

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**CITY OF WAUSAU**

and

**CITY OF WAUSAU DEPARTMENT OF PUBLIC WORKS EMPLOYEES  
UNION LOCAL 1287, AFSCME, AFL-CIO**

Case 140  
No. 69487  
MA-14623

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**Appearances:**

**John Spiegelhoff**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1105 East 9<sup>th</sup> Street, Merrill, Wisconsin, appeared on behalf of the Union.

**Dean R. Dietrich**, Ruder, Ware & Michler, S.C, 500 First Street, Wausau, Wisconsin, appeared on behalf of the Employer.

**ARBITRATION AWARD**

City of Wausau Department of Public Works Employees Union, Local 1287, AFSCME, AFL-CIO, herein referred to as the "Union," and City of Wausau, herein referred to as the "Employer," jointly selected the undersigned from a panel of arbitrators from the staff of the Wisconsin Employment Relations Commission to serve as the impartial arbitrator to hear and decide the dispute specified below. The arbitrator held a hearing in Wausau, Wisconsin, on March 23, July 1, 2, August 25, 26, 2010. Each party filed a post-hearing brief, the last of which was received November 24, 2010.

**ISSUES**

The parties were unable to agree to a statement of the issues. The Union phrased the issue as follows:

Did the Employer violate the collective bargaining agreement in the manner in which it laid off the grievants in November, 2009?<sup>1</sup> If so, what is the appropriate remedy?

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<sup>1</sup> I have paraphrased the Union's stated issue on March 23 tr. p. 6 slightly.

The Employer stated the issues as follows:

Did the Employer violate the provisions of Article 8, Section A, Role of Seniority, and Article 12, Section A, Layoffs, by the manner in which it selected employees for layoff in November, 2009? Is so, what is the appropriate remedy?

I phrase the substantive issue as: Did the employer properly deny under the terms of the agreement each of the grieving employees the right to bump into the disputed positions?

The parties agreed that I might reserve jurisdiction over issues arising from the specification of remedy if either party requested that I do so in writing, copy to the opposing party, within sixty (60) days of the date of the award.

### **RELEVANT AGREEMENT PROVISIONS**

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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:

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- D. To relieve employees from their duties because of lack of work or other legitimate reasons;

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#### **ARTICLE 8 - SENIORITY**

- A. Role of Seniority: It shall be the policy of the City to recognize seniority in filling vacancies, making promotions and in laying off or rehiring, provided however, that the application of seniority shall not materially affect the efficient operation of the various departments covered by this agreement.

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ARTICLE 9 - JOB POSTING

- A. General: The City shall attempt in each posting to fill a job first within the department then with a present employee of the City before it hires new personnel for the job.
- B. Divisional/Unit and City-Wide Posting: Whenever a vacancy is to be filled or a new job created, this position shall be posted for a period of three (3) working days on all shop bulletin boards. Any employee interested in applying for the job shall endorse his/her name and division/unit upon such notice in the space provided. The full-time employee with the greatest seniority within the division/unit when a vacancy occurs, who can qualify, shall be given the job. If the job is not filled within the division, the full-time employee with the greatest seniority with the employer who can qualify shall be given the job. For the purpose of this section, division/unit seniority shall be limited to the following divisions/units: maintenance and construction division, electrical division, engineering division, sign unit, water treatment plant division, water meter division, water distribution division, wastewater treatment plant division, sewage maintenance division, and motorpool. If no full-time employee bidding can qualify for the work, it shall be given to the regular part-time employee with the greatest seniority who has bid for the job and can qualify.

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- G. Qualifications: The initial determination as to an employee's qualifications shall be made by the City. However, if there is a difference of opinion as to the qualifications of an employee, the Union committee and/or Union representative in conjunction with the employee may take the matter up for adjustment under the grievance procedure.

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ARTICLE 12 - LAYOFF - RECALL

- A. Layoffs: When laying off regular part-time employees the oldest in point of divisional seniority shall be retained, if qualified, to perform the available work. When laying off regular employees the oldest in point of city-wide seniority shall be retained if qualified to perform the available work. All seasonal, temporary and part-time employees shall be laid off prior to any reduction in the regular employee working force.

- B. Recall: Rehiring of employees that have been laid off shall be in reverse order to that of laying off provided the recalled employees are qualified to perform the available work. An employee who quits or fails to report within fifteen (15) days from postmark on date of recall, or is discharged, except those reinstated under the grievance procedure, shall lose all prior seniority rights. The Notice of Recall for any employee who has been laid off shall be sent by certified mail to the last known address of the employee. Employees on layoff shall forward any change of address to their department head.

