

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

VILLAGE OF BONDUDEL

and

GENERAL TEAMSTERS UNION LOCAL 662

Case # 5

No. 70048

MA-14842

Appearances:

Timothy J. Schmid, Aschenbrener, Woods, Lamia, Schmid, Chereskin & Sloma, S.C., 208 W. Green Bay St., Shawano, WI 54166, appearing on behalf of the Village of Bonduel.

Scott D. Soldon, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North RiverCenter Drive, Suite 202, Milwaukee, WI 53212, appearing on behalf of General Teamsters Union Local 662.

ARBITRATION AWARD

The Village of Bonduel, hereinafter Village or Employer, and General Teamsters Union Local 662, hereinafter Union, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The Union, with the concurrence of the Employer, jointly requested the Wisconsin Employment Relations Commission to provide a panel of five (5) arbitrators from which they might select an arbitrator to hear and decide a grievance involving the proper pay rate for employee Matt Bunker. The undersigned was selected. A hearing was held on November 10, 2010, in Bonduel, Wisconsin. The hearing was not transcribed. The record was closed at the close of the hearing on November 10, 2010.

Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the Undersigned makes the following Award.

ISSUE

The parties raised no procedural issues but were unable to stipulate to the substantive issue and agreed to allow the arbitrator to frame the issue based upon the parties' proposed issue(s) and evidence presented. The Union frames the issue as:

Did the Employer violate the collective bargaining agreement by failing to pay the correct wage rate to Matt Bunker? If so, what is the remedy?

The Employer frames the issues as:

Did Matt Bunker fill the position of the retired employee? If not, what is his proper rate of pay?

Based on the evidence and arguments presented by the parties, the undersigned adopts the following statement of the issue:

Should Matt Bunker be compensated at the Technician 2 pay rate? If so, what is the appropriate starting date for such compensation?

FACTS

The Union represents all full-time and regular part-time employees of the Village of Bonduel in Municipal Operations and the Clerk/Treasurer department. This is a new bargaining relationship such that the parties are working under their initial contract which covers the period January 1, 2009 through December 31, 2011. At the time the parties bargained this initial contract, there were two represented classifications in the Department of Public Works (DPW): Technician 1 and Technician 2.¹ The parties bargained rates of pay for the two classifications without discussion across the bargaining table of the fact that the incumbent in the classification of Technician 2, Dick Siebert, had significantly more years of experience in the position than the individual holding the position of Technician 1, Matt Bunker.

The job description for Technician 1 was revised on December 18, 1998 and adopted by the Village Board on May 12, 1999, well before the Union was certified to represent the employees. In pertinent part, this job description reads:

Position Summary: Maintains, repair all village streets, curbs and sidewalks. Knowledge and experience of lift stations, manholes, sanitary and storm sewer systems. Operational knowledge of backhoe and street sweeper and misc. equipment. Drive trucks equipped with dump body to transport and dump loose materials such as sand, gravel, salt and snow. Drive trucks equipped with plow and sander to remove snow and ice from streets. Ability to drive or operate all tractors, lawn equipment and misc. equipment when needed.

¹ There is also a foreman in the Department of Public Works. There was no testimony or evidence as to whether this is a represented position. For purposes of the instant arbitration, it is not relevant.

Duties and Responsibilities:

Repair and maintain all sanitary main, manholes, storm sewer mains, catch basins and lift stations.

Operate all size trucks.

Required to maintain street repair and maintenance.

Clean and maintain storm sewers and catch basins.

Maintain village street signs.

Ability to assist with concrete and asphalt work.

Ability to paint exterior or interior of village property and also assist with building maintenance.

Ability to operate all lawn equipment and basic landscaping.

Operate and maintain Recycling Drop Off Center.

Maintain minor vehicle and equipment maintenance and repair.

Minor plumbing, electrical and heating maintenance could be assigned.

Maintain all parks with general maintenance or necessary repairs.

Keep an accurate record of all work performed.

Any other duties that may be assigned in other areas or due to absence of fellow workers or as need arises.

Be available for 24-hour emergency call-in, when necessary.

