidence and argument as well as the parties' suggested issues. The Union suggested the following issues for determination:

Did the City violate the collective bargaining agreement when it used seasonal employees to perform bargaining unit work on October 25 and 26, 2004?

If so, what is the appropriate remedy?

The City suggested the following issues herein:

Did the City violate the collective bargaining agreement in October, 2004 by assigning Fall Clean-Up work to seasonal workers in lieu of utilizing regular bargaining unit employees to perform that work at overtime rates?

If so, what is the appropriate remedy?

Based upon the relevant evidence and argument and the parties' suggestions, I conclude that the Union's issues reasonably state the dispute between the parties and they shall be determined herein.

RELEVANT CONTRACT PROVISIONS

ARTICLE 1

RECOGNITION, UNION SHOP AND CHECKOFF

Section 1. Recognition. The Employer recognizes and acknowledges that the Union, its agents, representatives, or successors, is the exclusive bargaining agency for all employees of the Employer, including such employees as may be presently or hereinafter represented by the Union, working on jobs in classifications as set forth in the attached Wage Schedule, excluding office clerical employees, supervisors and guards as defined in the Act.

. . .

ARTICLE 2

CONDITIONS OF EMPLOYMENT – PROBATIONARY PERIOD

. . .

Section 2. Any employee hired as a seasonal, casual, or part time worker, shall not become a seniority employee under these provisions, where it has been agreed

by Employer and Union that he/she was hired for seasonal, casual, or part time work. The word "seasonal", as used herein, is meant to cover situations such as "Christmas" or like situations. The word "casual" or "part time", as used herein, is meant to cover situations such as replacements for absenteeism and vacations. Casual and part time employees shall be given first opportunity to become regular employees and be placed at the bottom of the seniority board, if they meet qualifications, and shall accumulate seniority from the date of regular employment.

Section 3. The Employer agrees not to enter into any agreement or contract with his employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void.

ARTICLE 7

MANAGEMENT RIGHTS

The City possesses the sole right to operate the City government and all management rights related to the same, subject only to the provisions of this contract and applicable law. The rights of the City include, but are not limited to:

(a) Determining the kinds and amounts of service to be provided to residents of the City and the number of persons to employ and the kinds of job classifications to establish to provide such services.

(b) Directing its employees to perform those tasks in order to appropriately and efficiently carry out and comply with statutory and regulatory mandates and goals.

(c) To direct all operations of the City of Stanley Public Works Department.

(d) To manage, hire, promote, transfer, assign, make job assignments, evaluate and retain employees, and to adopt written rules and policies to carry out these rights. The Union will be provided copies of proposed written rules and policies not less than ten (10) days prior to implementation, and will retain all contract and legal rights to challenge the reasonableness of any such rules or policies should there be a dispute.

(e) Suspend, reclassify, demote, discharge or take other appropriate disciplinary action against employees for just cause.

(f) Permanently reduce staff through attrition, if amount of work does not justify replacing staff, or if lack of funds does not allow replacement of staff.

(g) To layoff or reclassify employees in the event of lack of work or budgetary constraints.

(h) To introduce new or improved methods for performance of work and provision of services, or to acquire new or improved equipment or facilities to perform work or provide services.

(i) To create, combine or eliminate job classifications.

(j) To contract for goods and services provided there is no reduction in hours, layoff, or elimination of existing bargaining unit positions as a result thereof.

(k) To make, adopt, amend and enforce reasonable written work rules and regulations. The Union will be provided copies of proposed written rules and policies not less than ten (10) days prior to implementation, and will retain all contract and legal rights to challenge the reasonableness of any such rules or policies should there be a dispute.

(l) No right under this Article shall conflict with, or be exercised in a manner which will conflict with the express terms of this Agreement. Any right not to conflict with this Agreement is reserved to City. No action by the City pursuant to its rights herein shall be subject to grievance/arbitration review, except if such action is exercised in contravention to the terms of this Agreement or for the purpose of evading this Agreement.