### ARTICLE 13 - JOB TRANSFER AND JOB REASSIGNMENT

All employees are subject to job transfer or work reassignment within the department subject to the conditions and restrictions contained elsewhere. Employees may be reassigned to different work projects or work in different departments during the workday. Construction and maintenance division employees will be assigned work in other departments on a seniority basis only when overtime work is anticipated and management is notified of the request for additional employees at least thirty (30) minutes prior to the commencement of the workday.

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### BACKGROUND FACTS

The Employer is a Wisconsin municipality which operates a Department of Public Works and Water/Sewerage Utility. The Union represents non-supervisory, non-managerial employees of those departments. Employees Jon Raduechel, Michael Beran, Brad Wendtland, Brandon Ball, and William O'Neill are all employed in the Department of Public Works (Road Construction and Maintenance Division) as Equipment Operator 1's and all are members of the bargaining unit represented by the Union. Joe Blair was employed as an Equipment Operator III, but bumped down to an Equipment Operator I position from which he sought to bump into the disputed positions.

The Department of Public Works is divided into the following sub-divisions; the Sign Department, and Road Construction and Maintenance Division. The Water Utility at the relevant times was divided into the Sewer Division and Water Division. The Sewer Division was added to the DPW effective January 1, 2010, after the events in this case.

The Road Construction and Maintenance Division has employees in, among others, the classification of Equipment Operator I and the higher-paid position of Equipment Operator III. The Sewer Division has employees in the classification of Sewer Maintainer which is the entry level position for the Sewer Division. The Water Division employs employees in the

classification of Water Distribution Maintainer. Both positions are paid more than Equipment Operator I's.

The Department of Public Works road crews have a slow season between the end of construction and the beginning of the winter snow season. Ordinarily, employees are kept busy with maintenance and lower priority work until the commencement of the winter season. The Employer has never had a seasonal layoff before. The Employer decided to layoff unit employees during the slow season until the first snow fall. In that regard it laid off the above-listed employees (other than Mr. Blair), among others, effective November 19, 2009. Mr. Blair bumped down from an Equipment Operator III position on November 19 to an Equipment Operator I position, but was laid off December 7, 2010, but then sought the positions listed below. The Employer retained all employees employed in the Water Maintainer and Sewer Maintainer classifications. The purpose of the layoff and the expected duration of the layoff were well known to everyone involved. The above-listed employees each duly exercised his right to seek to bump less junior retained employees' positions as follows:

Grievant	Position sought
Blair	Water Distribution Maintainer Sewer Maintainer Trades Technician Equipment Service Mechanic
Raduechel	Water Distribution Maintainer Sewer Maintainer Trades Technician
Beran	Water Distribution Maintainer Sewer Maintainer
Wendtland <sup>2</sup>	Equipment Service Mechanic
Ball	Trades Technician Water Distribution Maintainer Sewer Maintainer
O'Neill Maintainer	Water                      Distribution

All such requests were denied. All employees were finally recalled from layoff December 9, 2009.

The Equipment Operator I's perform heavy labor in the Department of Public Works. They operate single axle trucks and end loaders in yard operations only. Other heavy equipment is operated only by those in the position of Equipment Operator III. Some Equipment Operator I's have been temporarily assigned to the Heavy Equipment Operator III position at times and have operated the other heavy equipment in that role.

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<sup>2</sup> Employer asserts that he never gave it notice that he wanted to bump into another position.

## POSITIONS OF THE PARTIES

### Union

The essential issue is whether the laid off employees are qualified for any of the positions in dispute. The Employer violated Article 12 when it laid off by job classification rather than by seniority. Article 12, Section A does not specify what the standard is for determining “qualifications.” Article 10 provides that as to promotions, employees are given 30 days to qualify. The standard should be the same. The standard should be whether the employee is “minimally” qualified for the position. The Employer never investigated the qualifications of the employees in dispute and essentially required that in order to bump into a position the employee had to be fully trained to do every duty of the position. The proper standard is whether the bumping employee is minimally qualified to perform the remaining work with the help of others on the crew to which he would be assigned. The Employer exaggerates the work of the positions occupied by the junior employees as too complex for the employees in dispute. In fact, the remaining positions’ duties are entry level, do not require advanced training, and can be easily learned in a short period of time. The grievants all have backgrounds to perform the basic duties of the remaining positions. This is especially true for the positions of water and sewer maintainer. Some of the grievants had practical hands on experience in the Trades Technician position as they worked as a Trades Technician Helper. One of the grievants had extensive knowledge and experience as a mechanic prior to being employed by the City.