The job description for Technician 2 was revised in December 1998 and adopted by the Village Board in May 1999, also before the Union was certified to represent persons holding the position of Technician 2. In pertinent part, this position description reads:

Position Summary: Maintains, repair and install village water systems, sanitary sewer systems. Knowledge and experience of lift stations and wells. Knowledge of Village streets and storm sewer systems. Operational knowledge of backhoe and street sweeper. Drive trucks equipped with dump body to transport and dump loose materials such as sand, gravel, salt and snow. Drive trucks equipped with plow and sander to remove snow and ice from streets.

Duties and Responsibilities: Repair and maintain water main, lateral and wells, sanitary sewer main, lateral pipe and lift stations. Operate all size trucks. Street repair and maintenance. Clean and maintain storm sewers and catch basins. Maintain street signs. Operate all lawn equipment. Operate and maintain Recycling Drop Off Center. Minor

vehicle and equipment maintenance and repair. Minor plumbing, electrical and heating experience. All building and park maintenance and repair. Maintain records for all work performed. Occasionally perform duties in other areas because of absence or need. Occasionally on 24 hour emergency call-in.

According to Village Trustee Vicki Mueller, at the time the parties were bargaining the initial contract, the Village bargaining team discussed the idea of combining the Technician 1 and Technician 2 jobs into one classification. This information was not shared with the Union bargaining team at the time even though the Village was actively working on a revision of the position description to put the jobs together. As of the hearing in this matter, the Village had not yet combined the position descriptions into one position.

Technician 2 Dick Siebert retired on March 23, 2009. At the time, he had approximately 20 years of experience. Since that time, Matt Bunker, the Grievant herein, has been performing all of the work that Siebert had previously performed. In an undated memo to the Bonduel Village Board, Steve Berndt, Director of Municipal Operation, and Jim Welcing, Supervisor of Municipal Operation, asked that Bunker be promoted to the position of Tech 2:

We request that you promote Matt Bunker be promoted [sic] to the position of Tech 2.

He is currently performing all of the duties listed for a Tech 2 position. He has the required knowledge, skill and ability to perform any job or emergency situation that comes with the day to day operations of the Village of Bonduel.

Pursuant to section 10.8 of the collective bargaining agreement, the village may temporarily transfer an employee for its convenience to another job classification. Matt has performed the duties of the Tech 2 position for over six months which exceeds the 90 day probationary period. Matt has proven he is qualified to perform and assume the assigned duties and responsibilities of the position.

We respectively [sic] request that Matt be promoted to a Tech 2 position at a pay rate of \$16.07@ hour effective January 1, 2010.

By letter dated March 10, 2010, Mel Wendland, Village President, responded to Steve Berndt:

We have reviewed Matt Bunker's request for a job transfer and wage increase at both the committee level and more recently at the Board level. Based on our discussions, we have determined that Matt is in the appropriate position based on the current union contract and the needs of the community.

Our reasoning includes our belief that going forward, it is critical to have our staff cross-trained and flexible so that the workers are able to perform a wide variety of tasks. In accomplishing this goal and after much deliberation, we will be combining the current job titles, Technician 1 and Technician 2 to create one job title – Municipal Operations Technician, as there are minute differences in the current job descriptions. The current employees will not be affected because of this change and will remain eligible for the agreed upon wage increases under the current bargaining agreement.

We do not intend for this to stifle the betterment of Matt's career, and we appreciate all that he has added to the department. We are looking to have a department that is cross-trained and working as one, rather than a hierarchy that does not allow every employee to experience their full potential. We feel strongly that this will better serve our community and look forward to his efforts in achieving this goal.

If you have any further questions, please contact Vicki Mueller or myself at your convenience.

Beth Kirchman, Business Representative for the Union, received a copy of Wendland's letter to Berndt. In response thereto, she wrote to Mr. Wendland on March 22, 2010:

I am in receipt of a copy of your letter dated March 10, 2010 to Steve Berndt regarding Matt Bunker.

I am unsure as to the meaning of your letter, as its intent is unclear.

However, it discusses cross training and creating one job title of Municipal Operations Technician by combining the Technician 1 and Technician 2 positions.

Please be advised that pursuant to the collective bargaining agreement and Section 111.70 of Wisconsin Statutes, the Village is obligated to bargain the effects of this decision with the Union.

Further, I direct your attention to 10.7 (d) and 10.8 of the contract.

Mr. Bunker is entitled to a higher rate of pay for assuming the duties of Mr. Dick Sibert following his retirement.

Therefore, should the Village wish to pursue combining positions, please contact me to schedule a meeting to discuss the matter.

