

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 1287 AFSCME, AFL-CIO

and

CITY OF WAUSAU

Case 123
No. 66913
MA-13679

(Van Ouse Grievance)

Appearances:

Mr. John Spiegelhoff, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1105 East 9th Street, Merrill, Wisconsin 54452, appearing on behalf of Local 1287, AFSCME, AFL-CIO.

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

ARBITRATION AWARD

Local 1287, AFSCME, AFL-CIO, hereinafter “Union,” and City of Wausau, hereinafter “City” or “Employer” mutually requested that the Wisconsin Employment Relations Commission provide them a list of arbitrators from which to select assign an arbitrator to hear and decide the instant dispute. From said list, the parties selected Coleen A. Burns to hear the dispute. The hearing was held on August 20, 2007 in Wausau, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing briefs and reply briefs, the last of which was received on October 9, 2007, whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The Union frames the issues as:

Did the City violate the collective bargaining agreement when it denied higher classification pay to the Grievant?

If so, what is the appropriate remedy?

The City states that the Arbitrator should frame the issues, but raises the following issue:

Is the grievance arbitrable?

CONTRACT LANGUAGE

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ARTICLE 5 – MANAGEMENT RIGHTS

The City possesses 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 (sic) City government.
- B. To hire, promote, transfer, assign and retain employees in positions with the City;
- C. To suspend, demote, discharge and take other disciplinary action against employees for just cause;
- D. To relieve employees from their duties because of lack of work or other legitimate reasons;
- E. To maintain efficiency of City Government operation entrusted to it;
- F. To take whatever action is necessary to comply with State or Federal law;
- G. To introduce new or improved methods or facilities;
- H. To change existing methods or facilities;
- I. To contract out for goods or services. Whenever possible, the Employer shall provide the Union a reasonable opportunity to discuss contemplated subcontracting that would result in the layoff of bargaining unit personnel prior to a final decision being made on such subcontracting.
- J. To determine the methods, means and personnel by which such operations are to be conducted;
- K. To take whatever action is necessary to carry out the functions of the City in situations of emergency.

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ARTICLE 14 –GRIEVANCE PROCEDURE

A. Definition of Grievance: A grievance shall mean any controversy which exists as a result of an unsatisfactory adjustment or failure to adjust a claim or dispute of any employee or group of employees concerning this contract. The grievance procedures shall not be used to change existing wage schedules, hours of work, working conditions, fringe benefits and position classifications.

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D. Time Limitations: If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual consent. Time limits shall be exclusive of Saturdays, Sundays and Holidays.

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F. Steps in Procedure:

Step 1: All grievances must be presented promptly and no later than fifteen (15) work days from the date the employee knew or should have been aware of the cause of such grievance. In the event of a grievance, the employee shall perform the employee's assigned work task and grieve the employee's complaint later except in cases affecting the employee's health or safety. The employee alone or with one (1) union representative will explain the employee's grievance orally to the employee's immediate supervisor (or his/her designee). The employee alone or with one (1) union representative shall identify whether any matter being discussed with the supervisor is an actual or potential grievance. The employee's immediate supervisor shall, within seven (7) working days, orally inform the employee of his/her decision on the grievance presented to him/her.

Step 2: If the grievance is not settled in the first step, the employee shall meet with the Grievance Committee of the Union and determine whether the subject matter is a proper grievance. Providing the Union Grievance Committee concurs it shall assign one of its representatives and the applicable employee to confer with the immediate supervisor. If this is unsuccessful, the employee in conjunction with the grievance committee shall write up the grievance and present same to the immediate supervisor. The grievance must indicate the section of the contract alleged to have

been violated, if any. The grievance must be filed in writing within ten (10) work days after disposition by the immediate supervisor in Step 1. The immediate supervisor will review the grievance and give a final answer in writing to the employee and the Union within ten (10) working days after receiving written notification of the grievance. In this step only the employee and one designated member of the Union shall meet with the immediate supervisor. Only one subject matter shall be covered in any one grievance. A written grievance shall contain the name and position of the grievant, a clear and concise statement of the grievance, the issue involved, the relief sought, the date the incident or violation took place, and the signature of the grievant and the date.