All of the grievants had at least three years service with the City prior to the layoff. All have a general knowledge base of other departmental activities within Public Works. The grievants have, on numerous occasions, either worked side by side with other department employees on work projects or observed the duties being performed. Most, if not all, were hired with a construction-based background. The City has allowed street department employees to freely post into Water Distribution Maintainer, sewer maintainer, and even the Trades Technician position without prior experience in these positions. Employees who posted into these positions refined their skills through observing and on-the-job training.

The duties of Equipment Services Mechanic and Trades Technician are more specialized than the duties of Water Distribution Maintainer or Sewer Maintainer. Actual experience in the essential duties would be a reasonable expectation to be deemed qualified. Three of the six grievants were Trades Technician Helpers during their employment with the City. For approximately two years, Raduechel was the sole employee in the trades technician department when the Trades Technician posted out. Mr. Raduechel even had a “helper” when was he did this. Mr. Wendtland had extensive mechanic experience and knowledge prior to his employment with the City.

The Employer portrays the “remaining work” as complex emphasizing infrequent duties in each classification as evidence the grievants are not qualified. Examples of this would include the parking ramp fire suppression system (Trades Technician) and wiring top lights on police cars (mechanic). However, the record evidence demonstrates the vast majority of the work in the remaining positions is general construction, routine and not extremely complex. Even if select tasks are more complex, such work could be given to more seasoned workers without adversely affecting operations.

The essential job duties of a Water Distribution Maintainer are to maintain fire hydrants, replace broken water mains, replace valves, and flush water mains. The water department works mainly in crews enabling less seasoned employees to learn from more seasoned employees. There are lead workers who could assist in answering any questions. There are other aspects of the job which include knowing how to turn off water service to homes and reading schematics of the city water system. Many of the grievants have been on work projects with water department employees when these tasks were being completed. They have observed the processes in the completion of tasks. Many of the grievants had plumbing experience, albeit on a smaller scale. However, the concept is still the same. The position of Water Distribution Maintainer is truly an entry level position in the Water Department. Many employees have posted from Operator I positions to Water Distribution Maintainer positions. Some of the current Water Distribution Maintainers had no background in water utility work when they were hired. It is interesting to note that the City takes the position that new hires and employees who post are held to a wholly different standard than an Equipment Operator I displacing employees in the remaining positions. However, the contract merely states that the employee must be “qualified” to perform the remaining work. All of the grievants have practical hands-on experience in water utility work. They are minimally qualified to perform the work of a Water Distribution Maintainer.

The pieces of basic equipment used by Sewer Maintainers are; the Jetter, TV sewer camera, sewer rodder and VacAll. The lion’s share of the Sewer Maintainer is preventative maintenance of problem areas in the city using the Jetter’s high pressure water to clean sewer mains. This is the machinery used 98% of the time for blockages. In a small portion of system failures, employees must use a sewer rodder to clear the blockage. Once the blockage is cleared, the water department uses a large vacuum known as a VacAll to clean up the debris.

If the Jetter or sewer rodder is unsuccessful in clearing the blockage, the employees need to determine what is causing the blockage. In order to get an accurate “picture” of what a situation is in the sewer mains, employees use what is known as a sewer TV. In essence, this is a television mounted on a robotic tank like vehicle. Employees use a joy stick in a remote location to operate the sewer TV vehicle. This is inserted into the sewer main and transmits a picture of the inside of the sewer main. Employees then diagnose what the problem is.

In order to qualify for the position of Sewer Maintainer, a basic knowledge of sewer systems would be essential. Knowledge of how to repair a broken sewer main would also be helpful to qualify for this position. Most, if not all, of the grievants had had experience related to repairing and replacing pipe to clear a blockage. Many of these employees have used a type of sewer rodder in their own homes to clear a blockage. The grievants further had either observed or participated in operating the Jetter and VacAll. The grievants would be able to transfer this knowledge to work in the sewer department. The ability to become proficient in a job is directly related to the amount of time one is in the job. Full knowledge of all aspects of the job duties was not necessary for Mr. Baker when he was hired as a Sewer Maintainer. The same should be true of Equipment Operator I's who could displace current Sewer Maintainers. The grievants had sufficient prior knowledge either through their own personal experience or through previous employment. This most certainly would enable them to handle the basic duties of a sewer maintainer position. Proficiency comes with experience. In the instant dispute, the employees only need to be minimally qualified to displace sewer maintainers.

