

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
LOCAL 1287, WISCONSIN COUNCIL 40, AFSCME, AFL-CIO
WAUSAU CITY DPW EMPLOYEES UNION

and

CITY OF WAUSAU

Case 110
No. 64777
MA-13008

(Work in a Higher Classification Grievance)

Appearances:

Phil Salamone, Staff Representative, AFSCME Council 40, 7111 Wall Street, Schofield, Wisconsin 54476, appearing on behalf of the Union.

William P. Nagle, City Attorney, City of Wausau, 407 Grant Street, Wausau, Wisconsin 54403-4783, appearing on behalf of the City.

ARBITRATION AWARD

The City of Wausau (hereinafter referred to as the City or the Employer) and Local 1287, AFSCME, AFL-CIO, (hereinafter referred to as the Union) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen as arbitrator of a dispute over a grievance alleging that employees had worked in a higher classification without proper compensation. The undersigned was so designated. A hearing was held August 2, 2005 in Wausau, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. No stenographic record was made of the hearing. The parties submitted post hearing briefs, the last of which was received by the undersigned on September 13, 2005, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the relevant provisions of the contract and the record as a whole, the Arbitrator makes the following Award.

ISSUE

The parties stipulated that the following issue should be determined herein:

Did the Employer violate the collective bargaining agreement when it refused to pay the Electrical Worker II rate to the grievants (a Trade Technician and an Equipment Operator I) for changing burned out light bulbs in the parking ramp?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

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ARTICLE 5 - MANAGEMENT RIGHTS

The City possess the sole right to operate City government and all management rights repose in it but such rights must be exercised consistently with the other provisions of this contract. These rights include but are not limited to the following:

A. To direct all operations of City government.

. . .

E. To maintain efficiency of City Government operation entrusted to it;

. . .

J. To determine the methods, means and personnel by which such operations are to be conducted

. . .

ARTICLE 33 – HOURS AND OVERTIME

. . .

E. Work in Different Classification: Any employee who performs work in a higher classification for four or more hours daily shall receive the rate of pay for actual hours worked in that classification for that classification...

...

**APPENDIX A
SALARY SCHEDULE
HOURLY RATE**

ELECTRICAL/DPW

...

<u>LEVEL</u>	<u>CLASSIFICATION</u>	<u>Step D</u>	
		<u>1/1/03</u>	<u>1/1/04</u>
		...	
7	Electrical Worker II	\$18.31	\$18.86
		...	
6	Trades Technician I	\$17.17	\$17.69
		...	
4	Electrical Worker I Equipment Operator I	\$16.32	\$16.81

...

BACKGROUND

There is relatively little dispute over the facts giving rise to this grievance. The City is a municipal employer providing general governmental services to the people of Wausau in central Wisconsin. The Union is the exclusive bargaining representative of the City's non-supervisory employees, aside from protective services employees. Among the titles represented in the Union's bargaining unit are Electrical Worker I, II and III, Trades Technician, and Equipment Operator I. Grievant Daniel Cook is a Trades Technician and Grievant Jon Raduechel is an Equipment Operator I. This case concerns their claim for Electrical Worker II pay for time spent changing light bulbs in the City's parking ramps.

The City's parking ramp uses 440 volt Halite bulbs, as compared to the standard 110 volt bulb used in households. If the power is on while one of these bulbs is being changed, there is a danger that the bulb will explode, or that it will burn the person installing it. If the power is off, the changing of these bulbs is essentially the same as screwing in a light bulb in the home.

In the 1980's to the start of the 1990's, changing light bulbs in the ramp was done by a Cashier. The job was then taken over by workers in the Electrical Worker classification. Most of the work was done by an Electrical Worker I, until the incumbent Electrical Worker I retired in the early 1990's. Since that time, the City has not employed any Electrical Worker I's, and the Electrical Worker II has been responsible for changing the bulbs.

In late 2002 or early 2003, Jon Raduechel was directed to change some of the light bulbs in the parking ramp. He was not given any instructions on the proper means of doing the job, and screwed in a starter bulb while the power was on, resulting in his glove catching fire. He was subsequently advised by one of the Electrical Workers to throw the breakers and shut the power off before changing the bulb. At the time, he only changed a few bulbs on any given day. Given the four hour minimum for qualifying for out of classification pay under the contract, he did not apply for any higher pay.

On February 8 and 9, 2005, the Electrical crew was tied up with a project, and Raduechel and Daniel Cook were directed to change light bulbs in the ramps. They worked on the project for twelve hours across the two days, and put in for Electrical Worker II pay for the work. Their claim was denied, and the instant grievances were filed, asserting that this was the work of the Electrical Worker II classification. The grievances were not resolved in the lower steps of the grievance procedure, and were referred to arbitration.

Additional facts, as necessary, will be set forth below.

POSITIONS OF THE PARTIES

The Position of the Union

The Union takes the position that the changing of high voltage light bulbs is work that has normally and traditionally been performed by the Electrical Worker II. The language of the collective bargaining agreement is absolutely clear-cut: "Any employee who performs work in a higher classification for four (4) or more hours daily shall receive the rate of pay for hours worked in that classification for that classification." This language, the Union submits, fits these circumstances "like a glove." The arbitrator is not free to ignore the language, and should simply apply it to these grievants, resulting in the higher rate of pay.