Step 3: If the grievance is not settled in the second step, the employee and the grievance committee will appeal the decision in writing to the department head within ten (10) work days. (If the department head is the immediate supervisor, the grievance shall automatically proceed to Step 4.) At this meeting the employee may be represented by up to (but not to exceed) two (2) members of the Union and a representative of Council 40, AFSCME. This will probably be a member of the grievance committee and the president of the Union but this determination is in the discretion of the Union. The department head will review the record and further investigate the grievance. The department head will then inform the aggrieved employee and the Union in writing of the decision within ten (10) working days after receiving the grievance.

Step 4: If the grievance is not settled in the third step, the employee and the grievance committee will appeal the decision in writing by submitting the letter, memo, or note to the Human Resources Director. (In the event there is no Human Resources Director, the Human Resources Committee shall handle this step.) This appeal must be made within ten (10) working days. The Human Resources Director will review the record and further investigate the grievance. The Human Resources Director will inform the aggrieved employee and the Union in writing of his/her decision within ten (10) working days after receiving the grievance.

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ARTICLE 33 – HOURS AND OVERTIME

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- E. Work in Different Classification: Any employee who performs work in a higher classification for three (3) or more hours daily shall receive the rate of pay for actual hours worked in that classification for that classification. If the employee is performing work in a lower classification, the employee shall receive no lower than the employee's regular rate. This section shall not apply when an assignment to a lower position at a lower rate is necessary to preserve the job of an employee due to the inability of an employee to perform the employee's job due to health or other legitimate reasons.

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BACKGROUND

Patrick Van Ouse, hereafter Grievant, is in his thirteenth year of employment as a Plant Maintenance Mechanic. Lonnie Lewis holds the position of Plant Lead Maintenance Mechanic.

On December 28, 2006, the Grievant filed a grievance alleging that, on December 15, 2006, he was told by Gus Strehlo that he (the Grievant) would not receive lead man's pay when Lonnie Lewis is not working. The grievance was denied at all steps and, thereafter, submitted to arbitration. At the start of hearing, the Union objected to the City's raising the issue of arbitrability, but agreed to proceed with the hearing and present evidence with respect to this issue.

POSITIONS OF THE PARTIES

Union

The City effectively waived its right to raise the procedural issue of whether or not the grievance was timely filed when it did not raise this issue prior to hearing. The Grievant testified that December 15, 2006 was the first time that he knew that he was not going to be paid lead man wages. The grievance challenging the failure to pay lead man wages was filed on December 28, 2006 and, thus, was filed within the fifteen day time limit set forth in Article 14.

Any failure to pay lead man wages is a new violation of the contract. Given the continuing nature of the grievance, the lack of a prior grievance does not preclude the Union and the Grievant from filing the present grievance. Under any argument of the City, this grievance is not time barred.

Article 33 provides that employees performing work in a higher classification for three or more hours daily shall receive the pay of the higher classification. A comparison of the Grievant's job description to that of the Plant Lead Maintenance Mechanic reveals that the main difference between the two jobs is 'Direct supervision on a day-to-day basis to other employees.'

The City's argument that the Plant Lead Maintenance Mechanic is lead man in name only is inconsistent with the wastewater treatment plant table of organization; the payment of the \$.35/hour lead man differential to the Plant Lead Maintenance Mechanic; and the testimony that the Plant Lead Maintenance Mechanic has directed the seasonal workforce and the Grievant at times that the Grievant has accompanied the Plant Lead Maintenance Mechanic to work on lift stations. That the Plant Lead Maintenance Mechanic may have less day to day supervision of employees than other lead men is a situation created by the City. In the absence of the Plant Lead Maintenance Mechanic, the Grievant has directed the seasonal workforce. On December 23, 2006, the Grievant directed the work force when the lift stations failed to operate.

As established by witness testimony, the prevailing practice in streets, water and wastewater is that, when the lead man is absent from work, the next senior man receives lead man wages regardless of whether or not the next senior man actively directs the workforce. This practice is long-standing, consistent and mutually understood by both parties to the contract. Based upon this practice, the Grievant requested lead man wages when the Plant Lead Maintenance Mechanic is absent from work.

Given the City's position that the Plant Lead Maintenance Mechanic receives lead man pay's but does not supervise, the City's denial of lead man's pay to the Grievant indicates inequitable disparate treatment. This inequitable disparate treatment is exacerbated by the fact that the City pays the Plant Lead Maintenance Mechanic at Level 8 despite the fact that he is not fully certified in wastewater certifications outlined in the collective bargaining agreement. Contrary to the argument of the City, the Union is not proposing to take anything away from the current Plant Lead Maintenance Mechanic.