ARTICLE 8

MAINTENANCE OF STANDARDS

Except as hereinafter provided, the Employer agrees that all conditions of employment relating to wages, hours, overtime differentials, vacations, and general working conditions shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Agreement and the conditions of employment shall be improved wherever specific provisions for changes are made elsewhere in this agreement.

BACKGROUND

The City employs four bargaining unit employees in its Waste Water and Water Plants and it currently employs two bargaining unit employees in its Streets Department, Mike Savina and Tom Madison.[1] Madison has been employed by the City for 20 years, the last 6 of which have been in the Streets Department (hereafter Streets); and Savina has been employed by the City for 26 years, the last 20 of which have been in Streets. In Streets, unit employees operate heavy equipment, they repair City streets, pick garbage and do major repairs in City parks. City Waste Water and Water employees (all unit members) have assisted Streets employees when the Streets Department has needed help in order to complete its regular work.

The City has for some time also employed three non-unit seasonal employees, Bill Alix, Ron Witt and Charles Nondorf.[2] Two of these seasonals, Alix and Witt, are hired each year to work from April until the end of October to care for City lawns at City buildings, parks and the City cemetery — mowing, pruning and trimming; these seasonals also pick garbage in City parks and make small repairs and do painting at City parks and buildings. The third seasonal employee, Charles Nondorf is hired each year to clean the bathrooms at City parks and in the Winter, he also shovels snow at City buildings.[3]

In the Fall of each year, the City Council designates a week or two as Fall Clean-Up time. During this time, City residents can bag their leaves and yard waste and put them out to be picked up and composted by the City Streets Department. Both Savina and Madison stated without contradiction that during their tenure with the City, until October, 2004, only Streets unit employees performed Fall Clean-Up work; and that they never saw seasonals performing Fall Clean-Up work in 2003.[4] Savina stated that if he had seen a seasonal employee doing Fall Clean-Up work in 2003, he would have filed a grievance thereon.

FACTS

On or about October 24, 2004, Madison and Public Works Director Gene Hodowanic[5] had a conversation about the 2004 Fall Clean-Up. Hodowanic was concerned that Fall Clean-Up would take longer that year than it should because the Department was under-staffed, having only two unit employees to do that work. Hodowanic asked Madison whether he could use outside

1 Due to at least one recent retirement which vacancy has not been filled, the City has fewer Streets unit employees than formerly.

2 Although the labor agreement at Article 2, Section 2, refers to casual and part-time employees, the City has never employed any of these workers.

3 Madison also stated that a seasonal employee is used to collect campground fees in the Summer. There is no evidence regarding who the City has employed to perform this task.

4 Madison stated that there may have been a seasonal employee who worked one or two days on Fall Clean-Up in 2003, but he did not see this and he did not work with the seasonal employee involved. No evidence was submitted to show that the Union knew that a seasonal employee was used to perform Fall Clean-Up work in 2003.

5 Hodowaqnic was not present at the instant hearing and he did not testify herein.

help to get the Fall Clean-Up done. Madison replied that if Hodowanic used help from outside the bargaining unit, he (Madison) would have to file a grievance on it. During this conversation, Madison also asked Hodowanic whether the City would authorize overtime to get the Fall Clean-Up work done.

On or about October 25, 2004, Hodowanic attended a Finance Committee meeting of the City Council at which Hodowanic expressed concern about the Streets Department being able to complete Fall Clean-Up work that year. Hodowanic recommended that the City pay bargaining unit employees overtime in order to complete Fall Clean-Up work. Although this item was not on the agenda for the meeting, the Committee told Hodowanic to use seasonal employees to get the Fall Clean-Up work done. On October 26, 2004, seasonal employees Alix and Witt each worked 7 hours performing Fall Clean-Up work (City Exh. 1, page 1).[6]

The City's only witness herein was City Clerk Diane Zais. Ms. Zais stated that she has held this position for the past 20 years. Zais also stated that she does not supervise Hodowanic and that he does not report to her for any reason. Nor does Zais have any authority over the Streets Department or the other Public Works employees (both unit and non-unit) who are supervised by Hodowanic.

Zais stated that it is part of her job to check all timecards (which are filled out by City unit and non-unit employees and then checked and initialed by their supervisor); the supervisor then prepares a timesheet showing the number of hours (for payroll purposes) that were worked by each employee and they submit the timecards and the timesheets to Zais for her review and payment.