The City denied the grievances, claiming that this work was simple and did not warrant Electrical Worker II pay. This is not accurate. The testimony at hearing established that this is potentially hazardous work. In order to do it safely, the power must be off, and the employee must be able to insure that the power is off. The equipment needed to insure that is the equipment used by Electrical Workers.

The Union notes that the City attempted to establish that this work has been performed by various classifications, including the Electrical Worker I classification (which is listed in Level 4, the same as the Equipment Operator I). This evidence belies the fact that there has

been a clear and consistent practice for the past ten years of having the work done by Electrical Worker II and III's, and that the Electrical Worker I is a phantom classification that has not been used in over a decade. There is no evidence of any employee having been paid at the Electrical Worker I rate since the job was effectively abolished. The Union also points out that the Electrical Worker I is a helper classification, and that the job specifications for that position do not even suggest an Electrical Worker I would be permitted to work alone on high voltage fixtures such as those used in the ramps.

The Position of the City

The City takes the position that the grievances are without merit and should be denied. Changing light bulbs in the parking ramps is work that has been performed by various classifications over the years. No employee has ever sought or received out of classification pay for the work. The work is not specialized. It consists of throwing the circuit breaker, screwing in a light bulb, and turning the power back on. This work does not approach the complexity of the Trades Technician job, nor even the Equipment Operator I job, much less the Electrical Worker II classification.

The task of changing light bulbs is one that must be done properly, and the City acknowledges its duty to provide a safe working environment for employees. While one of the Grievants did have a mishap when he tried to screw in a bulb with the power on, that was because he was not properly instructed that no one, including Electrical Workers, should change these bulbs with the power on. The City agrees that it has the responsibility to see that these employees are told how to do the job safely, and if it has not done so in the past, it pledges to do so in the future.

To the extent that there has been any past practice, the City asserts that it has been to pay employees at the appropriate rate for their permanent classification when they are changing light bulbs in the parking ramps. There is no instance in which an employee has received the pay of a higher classification for this work. That is because the work is basic enough to fit within the broad category of "other duties as assigned" that each job is subject to. As there is no specialized skill required for the work, no history of paying extra for the work, and no contractual obligation to pay out of classification pay for the work, the City urges that the grievances be dismissed.

DISCUSSION

The question in this case is whether the changing of light bulbs in the parking ramps is work of the Electrical Worker II classification. Certainly it is work that has been done by that classification on a regular basis over the past ten years. However, Electrical Worker II's also assist in digging trenches. They assist in setting poles. Presumably they drive vehicles. Virtually every job has tasks included in it that are well below the skill level required for the rest of the job. The mere fact that work is done within a particular classification does not make it the work of that classification, in the sense of being an element in arriving at the pay of the classification.

The Union provided compelling testimony about the potential hazards of this work, and from the record it appears that the City has done a poor job of instructing non-Electrical Worker employees on the procedures for changing the bulbs. That having been said, the procedures are not specialized or complex. The procedure is to turn the power off before changing the bulb. If that is done, the work is completely safe. Turning the power off involves throwing the circuit breaker. Neither throwing a circuit breaker nor screwing in a light bulb is work requiring specialized training. It simply requires being told where the breaker boxes are located. Any job involving equipment, at any pay level, may be hazardous if the employee is not properly instructed. That is a separate question from the appropriate pay level for the work.

Neither is there anything in the history of the work to show that it is considered to be the specialized work of the Electrical Worker II classification. As noted, it has been work performed almost exclusively in that classification for ten years. However, prior to the Electrical Worker II assuming the job of changing bulbs, it was done on a regular basis first by the Parking Cashier and then by the Electrical Worker I. On the record before me, this is not a case where the job increased in complexity, and outgrew the classification it was assigned to. Rather it appears that the Electrical Worker I was discontinued, and the work migrated to the lowest rated remaining Electrical Worker classification. To the extent that the Electrical Worker II's are doing the work, it is because they are doing the work of a lower rated classification, not because the Electrical Worker I or the Parking Cashier was doing the work of a higher rated classification.

The job of changing light bulbs in the parking ramp is Electrical Worker II work because they inherited it from the Electrical Worker I, who in turn inherited it from the Parking Cashier. This history indicates that there is nothing about the job requiring special skills or knowledge. In fact, it is basic in comparison to the equipment and work performed by these Grievants in their own classifications.¹

On the basis of the foregoing, and the record as a whole, I have made the following

¹ The Trades Specialists duties include maintaining steam systems and boilers, bridge repair, concrete and cement work, and plumbing. The Equipment Operator I operates and maintains trucks, end loaders, rollers, tractors, jack hammers, concrete saws and various other pieces of equipment.

AWARD

The Employer did not violate the collective bargaining agreement when it refused to pay the Electrical Worker II rate to the grievants (a Trade Technician and an Equipment Operator I) for changing burned out light bulbs in the parking ramp. The grievances are denied.

Dated at Racine, Wisconsin, this 6th day of December, 2005.

Daniel J. Nielsen /s/

Daniel J. Nielsen, Arbitrator