The City claims that it unilaterally eliminated the past practice in the wastewater plant maintenance department, but has not presented substantial evidence to that effect. The letter of January 23, 1993 (City Exhibit #1) references the non-payment of lead man pay to water operators or wastewater operators only. Thus, the grievance of Dan Zoborowski does not directly relate to this dispute.

The Grievant's E&I certification add-on results in the Grievant receiving a higher wage than the Plant Lead Maintenance Mechanic. Such a fact, however, does not deprive the Grievant of his right to receive a remedy of Level 8 pay, lead man differential, and his current E&I certification add-on. The grievance should be sustained.

City

As early as 1993, the Union and City employees were made aware that the City would not temporarily assign employees to fill the Lead Maintenance Mechanic position or pay any extra wages. (City Ex. #1) At least since the reorganization in the early 1990's, the City has never paid lead worker pay or certification pay to anyone when the Plant Lead Maintenance Mechanic is absent from work. The Grievant and everyone else knew that this was the situation.

The Grievant knew, or should have known, more than fifteen days prior to the filing of this grievance that he never received additional pay at times that Lonnie Lewis was absent. The grievance is untimely under Article 14(F), Step 1, and, thus, is not arbitrable.

When Lonnie Lewis posted into the position and for reasons unrelated to the certification, the City decided to pay Lonnie Lewis the same pay as the operators who had certification even though Lonnie Lewis did not have the certification. When Lonnie Lewis is absent from work, nobody is assigned Lonnie Lewis' work and nobody's work load changes.

As the testimony of Harold Ferge and Ken Rye establishes, they actually "lead" people when their lead worker is absent. The Grievant does not perform the work of a lead worker. If the Grievant supervised any employees, this supervision did not extend over three hours. Given the difference in job descriptions, duties and requirements, the practices of other departments and divisions are irrelevant.

The Grievant currently earns more than Lonnie Lewis. The Grievant does not have the certification that would entitle him to work in Lonnie Lewis' higher classification and, thus, the Grievant cannot work in Lonnie Lewis' higher classification. The Grievant has not met the requirements of Article 33.

The practice of not paying out of classification pay or lead worker pay at times that Lonnie Lewis is absent from work was acknowledged, understood and agreed upon by the parties. The grievance should be denied.

DISCUSSION

Issues

At hearing, the City raised the issue of arbitrability. Specifically, the City asserts that the grievance is not timely filed under Article 14 and, therefore, the undersigned does not have jurisdiction to decide the merits of the grievance. The Union responds that the City has waived

its right to argue that the grievance is untimely because the City did not raise this issue prior to the day of the arbitration hearing.

The City's written responses to the grievance do not raise the issue of timeliness. The City does not argue and the record does not establish that the timeliness issue was otherwise asserted during the processing of this grievance. The undersigned is satisfied that the City did not raise the issue of timeliness until the day of the arbitration hearing.

Article 14, Grievance Procedure, does not state that the City waives its right to contest arbitrability if the City does not raise this issue prior to hearing. It is generally recognized that an employer does not waive the right to contest arbitrability before the arbitrator by failing to raise the issue prior to hearing.¹ Accordingly, while the undersigned is persuaded that it is in the best interest of both parties to raise and discuss such issues during the processing of the grievance, the undersigned rejects the Union's argument that the City has waived its right to raise the issue of arbitrability.

The instant grievance was submitted on December 28, 2006. This grievance challenges Supervisor Strehlo's December 15, 2006 notification that the Grievant would not receive lead man's pay when Lonnie Lewis is not working. (Jt. Ex. #1)

Under Article 14, a grievance is to be filed no later than fifteen (15) work days from the date the employee knew or should have been aware of the cause of the grievance. The "cause" of the grievance is Supervisor Strehlo's notification that the Grievant would not receive lead man's pay when Lonnie Lewis is not working. The Grievant claims that this notification occurred on December 15, 2006 and the record does not establish otherwise.

The grievance was filed within fifteen work days from the date the Grievant knew of the "cause" of the grievance. Accordingly, it has been timely filed and is arbitrable. In concluding that this grievance is arbitrable, the undersigned makes no determination with respect to the issue of the retroactivity of any remedy should the grievance be sustained.

The City has not framed an issue on the merits and has argued that the undersigned may frame the issue. The Union has framed an appropriate issue on the merits. Accordingly, the undersigned has adopted the Union's statement of the issues.