Zais stated that she reviewed all City timecards from 2002 forward in preparation for the instant hearing and that her search showed that City seasonal employees performed bargaining unit work on 12 days during the period of her search. In addition, Zais stated that she believed that Alix had performed Fall Clean-Up work on two days in October, 2003, for a total of 13 hours (City Exh. 1, pages 3 and 4).[7] However, Zais admitted that she never asked anyone what the notations on the timecards (showing the work performed) meant and she never asked Alix or Witt what jobs they had performed on the days in dispute herein in 2003 and 2004. Zais also admitted that she did not know whether unit employees were aware that seasonal employees had performed the unit work allegedly listed on their timecards from 2002 forward.

6 Although Madison stated that he believed that Witt and Alix also worked on Fall Clean-Up on October 25, 2004, the timecards for Witt and Alix did not support Madison's assertion (Jt. Exh. 4). City Clerk Diane Zais also stated without contradiction that she searched all City timecards and that her search revealed that in 2004, Alix and Witt only worked on Fall Clean-Up on October 26, 2004.

7 Only the October 27, 2003 timecard for Alix listed "Fall Clean Up" for 8 hours. Alix' timecard for October 28, 2003, listed some task(s) that were crossed out (and illegible) and under this cross-out Alix had listed, "Clean Up." The reference to "Clean Up" could have referred to something other than Fall Clean-Up work and as neither Alix nor Hodowanic testified regarding the notations on this or any other timecard, there is insufficient evidence to show that Alix' work on October 28, 2003 was Fall Clean-Up work.

Finally, Zais stated that she recalled that in 2003, Hodowanic asked her whether he could use seasonal employees to perform Fall Clean-Up work. Zais stated that she thought Hodowanic's question was odd and she did not know why Hodowanic would ask her such a question, given the fact that she was not Hodowanic's supervisor and he did not need to clear anything with Zais.

On October 26, 2004, the Union filed the instant grievance. On November 18, 2004, the City Personnel Committee issued the following Step 2 Response, simply quoting portions of Article 7 of the labor agreement, as follows:

> The City possesses the sole right to operate the City Government and all management rights related to the same, subject only to the provisions of this contract and applicable law. The rights of the City include, but are not limited to:
>
> (a) Determining the kinds and amounts of service to be provided to residents of the City and the number of persons to employ and the kinds of job classifications to establish to provide such services.
> (c) To direct all operations of the City of Stanley Public Works Department.
> (d) To manage, hire, promote, transfer, assign, make job assignments, evaluate and retain employees.
> (j) To contract for goods and services provided there is no reduction in hours, Layoff or elimination of existing bargaining unit positions as a result thereof.

The Union then brought this case forward to arbitration.

POSITIONS OF THE PARTIES

The City

The City argued that the Union's construction of Article 2, Section 2, to prohibit the City from utilizing seasonal employees to perform work which "has not traditionally been considered seasonal work" (Er. Br. p. 9), is incorrect. The City urged that the language of Article 2, Section 2, (which consists of a list of criteria for seasonal, casual and part-time work) does not support such an overly restrictive construction or approach. In this regard, the City observed that "seasonal" was expressly intended by the parties to cover "Christmas or like situations." As seasonal employees have never been used at Christmas, according to the City, the Article 2, Section 2, definition of seasonal has been transcended.

In addition, Article 2, Section 2, does not contain any language which prohibits the use of seasonal, casual, or part-time employees "in order to limit the overtime opportunities for regular bargaining unit employees" (Er. Br. pp. 9-10). As Article 2, Section 2, allows casual and part-time employees to perform work involving the absenteeism and vacation of unit employees, the Section "inherently limits overtime opportunities for regular bargaining unit employees . . ." (Er. Br. p. 10).

The City argued that the Union must have known that seasonals had been used to perform Fall Clean-Up work in 2003 and it should be bound thereby. Since the effective labor agreement was not executed until early 2004, the guarantee contained in Article 8 should not, in fairness, be applied in this case. Also, the City pointed out that because the non-utilization of seasonals to perform Fall Clean-Up work in the past was not a matter of conscious design on the City's part, it should not fairly be found to have become a condition of employment to be protected or preserved by Article 8.