Mr. Gehin testified that the position of sewer maintainer is an entry level position within the department of public works. It would take only a few hours of training to give employees a rudimentary knowledge of the equipment. This case is not about being totally proficient in the job to be deemed "qualified." It is about having a base knowledge of the functions of the job and being given the opportunity to be marginally trained on duties and equipment used on the job. This is analogous to the water and sewer employees being trained on snow plows. They just needed a few hours training to perform the job adequately not proficiently. The same standard should be used for Equipment Operator I's in the remaining positions.

A Trades Technician is the proverbial jack-of-all-trades or the city handyman. This position requires a little bit of knowledge to solve a multitude of situations. Union witness Dan Cook testified to the following various duties of a Trades Technician

- Maintenance and inspections of parking ramps, buildings and grounds
- Operate heavy equipment, sweepers (Operator I duties)
- Furnace failure diagnosis
- General plumbing
- General electrical
- Air conditioning failure diagnosis
- Replace brick pavers
- Painting
- Carpentry
- Civic event set up and take down
- Maintenance of elevators
- Maintenance of hangar doors at airport
- Concrete replacement and repair
- Bridge expansion joint maintenance



- City parking ramps fire suppression system maintenance
- Brine system maintenance

In the instant dispute, it is reasonable to expect employees to have general experience in the duties of Trades Technician. What is particularly instructive in this case is that employees Raduechel, Blair and Beran had been Trades Technician Helpers in their employ with the Employer. They each were rotated into a year in that position. They are qualified to perform that work. The Employer is incredible when it attempts to minimize their Trades Technician experience in that position.

In order to qualify for the Equipment Services Technician position, employees certainly need direct quantifiable experience in this field. A strong knowledge of the gasoline and diesel powered engines is important in order to qualify or, in the case, displace an existing mechanic. Union witness Pagel testified to the following regarding the essential duties of a mechanic:

- Minor engine overhauls
- Electrical wiring
- Steering assemblies
- Water pumps
- Repairing hydraulic equipment
- Fabricate metal parts
- Operation of plasma torches and welding
- Replacing plow blades
- Brake jobs
- Assembling top lights for police cars
- Routine maintenance such as oil changes
- Preventative maintenance-inspection of vehicles for issues

As there is certainly a multitude of problems that could arise when vehicles come in, a broad based knowledge of how gasoline and diesel engines work is essential. Moreover, skills in how to diagnose an engine problem are essential. Wendtland had experience both in the private sector and others with mechanic related activities. He is able to diagnose and repair a multitude of problems related to engines. Wendtland has the broad based knowledge to minimally qualify for the position of mechanic.

The evidence indicates that the Employer never seriously considered the qualifications of the grievants. It did not interview the grievants before it made the decision. It, therefore, could never have assessed what they have learned since they were employed or information not presented in their individual resumes when they were hired. The Employer's argument that it considered qualifications is inconsistent with the position it took at the time of the layoffs. At that time, it took the position that it did not need to consider qualifications. The Employer's

approach at hearing was to determine what the employees' qualifications were through the hearing on the grievance and then characterize the work as so complex that they could not qualify. The Employer's argument as to the level of qualifications is undermined by the fact that it offered extensive cross training to the employees who were retained to do snow plowing. The Employer's argument that they were not trained for snow plowing is contradicted by the facts and documentary evidence. The Union requests that the arbitrator find the grievants were qualified for one or more of the disputed positions. Further, the Union requests that the grievants be made whole for any loss of wages and fringe benefits as a result of their layoff.

### **Employer**

The Employer has demonstrated that none of the grieving employees was qualified for any of the disputed positions in the remaining work. Joe Blair, Jon Raduechel, Michael Beran, Brandon, Ball and William O'Neill were eligible to bump less senior employees in the water and sewer departments, but they were not qualified for the remaining work.