Merits

Lonnie Lewis, the Plant Lead Maintenance Mechanic, and the Grievant, one of several Plant Maintenance Mechanics, work in the City's Water/Sewerage Utility. The Grievant has been in his position for approximately thirteen (13) years and Lewis has been in his position since 1995.

¹ Elkouri & Elkouri, *How Arbitration Works* (6TH ed.), pg 290.

The Grievant states that, in November and December, 2006, he requested lead man pay on dates that Lewis was gone and became aware that this request had been denied on December 15, 2006. The Grievant recalls that, on that date, Gus Strehlo, the Wastewater Superintendent, told the Grievant the following: when the Plant Lead Maintenance Mechanic was gone, the City did not pay lead man pay to any employee; that the Grievant was not going to receive lead man pay when Lewis was absent from work; and that the Grievant could grieve the issue if the Grievant needed to.

Gus Strehlo, the Wastewater Superintendent, has worked at the Plant for over twenty-five years. Strehlo recalls that, when the Grievant prepared his time sheets for the period of November 19, 2006 through December 16, 2006, the Grievant asked for lead man's pay on several occasions; that Deb Geier, who prepares payroll, was on vacation; that those replacing her would be confused by the Grievant's request for lead man pay; and, therefore, Strehlo scribbled out each of these requests. Strehlo further recalls that, on or about December 15, 2006, Strehlo asked the Grievant why the Grievant continued to ask for lead man's pay when the Grievant was not receiving lead man's pay; and that Strehlo told the Grievant that he would not be paid lead man's pay.

As stated in the grievance and written argument, the Union has relied upon Article 33(E) of the parties' collective bargaining agreement to argue that the Grievant is entitled to receive lead man's pay. Article 33(E) provides out of classification pay for employees who meet two criteria, *i.e.*, that the employee perform work in a higher classification and that the work of the higher classification be performed for three (3) or more hours daily.

At the time that the grievance was filed, Appendix A of the parties' collective bargaining agreement stated that Lewis's position was at pay level 8 with an hourly rate of \$20.43, plus a \$.35 per hour differential, for a total of \$20.78 per hour. (Jt. Ex. #3) Appendix A does not state the reason for the \$.35 differential. The City and the Union, however, each refer to this \$.35 differential as lead worker differential pay. (City Initial Brief, pg. 2 and Union Initial Brief, pg. 8)

At the time that the grievance was filed, Appendix A stated that the Grievant's position was at pay Level 7 with an hourly rate of \$19.82. (Jt. Ex. #3) Inasmuch as the Grievant has obtained an E & I certificate, he receives "incentive pay" such that the Grievant's hourly rate matches that of the Level 8 – Electrical Worker III hourly salary. (Jt. Ex. #6) At the time that the grievance was filed, the Level 8 – Electrical Worker III hourly salary was \$20.84.

As the City argues, the Grievant's actual hourly rate is higher than that of the Plant Lead Maintenance Mechanic. However, Appendix A, as well as the April 5, 2002 memo that provides the E & I "incentive pay," recognizes that the Grievant's classification is Level 7. (Jt. Ex. #3 and 6) Regardless of actual hourly salary, it is reasonable to conclude, as the undersigned does conclude, that the Plant Lead Maintenance Mechanic position is in a higher classification than that of the Grievant.

As a review of Article 33 reveals, “out of classification” pay is not triggered by the absence of a lead worker. The Union argues, however, that the evidence of “past practice” establishes that lead worker pay is paid to the next senior employee when the lead worker is absent.

The Grievant states that, prior to December of 2006, he had requested lead man pay for probably one-hundred (100) times. The Grievant further states that, for thirteen years, he thought that he might be receiving this lead man pay.

According to Strehlo, neither the Grievant, nor anyone else, ever received Plant Lead Maintenance Mechanic pay when the Plant Lead Maintenance Mechanic was absent from work and Strehlo assumed that all of the employees knew this. Neither the Plant Lead Maintenance Mechanic, nor the other Plant Maintenance Mechanic employees, testified at hearing. Thus, the record is silent with respect to what each of these employees may or may not have known.