Where, as here, the City's actions have not violated Articles 2 and 8, Article 7 Management Rights (Sections a, c, d, j) effectively reserves to the City the right to use seasonals as it did in this case. The City noted that its actions would not violate Article 7, Section (j), even had the City subcontracted the Fall Clean-Up work, as no reduction in hours, layoff or elimination of unit positions resulted therefrom. Therefore, the City argued that its less extreme act of using long-time seasonal employees to perform Fall Clean-Up should not run afoul of the Agreement.

Although Article 17 guarantees overtime pay to unit employees who work beyond eight hours per day or 40 hours per week, it does not specifically state that the City must work unit employees at overtime rates rather than using non-unit employees at straight time rates. Also, Article 17 does not contain any language providing for an overtime guarantee for unit employees. Indeed, paragraph 3 of Article 17 allows management to send unit employees home after eight hours of work if they are called in early. In these circumstances, the City sought denial and dismissal of the Grievance in its entirety.

The Union

The Union argued that the City's use of non-unit seasonal employees to perform Fall Clean-Up work violated the entire Agreement. Article 2, Section 2, states that seasonals can be used to cover situations "like Christmas or like situations." In this regard, the Union observed that the City has employed seasonal employees over many years to perform grass mowing, trimming, light maintenance, and some trash pick-up from April to September or early October each year. The Union recognized the City's right to use seasonals in these situations. However, the Union urged that the City should not be allowed to use seasonals for work, such as Fall Clean-Up, which unit employees have normally and regularly performed over many years.

In addition, as the labor agreement does not contain subcontracting language, the Union urged that the contract as a whole and specifically the recognition, wage and seniority clauses should stand as an implied "covenant of fair dealing," which operates to avoid unreasonable reductions in the scope of the unit and nullification of the contract through subcontracting. The Union cited DAYTON ROGERS MFG. CO., 84 LA 531, 535 (JACOBOWSKI, 1985) and PET MILK CO., 33 LA 278, 279 (MCCOY, 1959) for the proposition that a contract which contains

recognition, seniority, wage and general provisions regarding work and classifications impliedly prohibits the removal of unit work from unit employees. The Union concluded in its brief:

> In summary, arbitrators find restrictions on removing work by the act of entering into a collective bargaining agreement, reasoning that unless work is protected, all bargaining unit work could be removed or subcontracted. In the absence of language explicitly giving management the right to remove work, the collective bargaining agreement itself bars the employer from removing bargaining unit work. Hugo New-Proler Co., 50 LA 1270 (Bailer 1968); W.S. Dickey Clay Manufacturing Co., 46 LA 444 (Kates 1966); Celanese Corp. of America, 33 LA 925 (Dash 1959); Twin City Milk Producers, 41 LA 1121 (Gundermann 1964); Journal Publishing Company, 22 LA 108 (Seering 1954).

The Union contended that the City's assignment of Fall Clean-Up work was a clear attack on unit employees' job security, as the work had been traditionally performed by unit employees and was regularly available and needed by the City. The Union urged that absent contract language which explicitly gives the City the right to remove work from the unit, the labor agreement itself bars the City from same under arbitral case law.

In addition, the contract's broad management rights clause (Article 7) does not justify the City's use of seasonals to perform Fall Clean-Up work. The Union noted that Article 7 states that it is subject to the specific provisions of the agreement such as Article 2, Section 2, which describes and limits the circumstances under which the City can employ seasonals. Fall Clean-Up therefore, cannot be said to be one of those circumstances.