The Union's position that the employees who would like to bump into positions are qualified to perform the work of the Sewer Maintainer position because they have done allegedly similar work at home is without merit. The Sewer Maintainer position is highly technical. The Employer relies on the employee to have the knowledge and skills to perform the position capably. The Employer is not required to take the chances as the agreement clearly states that the Employer is not required to apply seniority if it would materially affect the efficient operation of the Employer. Mr. Beran is not qualified to perform the sewer work. None of his experience qualifies him to work safely in the sewer, to operate the sewer TV equipment, operate the rodder machine or Jetter, or to be able to handle emergency situations involving the public septic system. Mr. O'Neill is not qualified to step into the job of Sewer Maintainer because he has assisted in helping with some maintenance at his former employer or because he did his own plumbing at home. It is true that Mr. O'Neill helped clear blockages at the mill and has done his own plumbing at his home; however, he admits that on any work done at the mill, he was just helping, and the pipefitters and millwrights were responsible for the repairs. While Mr. O'Neill has driven a truck with sludge in it, he is unaware of Department of Natural Resources rules regarding sludge hauling. Also, while he has worked on the pipes in his yard, Mr. O'Neill was unaware of plumbing rules or regulations to know if he was properly authorized to dig up pipes in his yard.

Although Mr. Blair has trained on the Jetter that is used by the Department of Public Works, this does not qualify him to operate the Jetter of this department. The department's Jetter operates at higher pressure and requires more extensive training. Although he has operated a manure spreader, he is not aware of the DNR rules governing the same. Mr. Blair has not operated the sewer TV inspection system, nor has he operated the sewer rodder. He has not worked with anyone to address sewer back-up, nor has he had an opportunity to address complaints regarding a sewer break.

Mr. Raduechel is not qualified to work as a Sewer Maintainer because he has done some minor work with laying pipe for the brine tank and worked on his own septic system at his house by cutting out roots. He has never been on a sewer crew with the Employer to work on a sewer main. He has never been assigned to go and fix a sewer problem for a customer and has never helped the sewer crew on the job helping a property owner with a sewer problem.

Mr. Ball has previously worked on a crew that repaired septic systems. However, this private sector work does not qualify him to step into the job of Sewer Maintainer. Mr. Ball has done no waste water plant work for the City, has not worked on any sewer main back up for the City, and his time working in the private sector was not with a pressurized sewer main system. Mr. Ball has not used schematics or maps, has not maintained sewage lift stations, nor has he driven a sludge truck.

Clearly, none of the DPW employees were qualified at the time of the layoffs to be able to step into the position of Sewer Maintainer and perform the duties immediately. While certain of the DPW employees have testified that they have been present when the sewer crews have performed work, DPW employees that have assisted the sewer maintenance by digging and excavating pipes did not perform the work, the actual maintenance work was performed by the sewer crew. Also, sewer work at home, or at private sector jobs pale in comparison to the expertise and knowledge needed to safely and competently handle the duties of a Sewer Maintainer that is responsible for the maintenance of the City's municipal sewage system. The City has a responsibility to ensure that its large municipal sewer system is adequately maintained, and it would be detrimental to the Sewer Department, the City and its citizens to place these inexperienced employees into the Sewer Maintainer position.

The Union has failed to show that any of the grievants was qualified for the position of Water Distribution Maintainer. The Union relied upon the grieving employees experience in plumbing projects at home to establish their credentials. The job of the Water Distribution Maintainer is far more sophisticated than that. In addition, the work for the Employer carries with it much greater risks of damage than mistakes at home. Water Distribution Maintainers work with water which remains under pressure while they work. This is different than home repair. The Employer selects new hires who are very experienced for the position of Water Distribution Maintainer because the work is as sophisticated as it is.

The position requires one year's experience in water main construction or repair or completion of an approved training period or equivalent. It also requires the ability to operate certain heavy construction machinery. Water Distribution Maintainers do not specialize and each must be proficient at all of the responsibilities of the position. They must be able to fix fire hydrants and perform emergency calls. Emergency calls require the exercise of judgment to minimize the damage caused by the problem. None of the disputed employees has these skills.

Messer's Beran, Blair, and Raduechel were not qualified to perform the duties of the Trades Technician. The Trades Technician is required to test the parking facility sprinkler system. In this regard, he must know the codes and be able to do so without setting off a false alarm. He must be able to operate the Employer's new computerized brine system which is very technical. Mr. Beran was a Trades Technician Helper. However, he only acted as an observer for the critical fire suppression system work. He cannot perform all of the duties of the position. Mr. Blair worked as the masonry Trades Technician Helper, a different position. He does not have the ability to perform all of the work of this position.

Mr. Raduechel did perform the work of this position. He was a Trades Technician Helper and filled in when the Trades Technician person was away. However, the Employer has obtained new equipment and facilities. He is not familiar with those. He would not sign elevator inspection reports while he was the helper. He is not familiar with the new brine system, only the old one.

