

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
LOCAL UNION 73, WISCONSIN COUNCIL 40, AFSCME, AFL-CIO

and

CITY OF APPLETON

Case 449
No. 66931
MA-13689

(Work Outside the Normal Shift)

Appearances:

Ms. Mary Scoon, Staff Representative, AFSCME Council 40, W5670 Macky Drive, Appleton, Wisconsin 54130 appearing on behalf of Local 73.

Ms. Ellen Totzke, Deputy City Attorney, City of Appleton, 100 North Appleton Street, Appleton, Wisconsin 54911-4799, appearing on behalf of the City of Appleton.

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, AFSCME Local 73 (hereinafter referred to as the Union) and the City of Appleton (hereinafter referred to as either the City or the Employer) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen, a member of its staff to serve, as arbitrator of a dispute over the scheduling of Operators at the Water Plant. The undersigned was so designated. A hearing was held on August 16, 2007, at which time the parties were afforded full opportunity to present such testimony, exhibits and other evidence as were relevant to the dispute. The parties submitted briefs, and the City submitted a reply brief, which was received on November 13, 2007, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the contract language, and the record as a whole, the undersigned makes the following Arbitration Award.

ISSUES

The parties could not agree on a framing of the issues and stipulated that the arbitrator should frame the issues in his Award. The issues presented by this grievance are:

- (1) Did the City violate the collective bargaining agreement when it changed the Relief Operator/Maintenance Helper hours of work from 7:00 a.m. – 3:00 p.m. to a different shift?
- (2) Did the City violate the collective bargaining agreement by not posting overtime?
- (3) If the City did violate the collective bargaining agreement, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE 2 - FUNCTION OF MANAGEMENT

Except as herein otherwise provided, the management of the work and the direction of the working forces, including the right to hire, promote, demote, layoff, suspend without pay, or discharge for proper cause, or transfer and the right to determine the Table of Organization, definitions, the number of employees to be assigned to any job classification and the job classifications needed to operate the Employer's public jurisdiction is vested exclusively in the Employer. The Employer agrees, however, to notify the Union prior to the effective date of any change in the Table of Organization.

It is further agreed, except as herein otherwise provided; that the responsibilities include, but are not limited to that outlined in this Policy. In addition to any specified herein, the Employer shall be responsible for fulfilling all normal managerial obligations, such as planning; changing or developing new methods; establishing necessary policies, organization and procedures; assigning work and establishing work schedules; and of applying appropriate means of administration and control.

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**ARTICLE 13 - NORMAL WORK DAY AND WORK WEEK /
OVERTIME / SHIFT DIFFERENTIAL / CALL-IN-PAY**

Day Workers (Relief Operators/
Maintenance Helpers)

Monday through Friday
7:00 AM to 3:00 PM

Saturday (Kelly Day)
7:00 AM to 3:00 PM

The normal workday for Relief Operators/Maintenance Helpers shall consist of eight (8) consecutive hours per day. The normal workweek shall consist of forty (40) hours per week Monday through Friday and Kelly Day coverage.

Relief Operators/Maintenance Helpers shall, if available, relieve for all prescheduled paid time off, as scheduled Monday-Friday, except holidays.

The primary duties of the Relief Operator/Maintenance Helper are operation of the plant, the routine cleaning of the plant and facilities and assisting the CBM personnel at the Plant.

Shift Workers (Water Plant Operators)

Monday through Friday
7:00 AM to 3:00 PM (second shift)
3:00 PM to 11:00 PM (third shift)
11:00 PM to 7:00 AM (first shift)

Saturday
3:00 PM to 11:00 PM (third shift)
11:00 PM to 7:00 AM (first shift)

Sunday
11:00 PM to 11:00 AM
11:00 AM to 11:00 PM

The normal workday for Water Plant Operators shall consist of eight (8) consecutive hours per day Monday through Saturday and twelve consecutive hours on Sundays. The normal work schedule for Water Plant Operators shall be accomplished by a shift rotation with employees working 960 hours in a 168-day tour and through the application of Kelly days and twelve hour Sunday shifts.

A Day Worker is entitled to a 15 minute paid lunch period when working as a Maintenance Helper. The lunch period shall be taken approximately half-way through the workday. A Relief Operator/Maintenance Helper, when working as a Maintenance Helper, shall be entitled to one 15 minute paid break during the first half of the shift at a time suitable to their job duties.