The Union asserted that the evidence showed that the City has consistently assigned Fall Clean-Up work to unit employees; that they alone have performed same over 20 years; and that this constitutes a past practice. The Union contended that Zais' testimony and the submitted time sheets for Bill Alix for October 27 and 28, 2003, failed to prove that seasonal employee Alix actually performed Fall Clean-Up work in 2003. In this regard, the Union observed that Zais admitted she had no personal knowledge of the work Alix performed on October 27 and 28, 2003; that she never spoke to Alix regarding his work on those days; and that she never inquired of Alix or anyone else regarding the ambiguous hand-written notations placed on Alix's time sheets, although she admitted that she typed notes on Alix's time sheets regarding Fall Clean-Up. The Union argued that Zais testimony and Alix' timesheets constituted unreliable evidence which should not be credited by the Arbitrator. In contrast, unit employees Madison and Savina's testimony contradicting Zais and the timesheets was first-hand and reliable and it should be credited.

Even assuming the City's evidence regarding past practice is credited, the evidence failed to show that the Union was aware, or should have been aware, that the City had used seasonals to perform Fall Clean-Up in 2003 or indeed any other work normally done by unit

employees. Zais' testimony was sheer speculation regarding tasks performed by seasonals in 2002 through 2004, as she admitted having no personal knowledge of seasonals' work during 2002-04.

Furthermore, the past practice proven by the Union is supported by Article 8, which operates to contractually protect all existing employee benefits extant before the contract came into being. As such, the Union urged, the City's use of seasonals for Fall Clean-Up work in 2004 violated Article 8 of the Agreement. Also, the Union noted that City could have used one or more of the four unit employees employed outside the Streets Department, to complete 2004 Fall Clean-Up work at straight time as the evidence showed had been done in the past. No evidence was proffered to show that the only choices in 2004 were to have Streets unit employees perform Fall Clean-Up on overtime or to have seasonals perform same on straight time. In addition, the City failed to prove that its concerns were about overtime expense.

Finally, the Union argued that the City should not be allowed to transfer unit work to seasonal employees because the work was apparently *de minimis*. Whether there were seven hours more or less of Fall Clean-Up work performed by seasonals in 2004, is irrelevant as the transfer of any work out of the bargaining unit can undermine the integrity of the bargaining unit, subvert the parties' contractual intent, and destroy employees' security, benefits, and seniority rights even if the work does not involve a large number of hours. The fact that the City has not laid off any unit employees as a result of its assignment of Fall Clean-Up work is also not a relevant consideration. Therefore, the Union sought an Award sustaining the grievance, making unit employees whole and ordering the City to cease and desist from assigning unit work to non-unit employees.

DISCUSSION

The City argued that the Fall Clean-up work has not traditionally been considered unit work based upon evidence it proffered through City Clerk Zais. In addition, the City urged that the Article 2, Section 2, definition of seasonal work has neither been applied nor understood, to cover "Christmas or like situations" in the past, making the contractual definition thereof inoperable. In these circumstances, the City contended that it was privileged to assign Fall Clean-up work to seasonal employees.

The evidence presented through City Clerk Zais failed to prove that seasonals had been assigned Fall Clean-up work in 2003. A close analysis of this evidence showed that Zais had no personal knowledge of the actual work performed by seasonals across the 2002-04 period she surveyed. Rather, the evidence showed that Zais' typed notations regarding the Fall Clean-up and other work she believed was performed by seasonals in 2002, 2003 and 2004 was not based upon any observations she made of seasonals' work, nor were they based upon any conversations with the seasonal employees involved or with Supervisor Hodowanic. Indeed, Zais could not identify whose handwriting was on the employee timesheets or what those

handwritten entries were intended to describe. It is also significant that neither the seasonal employees nor Supervisor Hodowanic testified herein and the City failed to explain why these individuals were not called to the stand.

In these circumstances, Zais' typed notations on the submitted 2002 - 2004 timesheets as well as her testimony regarding them amounted to sheer speculation that seasonal employee Bill Alix had performed Fall Clean-up work in 2003 and that seasonals had performed other regular unit work from 2002 through 2004. As such, this evidence must, in fairness, be rejected. Thus, the evidence of long-time unit employees Savina and Madison is credited that seasonals had never performed Fall Clean-up work prior to October of 2004. In addition, the City failed to prove that the Union knew or should have known that the City had employed seasonals to perform Fall Clean-up or other unit work in 2003. No evidence was proffered to show that seasonals had done Fall Clean-up work in 2002 or in any prior year. This evidence supported the Union's evidence/contentions herein.