Even if the arbitrator decides that one of these employees is qualified, he should be paid only at his former rate and not at the higher Trades Technician Helper rate because he could not be fully qualified to perform all of the work.

Mr. Wendtland is not qualified to perform the duties of the Equipment Services Mechanic. The position requires that an employee be able to service the heavy equipment that the Employer relies upon on a daily basis, as well as to work on emergency vehicles. Mr. Wendtland's work at CarQuest does not qualify him to do this work. He never worked on snow plows or their hydraulic equipment. He never worked on the lights on squad cars or other emergency equipment. He does not have a technical degree in auto mechanics. The Employer asks that the grievance be dismissed in its entirety.

### **Union Reply**

The Employer's position runs contrary to the intent of Article 12. If the Employer believed every distinct job classification was so specialized, it would have bargained contractual language limiting layoff to each classification. Water Distribution Maintainer and Sewer Maintainer are construction-based positions analogous to the Equipment Operator I position. Although Trades Technician and Mechanic are not entry level positions, the parties created a quasi-apprenticeship Trades Technician program which cross-trained employees to do these jobs.

This case involves only six employees. The Employer has a large workforce. It is unlikely that the bumping involved here would affect Employer operations. The Employer has argued that since the disputed employees have not actually held the disputed jobs, they are not qualified. Their other work experience does qualify them. Article 13 permits cross-training and evidence indicates that cross-training occurs when employees work on projects together.

The disputed employees should receive the higher rate of pay if they are successful herein. Article 14 (H)(5) requires full back pay. The Employer's argument that these employees are bumping into higher paid positions is not supported by any language in the agreement.

### **Employer Reply**

The Union uses the term "minimally qualified" in the sense of "barely qualified." The Employer demonstrated that each grievant could not perform most of the job qualifications for the disputed jobs. The Union has shifted its focus to an argument that the employees could do the jobs if and only if they received further training. However, the correct standard is that employees must be able to perform the job without significant training and, therefore, the Union's case must fail. The Union's attempt to use Article 10 to change this standard is incorrect. The employee must be capable of performing the work immediately upon taking the job. None of the Equipment Operator I employees involved herein could make the claim to be able to do so. All would require training. Even though the Employer may have accepted less qualified applicants when it hired, the fact that it has done so, does not mean it has to do so in a layoff situation. The fact that the Employer conducted snow plow training is not relevant. This is for safety purposes. How the Employer made the determination as to these positions is irrelevant. In any event, the Union incorrectly claimed that the Employer did not even consider the qualifications of these employees. It did consider them.

### **DISCUSSION**

The parties confined the litigation of this issue to whether any of the grieving employees was, in fact, qualified for any of the disputed positions which he sought and, if so, what is the appropriate wage rate.<sup>3</sup> The proper statement of the substantive issue is: Did the employer properly deny under the terms of the agreement each of the grieving employees the right to bump into the disputed positions? Article 12's layoff and recall provisions are focused on permanent layoffs more than temporary layoffs. This focus is exemplified in the protracted notice requirement which presumes a long term layoff. It is undisputed that Article 12 applies to this short term layoff; however, its terms and purpose must be interpreted in the light of the specific facts of this situation. Accordingly, no decision is expressed or implied as to any other issue which might be raised under other circumstances. Without limitation, this includes the amount of training which the Employer might be required to provide in a permanent reduction in force.

Article 12, Section A, provides that regular employees be retained in the order of oldest in point of city-wide seniority, but only "if qualified to perform the available work." The parties specifically consciously chose to use city-wide seniority in this provision and not

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<sup>3</sup> The Union also sought to challenge the credibility of management's determination of qualifications at the time of layoff, but the Employer instead presented extensive testimony at hearing on the grievants' qualifications for these positions. Therefore, it is not necessary to address the credibility of the determinations made by management at the time of layoff.

divisional seniority. This is evidenced by the fact that the parties used divisional seniority for the retention of part-time employees.<sup>4</sup>

It is important to address some of the aspects of interpretation over which the parties disagree. The first question is what is the “available work” within the meaning of Article 12 in the context of this specific layoff? The work of most of the disputed provisions is seasonal. Because the disputed layoff occurred during the fall and was intended to end, the “available work” was essentially the work the Employer reasonably expected would occur during the period in dispute. Qualifications to perform work normally performed during other seasons are irrelevant. Employees in some of the disputed classifications performed work which occurred either on an emergency basis or on a scheduled basis (such as monthly). Those circumstances are properly addressed based upon specific circumstances below.