Employees will be allowed up to 15 minutes beyond the ending time of the shift to brief the on-coming Water Plant Operator.

Employees cannot work more than 12 hours in a 24 hour period without having a break of at least 7 hours between work periods. This provision can be waived by mutual agreement between the employee and the supervisor.

The time keeping day for all Plant employees shall be a twenty-four (24) hour period beginning 11:00 PM.

OVERTIME:

All authorized, paid leaves of absence shall be considered as time worked for the purpose of computing overtime. Sunday work shall be compensated at the rate of two (2) times the employee's basic rate of pay for all Plant employees. Notwithstanding the above, an employee who attends meetings while on paid leave, without prior approval of management, shall not receive any additional compensation for such attendance.

Day workers: All work performed in excess of eight (8) hours in any one (1) day and/or in excess of forty (40) hours per week shall be compensated at the rate of time and one-half the employee's regular rate of pay.

Shift workers: All work performed in excess of regularly scheduled hours (Monday through Saturday) and all work performed on regularly scheduled days off shall be compensated at the rate of time and one-half the employee's regular rate of pay.

Temporary employees shall not perform bargaining unit work on an overtime basis unless all available bargaining unit employees are working.

The employer reserves the right to assign work to qualified employees by inverse seniority if sufficient qualified employees are not otherwise available.

NIGHT SHIFT DIFFERENTIAL: All work performed on hours other than the 2nd shift for Water Plant Operators and Relief Operators/Maintenance Helpers shall be compensated by the night shift differential in addition to regular pay.

CALL-IN PAY: In the event an employee is called in for work outside of his normal work schedule, he shall be paid a call-time allowance of three (3) hours at straight-time in addition to the applicable pay for the time actually worked provided, however, the employee shall receive no less than the equivalent of four (4) hours straight time pay. Such call-time as provided in this paragraph, shall not apply when an employee is notified sixteen (16) or more hours before he is to report to work. Neither shall such call-time be included as time worked in computing the weekly hours. When an employee is called in to work outside of his normal work schedule and has been so notified sixteen (16) or more hours before he is to report to work, he shall be allowed a minimum of two (2) hours pay.

Nothing contained herein shall require the employer to make more than one telephone call to an employee's residence for a call-in situation or to leave a message for an employee who is not available to come to the telephone.

EXCEPTION: In the case of the Relief Operator/Maintenance Helper, call-in pay shall apply only to the first day of an unscheduled relief assignment, even though such an assignment may last for several unscheduled consecutive days. Such call-in pay will apply for each new unscheduled relief assignment.

REINSTATEMENT PAY: If, through the procedures contained in this agreement, it is established that an employee was wrongfully discharged or disciplined, he shall be reinstated and compensated for all lost time at his regular rate of pay.

KELLY DAYS: Kelly Days (off) for Water Plant Operators shall be taken on the 2nd shift on Saturday only. Relief Operators/Maintenance Helpers will be scheduled for Kelly Day coverage. The Kelly Day Relief Operator/Maintenance Helper will be scheduled off the Friday following the scheduled Kelly Day.

An employee who is called on the telephone, outside of his/her regularly scheduled hours, to provide information related to the operation of the Water Treatment Plant shall be paid for the time actually spent on the telephone, but not less than one hour's straight time pay for each calendar day on which such calls occur.

BACKGROUND

The City provides general municipal services to the citizens of Appleton, Wisconsin, including the operation of a public water utility. The Union represents the Operators and the Relief Operators employed by the utility. Operators work eight hour shifts during the week and on Saturdays, and twelve hour shifts on Sundays. They are in charge of the plant operations while on duty. Relief Operators work eight hour shifts, Monday through Friday, and every fourth Saturday, and are tasked with various operations, including maintenance and monitoring. Relief Operators also, as the title suggests, cover the shifts of absent Operators.

Lake Winnebago is the source of the City's fresh water supply. Lake water is drawn into the plant and sent through various stages, first settlers that allow larger particles to settle out, then contactors to remove smaller particles, and finally a series of filters.