The City has argued that the Article 2, Section 2, definition of seasonal work is ambiguous and has been inoperable. I agree with the City on this point. No evidence was proffered to show what the parties intended when they defined "seasonal" in Article 2, Section 2, as covering "situations such as "Christmas" or like situations." Indeed, there is no indication on this record that the term "Christmas" has ever had any meaning to these parties, as no evidence was presented to show that any Christmas-related duties have ever been performed by City seasonal employees.[8] In this context, the phrase "Christmas or like situations" is entirely ambiguous and open to a myriad of interpretations. Thus, evidence of past practice is relevant and necessary to flesh out the parties' intentions regarding the utilization of seasonal employees.

Based upon this record, it is clear that the parties have understood and agreed over the past 20 years that seasonals could be used as extra, unskilled help in the Streets Department from April to November each year. As stated above, during the April to November "season," City seasonals have mowed grass and done pruning and trimming at City buildings and parks and at the cemetery; that seasonals have assisted unit employees in picking garbage mostly at City parks; and that seasonals have done minor repairs and painting at City parks and buildings. However, the record showed that the parties have never understood or agreed that seasonals could be used to perform Fall Clean-Up work.

The City has argued that Article 7, Section (j), allows it to use seasonals to perform unit work as no unit employees were reduced in hours or laid off and no existing unit positions were eliminated due to the City's assignment of some Fall Clean-Up to seasonals. In my view, Article 7, Section (j), by its express terms, must be subordinated to the more specific (albeit ambiguous) language of Article 2, Section 2, which must take precedence over the general

8 The fact that one seasonal employee has shoveled snow at City buildings each Winter does not assist the Arbitrator in determining the meaning of the contractual reference to "Christmas" as in this Arbitrator's experience, snow can and has fallen in Wisconsin from late Fall to early May.

language of Article 7, Section (j). In addition, the facts of this case demonstrate that the City did not contract out the Fall Clean-Up work performed on October 26, 2004. Rather, it used two currently employed seasonal workers to perform 14 hours of said work.[9]

Although it is true that the labor agreement does not guarantee overtime to unit employees and that it does not contain language prohibiting the City from using non-unit employees for work that would otherwise constitute overtime if assigned to unit employees, this does not mean that the City was privileged to assign Fall Clean-up work to seasonal employees. In this regard, this Arbitrator notes that the parties' labor agreement contains a maintenance of standards clause at Article 8 which guarantees, *inter alia*, that general working conditions "shall be maintained at not less than the highest minimum standards in effect" at the time the contract is executed. Absent express and specific language to the contrary, the language of Article 8, operates to preserve the past practice proven by the Union herein that unit employees have traditionally performed Fall Clean-up work. That this work was *de minimis* does not detract from the conclusion that under this contract and past practice, unit employees should be able to rely upon performing Fall Clean-up work at straight time or overtime rates, whichever is appropriate.[10] The duration or amount of the work is irrelevant under the contract language and the proven past practice.

In all of the above circumstances of this case[11], this Arbitrator issues the following

AWARD

The City violated the collective bargaining agreement on October 26, 2004, when it used seasonal employees Witt and Alix to perform seven hours each of Fall Clean-up work. Therefore, bargaining unit employees Madison and Savina shall be made whole by the City which is hereby ordered to pay each of them seven hours' pay at time and one-half their regular rate(s) as of October 26, 2004. The City is also ordered to follow the contract and past practice in the future, in accord with this Award.

Dated at Oshkosh, Wisconsin, 12th day of July, 2005.

Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator

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9 This Arbitrator notes that the record evidence showed that in 2004, the City's Streets Department had been working short since the retirement of a unit employee. The fact that the Department was working short likely exacerbated the difficulty of completing the 2004 Fall Clean-up work.

10 The Union's observation that it might have been possible for unit Waste Water Treatment Plant/Water Plant employees to assist the Streets Department in completing Fall Clean-Up shows that the City need not necessarily pay unit employees overtime pay to complete Fall Clean-Up work in the future.

11 The cases cited by the Union are factually distinguishable from the instant case.