Additionally, I request that Mr. Bunker be appropriately compensated for all time [sic] worked in the higher classification.

Should the Village fail to comply, please consider this letter as a grievance for both issues.

Thank you for your attention and anticipated cooperation.

Melvin Wendland responded to Ms. Kirchman by letter dated April 21, 2010:

This letter is in response to your letter to me regarding Matt Bunker.

The Village's position is that the two positions, Municipal Operations Technician I and Municipal Operations Technician II, involve substantially the same job duties and the pay is not based on the classification of the employee, but on the length of service for these two positions. Therefore the Village believes that there have not been any additional job duties nor has the combining of the two positions led to a higher-rated job entitling an employee to additional pay.

The Village would also call your attention to article 3 of the contract which provides in part that the Village has the right to reclassify employees and establish change [sic] work standards to determine the consolidation of jobs.

In summary, the Village believes that under article 3 of the contract the Village has the right to consolidate jobs and reclassify employees. Since the reclassification has not resulted in additional job duties, Mr. Bunker is not entitled to a pay increase.

If you have any other questions, please feel free to contact me.

Upon receipt of Mr. Wendland's letter, Ms. Kirchman notified the Village of the Union's desire to proceed to arbitration of the matter. The parties proceeded accordingly.

Additional facts are included in the Discussion, below.

RELEVANT CONTRACT PROVISIONS

ARTICLE 3: MANAGEMENT PREROGATIVES

- 3.1 **General:** Except as expressly modified by a specific provision of this Agreement, all authority, rights, and powers which the Village had prior to the signing of this Agreement are retained by the Village and remain exclusively and without limitation the rights of management. Only express modifications contained in specific provisions of this Agreement constitute limitations upon such authority, rights, and powers.
- 3.2 **Specific Rights:** Examples of the authority, rights, and powers which are hereby vested in the Village, with only such modifications as is expressly stated in a specific provisions of this Agreement, include, but are not limited to, the following: the right to schedule, adjust, and assign work and hours of employees; to assign and require overtime work; to determine the work to be done and the methods and processes of services; to hire, promote, transfer, reclassify, suspend, discipline, demote, layoff or discharge employees; to determine the locations of buildings; to determine the size of the work force and the amounts and kinds of supervision necessary; to temporarily or permanently shut down entire operations or a portion thereof to another location(s); to establish rules and safety standards; to contract out work; to establish or change work standards; to establish or change standards of quality and quantity of work; and to determine the creation, continuance, termination, change or consolidation of jobs or of partial or total operations (including discontinuance of their performance by Village employees.) If the Village does not exercise rights reserved to it or if it exercises such rights in a particular way, it shall not be deemed a waiver of the right to exercise such rights or of the right [sic] exercise such right in other ways not in conflict with express terms of this Agreement.

ARTICLE 7: NEW EQUIPMENT OR CLASSIFICATIONS

- 7.1 When substantial changes are made in existing classifications, the rates governing such classifications shall be subject to negotiations.

ARTICLE 10: SENIORITY

. . .

10.7 **Job Promotion:** In the event a permanent job vacancy occurs within a department which the Village desires to fill, the Village shall first consider whether there are employee(s) within the department, who, in the judgment of the Village, have substantial qualifications for the job....

(d) Training rate: All employees who are promoted to a higher rated job will continue to be paid at the rate of the previously held position until they are able to perform the new job unassisted. This shall be no greater in length than 30 days unless mutually agreed upon between the Village and the Union. . . .

10.8 **Temporary Transfers between Jobs:** When the Village temporarily transfers an employee to another job classification at the convenience of the Village, the employee will receive the higher rate of pay based on his seniority for that classification.

DISCUSSION

Although the facts of this case do not appear to be complex, there is not an easy answer to the question of whether the Grievant, Matt Bunker, should be compensated at the Technician 2 level. The Village makes several arguments to support its contention that Bunker is properly being paid at the Technician 1 rate, whereas the Union argues that Bunker is doing the work previously performed by retiree Technician 2 Dick Siebert and, therefore, Bunker should be classified as a Technician 2.

The Village's argument is grounded in its exercise of its management rights that are preserved in accordance with Article 3 of the collective bargaining agreement: the right to reclassify employees, and the right to change and consolidate jobs. The Employer further argues that there are no significant differences in the job descriptions for the Technician 1 and Technician 2 and that the retired Siebert was classified as a Technician 2 and paid more than the Technician 1 because of his longevity with the Village.