In 2001 the City opened a new plant using sequences of membrane cartridges – referred to as stages – for filtration. The plant uses 11 stages, and each stage is comprised of 50 membrane cartridges. This was a new technology, and the plant experienced problems for the first five years of its operation. The problems become particularly pronounced in the late fall of the year, when the lake turns over – the water near the surface cools and mixes thoroughly with the remaining lake water. The result of this is that particles are suspended throughout the lake, rather than clustering near the bottom, and the water intake for the plant contains more particulate matter than it does during the rest of the year. While the settler continues to remove the larger particles, the contactors are less effective at removing smaller particles during lake turnover. This means that the membranes in the cartridges at the last step of the process handle water with more particles, which clog the pores in the membranes. When the pores become clogged, the cartridge must be pulled out of production and cleaned with a chemical wash. When the cartridges are being cleaned, the entire stage is taken off line, reducing the ability of the plant to produce potable water. The cleaning process also damages the membranes, by causing the fibers to break, necessitating repairs to allow the cartridge to work properly.

In the fall of 2004 and 2006, the lake turnover lasted an unusually long time. This, in turn, leads to a great need for cleaning membranes. There is a single, small room available for cleaning and testing cartridges, so the cleaning process proceeds one cartridge at a time. In 2004, because the contractors who originally installed the system were still on-site, the cleaning work was spread out between Relief Operators and the contractors, and the Relief Operators worked their normal shifts, plus overtime in the customary two to four hour blocks.

In the fall of 2006, 10 of the 11 stages in the plants consisted of old cartridges. Older cartridges are less efficient and more prone to clogging. The protracted lake turnover and high rate of clogging reduced the output of the plant, leading a need for increased cleaning of the cartridges and repair of broken fibers in the membranes. By the middle of October, management concluded that it could not maintain production of the City's water supply with cleaning and repair work done during the normal 8 hour shifts supplemented by the customary two to four hour blocks of overtime, and decided to alter the work schedules of the Relief Operators to allow for around the clock efforts. An additional supervisor was also shifted over to the plant on a twelve hour shift to provide 24 hour supervision of the effort.

After the morning staff meeting on October 17, Utility Director Mike Buettner spoke with the 3 Relief Operators and told them that the problems with the membranes required 24 hour coverage for at least four days. Buettner told them that one of the Relief Operators would need to work an 11 p.m. to 7 a.m. shift. Ed Valencic, a Union Steward, told him that would raise issues with the contract, and Buettner replied that the work needed to be done, and the pay issues could be sorted out later. Valencic said he would work the hours that day, and went home on comp time for the balance of the day so he could report back that night.

Valencic worked the 11 p.m. to 7 a.m. shift. On the following morning, he was presented with a memo to sign, indicating the Union's agreement to an 11:00 p.m. to 7:00 a.m. schedule on October 18, 19, 20, 21 and 22. The memo specified that the schedule could be extended if needed, and that the Relief Operator would receive a shift differential of 35¢ per hour in addition to their regular pay. Valencic declined to sign the memo, and pointed out that he had only volunteered for the first night. He was told that someone from among the Relief Operators was going to have to work the hours and that they should provide the name to management. The late shifts were covered by Relief Operators, with Valencic covering the bulk of them, but no one signed the memo agreeing to the arrangement.

In early November, new membranes were delivered to replace the worn out ones then in use. In order to construct and install new cartridges, the utility management decided to have a Relief Operator work outside of normal hours. Brian Kreski was directed to report for work at 3:00 p.m. on November 7th, rather than his normal 7:00 a.m. starting time. Kreski finished by 1:30 a.m. He was paid overtime for the hours between 11:00 p.m. and 1:30 a.m.

Grievances were filed over the scheduling of Relief Operators for shifts outside of their normal 7:00 a.m. to 3:00 p.m. working hours in October and November. The grievances were denied in the lower stages of the grievance procedure and were referred to arbitration. At the hearing, in addition to the evidence recited above, the following testimony was taken:

Ed Valencic testified that, when he agreed to work the first 11-7 shift in October, 2006, he did so in order to give the utility time to post the remaining shifts as overtime opportunities. Valencic said that, outside of the October incident, he had never worked a shift other than 7-3 in his ten years with the water plant. He observed that those Relief Operator shift hours were included in both the work rules and the collective bargaining agreement. In his experience, hours other than 7-3 were posted as overtime opportunities. Overtime for membrane maintenance is a very common occurrence in the plant, and is posted in 2 to 4 hours blocks for employees to bid on, based on seniority. If no one bids, the overtime is assigned in inverse order of seniority.