The parties also disagreed as to the level of training which the Employer might be required to give to a bumping employee. One treatise properly describes the standard generally required of employer under the type of “ability” provision used in Article 12 above as follows:

When a contract contains a sufficient ability clause, it is accepted that an employee seeking to bump must have the current ability to perform the job unless the contract provides otherwise. Therefore, unless the contract requires it, the employer is generally not required to supply training to provide an employee with the skill and knowledge necessary to perform a job into which he or she wishes to bump. . . .<sup>5</sup>

Arbitrators generally have agreed that an employer is required to provide minimal familiarization with respect to a position for which an employee is qualified but requires some basic information in order to perform.<sup>6</sup> This concept varies with specific facts, express terms of the agreement and the practices of the parties. It is discussed more below, primarily with respect to the Trades Technician position.

### **WATER DISTRIBUTION MAINTAINER**

There are eight employees on the distribution crew. All of the employees perform all of the various duties specified for Water Distribution Maintainers in the applicable job description. The primary work which was planned for the Water Distribution Maintainers

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<sup>4</sup> The impact of the different language of Article 10 relating to promotions to a higher-rated provision as it relates to this dispute is discussed below with respect to the wage rate for an employee bumping into the higher-rated position of Trades' Tech.

<sup>5</sup> Footnotes omitted. Bornstein, Gosline, Greenbaum, Labor and Employment Arbitration, 2d Ed., Sec. 28.03(2), pp. 28-11-2.

<sup>6</sup> See. AIRWORK CORP., 83 L.A. 977 (Handsaker, 1984).

during the period in dispute was fire hydrant maintenance with repair as necessary.<sup>7</sup> Fire hydrant repair is done in teams of two or three. Hydrant maintenance requires removing the caps, checking to see if the hydrant is leaking, and oiling the nozzles. The inspection function requires experience and judgment in sounding out leaks, identifying the type of hydrant and knowing which set of tools goes with which type of hydrant. It is unclear if the testing process is done in teams or not. None of the grievants would be qualified to do the inspections in question on their own. They could not have been trained to do so in the period in dispute. It is possible that they could work in teams where they provide support only, but not to the inspection.

None of the grievants has the skill or experience to make the judgments necessary to make the repairs to hydrants which need repair. They could not have been trained to do so in the period in dispute. It is possible that they could provide support to other Water Distribution Maintainers as part of a team without further training.

The Employer regularly performs water taps to renew service or establish service. At this time of year, this occurs about two or three times per week.<sup>8</sup> Larger taps require more than one person, but smaller taps are performed by one person. Water is under pressure when taps are performed. None of the grievants has the ability to perform water taps without further training.

One of the primary functions of Water Distribution Maintainers is to perform emergency work on street mains and mains leading into homes. All Water Distribution Maintainers must be prepared to perform emergency work. Emergency work is initiated when some one reports a problem with water mains in the streets or a customer reports a problem in their home. Employees receive these calls on an individual basis and are dispatched individually to investigate. The employee reporting to the scene must make an immediate decision as to what needs to be done and the level of danger involved.<sup>9</sup> The employee must coordinate the actions to be taken and determine the extent to which there is time to give notice to the affected customers. These calls go by seniority after hours,<sup>10</sup> but as a practical matter all employees receive calls. It takes about six months training and experience to be trusted by the Employer to handle these calls. Even if training were required by the agreement, none of the grieving employees could be trained to perform this work in sufficient time to do it in the disputed period. This work is so essential to this classification with the limited manpower the Employer has that it is unreasonable to expect that the Employer could excuse an employee who bumped into the classification from this duty.

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<sup>7</sup> August tr. p. 326

<sup>8</sup> August tr. p. 301

<sup>9</sup> August tr. p. 305-6

<sup>10</sup> August tr. p. 307

A main break did occur during the period in dispute.<sup>11</sup> The equipment used for opening and closing streets is Equipment Operator III level equipment.<sup>12</sup> Those who handle main breaks must understand the direction of water flow in the mains, the precautions necessary to deal with different pressures, and the proper valves to open or close. Employees shut off water as much as possible, but some is always flowing. Employees must disinfect the area before starting work on the main.<sup>13</sup> It is possible for employees who might bump into the Water Distribution Maintainer to assist in this role, but they could not perform it alone or in a leading role.