The Village's arguments fall short on several accounts. Although it does have the right to reclassify employees, as well as the right to change and consolidate jobs, it cannot do so without negotiating the impact of those decisions with the Union. It cannot operate in a vacuum, and it must actually reclassify an employee or a position, as well as change or consolidate jobs. It cannot merely think about it, discuss it, and appear to implement such changes without the appropriate actions of the Village Board.

The position descriptions for the positions in question, Technician 1 and Technician 2, were adopted by the Village Board in 1999. They were the position descriptions that were in place during the negotiations for the first collective bargaining agreement between these parties in 2008. They continued to be the position descriptions in place at the time of the events giving rise to the instant grievance, and they continued to be the only position descriptions in place at the time of the hearing in this matter.

During negotiations for the initial contract between the Village and the Union, including bargaining the appropriate wage rates for the two positions, there was no discussion between the parties indicating that the wage rate for the position of Technician 2 was greater than that for the position of Technician 1 because the incumbent Technician 2 had greater seniority. There was also no discussion between the parties regarding the Village's plan to consolidate the two positions into one Municipal Operations Technician position. Village Trustee Vicki Mueller credibly testified to the effect that the Village bargaining team did discuss these concepts, but she agreed that this information was never shared with the Union.² I find the Village's contention that the Technician 2 wage rate is higher than the Technician 1 rate due to the longevity of the prior incumbent in the position to be unpersuasive as a rationale for not paying Matt Bunker at the Technician 2 rate.

The Village is correct that the job descriptions for the Technician 1 and the Technician 2 are very similar. The Grievant testified that all the duties he performs are included in the Technician 1 position description. Had he been asked, his testimony would also have been that he performs all the work of the Technician 2 position inasmuch as he credibly testified that he performs all of the duties that were previously performed by the now retired Technician 2.

Although the Union contends that there was a violation of Sections 10.7(d) and 10.8 of the contract, the Village does not see the transaction in question as a promotion, and appears to contest that this was a transfer between jobs, temporary or otherwise. The Village contends that it has eliminated the position of Technician 2, or otherwise chosen not to fill that position. However, inasmuch as the Village failed to take any action to reclassify the position previously held by Siebert prior to assigning all of the duties previously performed by Siebert to the Grievant, the argument that there is no Technician 2 position must fail. In addition to Bunker's testimony that he is performing all of the job duties of the Technician 2, the undated memo from the Director of Municipal Operation Berndt and the Supervisor of Municipal Operation Welcing corroborates Bunker's testimony that he performs the duties of a Technician 2. Accordingly, he should be paid for performing those duties at the Technician 2 rate of pay.

² The concept of increased pay for length of service certainly could have been discussed. Additional pay for longevity is a common component of collective bargaining agreements.

The Village does retain the right, pursuant to the terms of the collective bargaining agreement, to change job duties, to reclassify, and to combine jobs. It must, however, exercise those rights in a manner that is consistent with the rights of the employees under the terms of the collective bargaining agreement, including Article 7 thereof relating to classifications. Had the Village taken the steps necessary to eliminate the Technician 2 position and create one position of Municipal Operation Technician prior to the retirement of Siebert, or at least prior to Bunker's assuming Siebert's duties, this would be a different case. The Village continues to have the authority to create a new, combined, position. It must, however, bargain the impact of that decision with the Union. It cannot simply indicate, as it has done here, that it is its intention to combine the two technician positions and, therefore, Matt Bunker is not a Technician 2.

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

AWARD

Matt Bunker is to be compensated at the Technician 2 rate, effective January 1, 2010.³

The undersigned will retain jurisdiction for a period of 30 days from the date of this award to resolve any issues regarding the remedy awarded.

Dated at Madison, Wisconsin, this 23rd day of November, 2010.

Susan J.M. Bauman /s/

Susan J.M. Bauman, Arbitrator

³ Although Siebert retired in March 2009, nine months prior to the effective date of the increased pay rate awarded by this decision, there was no evidence or testimony offered that would support any other starting date for the Technician 2 rate of pay. The January 1, 2010 date is mentioned in the memo from Berndt and Welcing, the supervisors of the position. Accordingly, that is the date chosen.