Valencic stated that he was a member of the bargaining teams for the Union in negotiations for the 2004-2005 and 2006-2008 collective bargaining agreements. In 2004, the City sought language allowing them to schedule Relief Operators from 3-11 for emergency situations, because of the great amount of overtime the City paid for membrane maintenance during those hours. The Union rejected the proposal, and the City dropped it. In the 2006 negotiations, the City proposed to merge the job descriptions of Operator and Relief Operator, in order to allow the scheduling of Relief Operators to shifts other than 7-3. The Union refused to go along, and the City ultimately dropped the proposal.

On cross-examination, Valencic agreed that a state of emergency existed for the utility in October 2006, because the lake water was quite dirty and the membranes were in bad shape.

The utility was in danger of not being able to produce enough potable water to meet demand. All available personnel were working on fiber and membrane repair, in addition to performing their normal operator and maintenance duties. He also agreed that the Relief Operators were already working overtime during this period, and that no one's scheduled overtime had been cancelled. Reviewing provisions of the collective bargaining agreement, Valencic agreed that the Call-In provisions spoke to providing notice of a shift change, and about relief assignments lasting several days. The contract also provides a shift differential for hours outside of the second shift worked by "Water Plant Operators and Relief Operators/Maintenance Helpers." The overtime provisions for Day Workers state that time and a half is paid for hours over eight in a day or forty in a week, and Valencic agreed that Relief Operators do not receive overtime pay for working hours outside of their 7-3 shift when they are relieving operators on the second or third shift.

On re-direct examination, Valencic noted that the Union had entered into various agreements in the past to assist in dealing with emergencies, including an agreement with the City and the Local representing wastewater utility workers, to allow wastewater operators to work in the water utility. He noted that the reference to extended relief assignments had only been applied in the past to the absences of operators for illness or when there was a vacancy.

Michael Buettner testified that during the fall of 2006, the utility's 5 million gallon clear well was never filled, due to the serious problems with the membranes, and that a genuine emergency existed by late October, when he directed around the clock cleaning of the cartridges. The change in shifts was temporary, and was done only to keep the plant in operation. He expressed the opinion that buying extra membranes was not a realistic option, since they are very expensive. Notwithstanding this, the utility was able to purchase some new membranes in November. Building cartridges for these membranes, cleaning out the preservatives, and testing them required two people, and he scheduled the work to begin at 3:00 p.m. in order to minimize the amount of time the stages would be offline. He noted that the membrane repair room is quite small, and that it is not possible to repair more than one cartridge at a time.

Buettner expressed the opinion that scheduling overtime in four hour blocks, which is the norm, was not a viable response. He needed the workers to stick with the work for more than 4 hours, and the contract requires a minimum of 7 hours off when an employee works 12 hours in a 24 hours period. Moreover, he felt that the quality of work slips if too much overtime is demanded of the worker. Buettner noted that the management rights clause of the contract includes the right to "establishing work schedules", and stated his view that this allowed the utility to make temporary changes such as this.

On cross-examination, Buettner agreed that the limit of 12 hours of work could be waived by the employee and the supervisor. He also agreed that a Relief Operator would normally work outside of the hours of 7 to 3 only when he or she was relieving an absent Plant Operator. Buettner conceded that the utility had never been able to get agreement in

negotiations to have Relief Operator shift schedules changed in emergency situations. While he characterized the situation in the fall of 2006 as an “emergency”, he agreed that it was an emergency that recurred every fall, to varying degrees, when the lake turned over.

Additional facts, as necessary, are set forth below.

POSITIONS OF THE PARTIES

The Union’s Argument

The Union argues that the City is attempting to claim a right in arbitration that it could not obtain in collective bargaining. The collective bargaining agreement states that the hours of work for Relief Operators are 7 a.m. to 3 p.m. The City has tried in each of the last two rounds of bargaining to get the right to change work schedules for the Relief Operators. In both cases, it has failed to get agreement, and has withdrawn its proposal. It is a fundamental principle of contract interpretation that a party which tries but fails to secure a right in bargaining is thereafter presumed to have made the proposal because it did not have that right in the first place. The City admitted as much, when it presented Valencic with a memorandum of agreement for signature to legitimize its actions.

The City’s entire argument amounts to an appeal to the arbitrator that it faced an emergency. Granted that it is difficult to produce water in the fall, this is not an emergency as that term is normally used. Buettner conceded in his testimony that this “emergency” occurs every year for a predictable reason at a predictable time. That hardly justifies the complete, if temporary, repudiation of Article 13 of the collective bargaining agreement. Accordingly, the arbitrator should conclude that the City violated the contract, and should make employees whole for the wages and overtime compensation lost by virtue of the City’s violation.