Deb Geier, an Administrative Assistant since 1995, states that, based on time sheets, she codes payroll to pay the lead man rate for all of the Utility. Geier recalls that, over the years, the Grievant has requested lead man pay; that, years ago she checked with Joe Gehin about these requests of the Grievant; and that she has never coded payroll to pay the Grievant the lead man rate. According to Grier, she reviewed the 2006 time cards and no employee received Lewis’ pay when Lewis was absent from work.

Ila Koss has been an HR specialist with the City since 1989. According to Koss, Lewis assumed the position of Plant Lead Maintenance Mechanic in April of 1995 and no employee has received additional pay due to the fact that Lonnie Lewis was absent from work. Koss states that the City has never denied lead man pay when there is a crew, but that the Plant Maintenance Department employees are not a crew and do not work as a crew.

Under the remedy requested by the Union, the Grievant should have been receiving approximately one dollar more per hour when Lewis was absent from work. It is not likely that the Grievant would have not noticed that he was not receiving such a differential when Lewis was absent from work. The most reasonable conclusion to be drawn from the record evidence is that the City has not had a practice of paying the Grievant, or any other employee, additional wages when Lewis was absent from work and that the Grievant knew, or should have known, that he was not paid any additional wages when Lewis was absent from work.

Joe Blair is an Operator I in the Electrical/DPW section and has been the Union President for over six years. Blair states that he does not work in the sewer department so he does not know what goes on there.

Appendix A, Electrical/DPW, provides for a Crew Chief position and a Lead Worker position. This portion of the contract provides that the Crew Chief will receive \$.35 per hour in addition to his/her regular rate of pay. Blair states that there is a difference between Lead

Worker and Crew Chief; that Lead Workers are on call and rotate with the supervisors; and that other employees do not get Lead Worker pay.

Blair further states that, at his work site, if there is a crew, then the senior man gets Crew Chief pay of \$.35 per hour when the Crew Chief is absent. According to Blair, there must be a crew; that, therefore, Crew Chief pay is not paid when only one person is working; and that the Crew Chief add-on is received regardless of whether or not the acting Crew Chief is actually directing the work of others.

Ken Rye is a Sewer Maintainer and has been with the Sewage Utility for fourteen years. According to Rye, he is next senior to the lead worker; he receives lead worker pay whenever the lead worker is gone and Rye is working; and, if Rye is gone at the same time as the lead worker, then the person next in seniority to Rye receives lead worker pay. Rye states that there are four employees on his crew and one lead man. Rye further states that his crew works as a team.

Rye states that his supervisor, Gus Strehlo, makes sure that Rye receives lead worker pay even if Rye does not know that the lead worker is gone. Rye states that he is not sure of the lead worker pay, but believes that the lead worker gets a \$.35 per hour differential. According to Strehlo, the sewer maintenance crew needs to have a Crew Chief and that, when the Crew Chief is gone, another employee fills that spot.

Harold Ferge is a Level 6 Water Distribution Maintainer-Operator and has worked at the Water Utility for over fifteen years. Ferge states that his department has a Crew Chief who has four employees under him; that the Crew Chief designates work on a daily basis; and that, when this Crew Chief is absent, then the next senior employee takes over and is paid at the Crew Chief rate. According to Ferge, there has never been a deviation from this practice during his fourteen years of employment. Ferge states that he never worked in the sewer plant.

The above testimony indicates that, in some areas, lead worker pay is paid to the next senior employee whenever the lead worker is absent, but that in other areas, lead worker pay is not paid unless there is a crew to lead. Thus, this testimony supports the conclusion that there is not a consistent practice of paying lead man pay to another employee solely on the basis that the lead man is absent.

In August of 1999, Dan Zoborowski, an Operator/Maintenance Tech in the Water Works Department, filed a grievance in which he sought higher classification pay for performing the work of an Operator/Mechanic-Wastewater. (City #1) In denying this grievance, Strehlo stated "This has never been done, based on past practice this grievance is denied." In a subsequent response to this grievance, Gehin confirmed that he concurred with Strehlo's decision and stated "Based upon past practices your request for an increase in pay for July 22, 1999 and July 23, 1999 is denied."

On March 9, 2000, Jacquelyn Peterson, the City's then Personnel Director, sent a letter to then Union President Craig Gardner, which letter contained her response to Zoborowski's grievance. In this response, Peterson attached certain documents that, in her opinion, clarified the issue, and stated, *inter alia*:

Beginning in the late 1980's and into the early 1990's there were some organizational changes that occurred. Among the changes were those relating to the establishment of a new occupation, Operator/Mechanic, that did not have lead worker responsibilities and would not receive the \$.35 per hour.