The City’s Argument

The City takes the position that it has not violated the contract. The only provision in the contract which entitles Relief Operators to overtime states that “All work performed in excess of eight (8) hours in any one (1) day and/or in excess of forty (40) hours per week shall be compensated at the rate of time and one-half the employee's regular rate of pay.” Every Relief Operator who worked more than 8 hours in a day or 40 hours in a week received overtime pay. Beyond that, there is no limitation on the City’s right to schedule Relief Operators at times other than 7 a.m. to 3 p.m., and a multitude of provisions indicating that it may. The management rights clause expressly recognizes the City’s right to “establish work schedules” including those of Relief Operators. They routinely work the first and third shifts to cover for absent Plant Operators without receiving overtime. The contract provides that they may be called in outside of their normal hours and that an “unscheduled relief assignment ... may last for several unscheduled consecutive days.” Further the contract provides a shift differential for hours worked on the first and third shifts. The contract repeatedly recognizes

the possibility that Relief Operators may have to work outside of their normal shift. Likewise, their job description provides that they may be required to assist in emergency repairs on off-duty hours, and may have to work “non-routine shifts, weekends and holidays on an as needed basis.”

The City was faced with a perfect storm of problems in October of 2006 – a combination of old membranes, no available outside help, and an unusually long period of lake turnover. Even though the lake turnover is an annual event, these circumstances made the fall of 2006 a genuine emergency. The City needed to keep producing water. In order to do so, it needed to have the membranes cleaned and repaired, and that could not be accomplished simply by posting overtime. The City took the only reasonable step available to it, making a temporary change in work schedules to allow this critically needed work to be performed. These same factors led to the scheduling of Relief Operators for a 3 p.m. shift in November, when new membranes arrived, and had to be installed without interrupting production.

The City stresses that these schedule changes were temporary, and did not reduce the availability of overtime to bargaining unit personnel. They were a good faith attempt to answer a crisis, and as such were well within the management rights of the City. For those reasons, the grievances should be denied.

DISCUSSION

The thrust of the Union’s argument is that the contract defines the normal shift for Relief Operators, and does not allow for them to be assigned to a shift beginning at 3 p.m., unless it is as overtime. The thrust of the City’s argument is that the Fall of 2006 was an emergency, and it has the right to respond to an emergency. Each of these arguments is valid, as far as they go.

Article 2, the Management Rights clause, reserves to the City the responsibility for “establishing work schedules.” However, the provision limits the authority of management by making the exercise of those rights subject to the specific terms of the collective bargaining agreement (“except as herein otherwise provided”). Article 13 begins by stating the hours of work for Relief Operators:

*Day Workers (Relief Operators/
Maintenance Helpers)*

*Monday through Friday
7:00 AM to 3:00 PM*

*Saturday (Kelly Day)
7:00 AM to 3:00 PM*

The normal workday for Relief Operators/Maintenance Helpers shall consist of eight (8) consecutive hours per day. The normal workweek shall consist of forty (40) hours per week Monday through Friday and Kelly Day coverage.

If the second portion of the language was the only definition offered in the contract, the City would be right that it has the ability to assign Relief Operators to whatever eight consecutive hour shift it needs to have worked. That is not the only definition offered. The specification of a 7:00 a.m. to 3:00 p.m. work shift forecloses the City's appeal to its general right to establish work schedules.

Nor do the Call-In or Shift Differential provisions suggest an understanding that Relief Operators may be assigned to a shift other than 7 a.m. to 3 p.m. These are compensation provisions. The Call-In provision addresses the minimum pay received for working outside the normal shift. Shift differential is paid to Relief Operators for hours worked outside of the second shift. Both provisions recognize that it is in the nature of a Relief Operator's job that they will, as part of their normal duties, sometimes work the first or third shifts in relief of Plant Operators. That is specifically provided for in Article 13, and in Appendix A.¹ They may also be called into work outside of their normal shifts to respond to unanticipated needs, such as the short notice absence of a Plant Operator or, presumably, for sudden maintenance needs. The contract recognizes and makes provision for those eventualities, but that does not diminish the clear language establishing the second shift as the work hours for these employees when they are not relieving Plant Operators.