Specifically relevant to this grievance is the May 7, 1993 memo from Joe Gehin to Ken Larsen. Attached to that memo was another memo from Joe Gehin dated January 27, 1993 which provides guidance to us for this grievance. Please review the third page of that memo in the section headed "Wage Clarification". It includes text that clarifies that while the City will continue to pay the \$.35 to a specific individual, the duties of "lead work" are not transferable and persons temporarily assigned to this position will not receive the lead worker pay. In addition, there have been no payments made of this nature for such temporary assignment since the memo was written.

Based on the foregoing, I sustain the grievance answer written by Joe Gehin. The grievance is denied. If you have any questions or need to discuss this further, please advise. Thank you.

The documents attached to Peterson's letter include a May 7, 1993 memorandum from Gehin to then Union President Larsen regarding a proposed reorganization of the Water Plant; with an attached January 27, 1993 memorandum. The May 7, 1993 memo from Gehin to Larsen includes the following:

SUBJECT: Staff Reorganization – Water Plant

The attached memo was sent to the water plant employees approximately two weeks ago as a final draft. After their review, it was suggested that you be sent a copy for your information. If you have any questions, please advise immediately. It is our intent to forward this to the Personnel Committee as soon as possible for formal approval.

Also, it is my understanding that Ms. Hackett will provide you with draft position descriptions.

In the January 27, 1993 memorandum Gehin states, *inter alia*:

As part of this reorganization, Glen Viergutz' position will be designated as lead operator/mechanic with a wage adjustment of \$.35 per hour over

certification pay. As a matter of clarification, during the absence of the lead operator/mechanic, it will not be the practice to temporarily assign staff to fill this position and pay the extra wages for lead position. This is consistent with the practice at the wastewater plant. These lead positions are not temporarily transferable.

It is not evident that the Zoborowski grievance was processed beyond Peterson's denial of this grievance. Nor is it evident that the Union contested the City's stated position that "during the absence of the lead operator/mechanic, it will not be the practice to temporarily assign staff to fill this position and pay the extra wages for lead position. This is consistent with the practice at the wastewater plant. These lead positions are not temporarily transferable."

Blair credibly testified that, prior to the instant grievance, he did not know that employees were not receiving lead man pay when the Plant Lead Maintenance Mechanic was gone. However, the evidence of the processing of the 1999 Zoborowski grievance reasonably establishes that, in the Spring of 2000, the then Union President was placed on notice that Water/Wastewater did not have the practice of always paying lead man wages to another employee when the lead man was absent. It is not evident that this notice was met with any objection from the Union. The Zoborowski grievance documents reasonably indicate that the Union not only knew that the divisions/departments covered by the Union's labor agreement did not have a consistent practice with respect to the payment of lead man pay in the absence of the lead man, but that also the Union accepted the variation in practices.

With respect to the position of Plant Lead Maintenance Mechanic, the practice has been to not pay lead worker pay, or any other additional wage, to another employee when the Plant Lead Maintenance Mechanic is absent. Contrary to the argument of the Union, neither the language of Article 33, nor the evidence of the parties' practices, warrants the conclusion that the Grievant is entitled to additional pay solely on the basis that the Plant Lead Maintenance Mechanic is absent from work.

The primary focus of the Grievant's claim is that Lewis' absence from work is sufficient to trigger a Grievant right to receive lead worker pay. As discussed above, the undersigned has rejected this claim.

The Grievant also claims that the Grievant is entitled to Article 33 "out of classification pay" because, on December 23, 2006 and in the absence of Lewis, the Grievant performed work that was in Lewis' classification. Specifically, the Grievant states that he directed the work of four other employees. The record, however, is insufficient to establish that the "work direction" provided by the Grievant on December 23, 2006 is work of Lewis' higher classification. Additionally, while the record establishes that, on December 23, 2006, the Grievant worked for more than three hours, the record does not establish that the Grievant's claimed "work direction" involved three or more hours. This record does not warrant the

conclusion that the City has violated Article 33 by failing to pay the Grievant “out of classification pay” for work performed on December 23, 2006.

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

AWARD

1. The grievance is arbitrable.
2. The City did not violate the collective bargaining agreement when it denied higher classification pay to the Grievant.
3. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 30th day of January, 2008.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator

CAB/gjc

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