The City argues that it must be permitted the leeway to respond to an emergency, and cannot be prevented from having this necessary work performed. Certainly an employer, particularly one with a mission that implicates the public health and well being, has the right and the responsibility to respond to emergencies. It is a well established principle of labor relations that when an employer is faced with a genuine emergency, and it is not possible to both answer the emergency and comply with the strictures of the collective bargaining agreement, the employer is justified in taking the steps necessary to abate the emergency.² In this case, it is not completely clear why the City believed it was necessary to move an employee from the second shift to the third shift in order to have the backwashing and repair work accomplished, rather than scheduling the time as overtime. The City cites its reluctance to have employees work sixteen hour shifts, as well as the contract's provision for a minimum of seven hours between work periods when an employee has worked 12 hours in a 24 hour period. Neither of those considerations prevents the City from having this work performed. If the need was for an additional eight hours of work, that could have been accomplished by scheduling four hours of overtime from 3 a.m. to 7 a.m., and another four hours from 3 p.m. to 7 p.m., and having different employees work the two blocks. If the need was for work during the specific hours of 3 p.m. to 11 p.m., that could have been posted as two four hour

¹ Article 13: "Relief Operators/Maintenance Helpers shall, if available, relieve for all prescheduled paid time off, as scheduled Monday-Friday, except holidays." Appendix A provides detailed procedures for filling in absences of Plant Operators.

² See, for example, ELKOURI & ELKOURI, HOW ARBITRATION WORKS, 5TH ED. (BNA, VOLZ, 1997) AT PPS. 732-739.

blocks of overtime – 3 p.m. to 7 p.m., and 7 p.m. to 11 p.m.³ In either case, the employees would have worked 12 hours in a 24 hour period, but there would have been more than 7 hours before the employee's next period of work, so no contract violation would have occurred.⁴

Nothing in the contract prevented the City from having this work performed. The benefit derived from changing the shift hours was in having the work performed at straight time pay, rather than at overtime rates. The payment of overtime is not the basis of the emergency the City relies upon to justify its actions, nor is avoiding overtime a necessary response to the emergency. Moreover, the City specifically sought the right, in bargaining over the 2004 contract, to change the shifts of Relief Workers in response to an emergency. It failed to obtain that right. In the next round of bargaining, it sought to meld the job descriptions of Relief Operator and Plant Operators, again for the purpose of securing flexibility in assigning Relief Operators to shifts other than second shift. Again, it failed. This bargaining history makes it absolutely clear that the parties here understood that the contract did not allow the City to assign Relief Operators to shifts other than the second shift.

The reassignment of Relief Operators to shifts beginning at 3 p.m. was not a necessary measure in order to respond to the lake turnover in the Fall of 2006. The desired work could have been performed by posting overtime in four hour blocks – albeit possibly undesirable blocks – while still allowing employees to work their normal shifts. I therefore conclude that the City violated the collective bargaining agreement. The appropriate remedy is to make the affected employees whole, by paying them the eight hours of straight time pay they would have earned had they been allowed to work their normal shifts on those days, plus the premium pay they would have earned, had the hours after 3 p.m. been treated as overtime.⁵

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

³ Granting that this would have been more cumbersome for the employer and an inconvenience for the employee reporting back after a four hour break, there are two answers. The first is that this was an emergency, and some inconvenience must be tolerated. The second is that the parties are free to arrive at some other arrangement, if both find the contractually permissible alternative to be burdensome.

⁴ Any question of a contract violation for working more than 12 hours in a 24 hour period assumes that the employee and the supervisor would not have exercised the right to waive this limitation, as specifically provided in the contract

⁵ In the case of Brian Kreski, he received overtime for his hours after 11:00 p.m., and those hours would be excluded from this calculation.

AWARD

The City violated the collective bargaining agreement when it changed the Relief Operator/Maintenance Helper hours of work from 7:00 a.m. – 3:00 p.m. to a different shift. The hours outside of 7:00 a.m. to 3:00 p.m. should instead have been posted as overtime.

The appropriate remedy is to make the employees who worked these hours whole, by paying them eight hours of straight-time pay for the time they would have worked on their normal shift, plus premium pay for the hours worked after 3:00 p.m.

Dated at Racine, Wisconsin, this 14th day of August, 2008.

Daniel Nielsen /s/

Daniel Nielsen, Arbitrator