The Employer receives calls from customers on a daily basis. Water Distribution Maintainers must be knowledgeable and tactful.<sup>14</sup> Some of these calls are from plumbers who need to have water shut off at the street because of plumbing problems the plumber is working on in the home.<sup>15</sup> These are done by an individual employee and each employee needs to be able to do it. Locating the water distribution box is not easy and they do not always operate easily. Older ones frequently break and when they do, they must be replaced immediately.<sup>16</sup> All of the grieving employees would require training and direct supervision for at least the length of time involved in this dispute.

Employees are also called upon to thaw water mains to homes and, less frequently, water mains on an emergency basis. The home work requires two employees at a minimum.<sup>17</sup> Each employee of those teams must be able to perform the required work. None of the bumping employees was qualified to perform at that level and none could be trained to do so during the period in dispute.

The Employer has limited staffing and, therefore, has limited resources for training. It must plan in advance for any significant training opportunities because training takes both the trained employee and the training employee or employees out of service.<sup>18</sup> Even if the collective bargaining agreement required training discussed above it would be next to impossible to provide the level and variety of training which would enable any of the grievants to perform enough of the emergency work to be a reliable employee during the period in dispute.

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<sup>11</sup> August tr. p. 305

<sup>12</sup> August tr. p. 304-5

<sup>13</sup> August tr. page 303-4

<sup>14</sup> See, for example, August tr. p. 324. 332-3.

<sup>15</sup> August tr. p. 309

<sup>16</sup> August tr. p. 309-12

<sup>17</sup> August tr. pp. 317-19

<sup>18</sup> August, tr. p. 345



### SEWER MAINTAINER

The Sewer Maintainer is an entry level classification in the sewer department. Sewer Maintainers are primarily responsible for the maintenance and repair of the separate storm sewer and sanitary sewer lines of the Employer. Sewer Maintainers regular duties include cleaning sewers using the tanker for flushing and the high pressure sewer cleaner (Jetter) to pressure debris out of the sewer. They also use a remote controlled video camera to identify and diagnose problems in the sewers. They use the sewer rodder to cut roots and other debris blocking sewer lines. They also assist in the repairing and replacement of broken sewer lines.<sup>19</sup> Sewer Maintainers regularly respond to emergency sewer back-up situations. Sewer Maintainers normally work in pairs, but may be required to respond alone.

Sewer Maintainers' duties during the time in dispute are essentially the same as they are throughout the year unless it is below zero.<sup>20</sup> They are focused on checking to see if construction projects which were done earlier in the year are functioning correctly and preparing sewers for the projects which will be done in the Spring.

The essence of the Union's position as to the employees seeking to bump into this position is that each could be minimally qualified to perform this position with only a few hours' familiarization. It views being "minimally qualified" as being able to assist other employees in the use of the equipment in dispute. None of these employees would be qualified to act alone to answer emergency calls after hours or to work alone at a work site, if so required.

The Employer recently had two employee fatalities in a confined space mishap. It is not reasonable to expect the Employer to allow any employee to work on any project, including those which do not present confined space issues without fully providing the confined space training. It is not practical to expect the Employer to have done so for a layoff of this short duration. None of the grieving employees have confined space training other than Mr. Blair. Mr. Blair may have had confined entry training because Equipment Operator III's receive that training and Mr. Blair was an Equipment Operator III.

None of the employees would be qualified to use the video equipment, nor would they be able to evaluate and report on the condition of the sewers to a level to meet the Employer's needs.

The rodder is not a complex piece of machinery, but its use involves a risk of serious injury or death if improperly used. None of the employees was sufficiently experienced to use the equipment alone, but each could play a supporting role with a more experienced employee.

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<sup>19</sup> Jt. Ex 11, Er. Ex 1, August tr, 104-115

<sup>20</sup> August tr. p. 162

The Jetter is an expensive piece of equipment. None of the employees could have been trained or developed enough experience to use the Jetter. It is not believable that the Employer would allow an untrained employee perform even a supporting role with respect to this equipment without creating a specific extensive training program for that employee.

Each Sewer Maintainer must be qualified to answer citizen complaints. None of the grieving employees could perform that work. When one situation occurs, there may be many calls from different home owners. The better view of the evidence is that at least one of these situations was likely to occur in the disputed period. It would have been very difficult for the Employer to have an employee who was not qualified to handle one of these calls.

Most of the Sewer Maintainers' work is doing regular maintenance.<sup>21</sup> I conclude that none of the employees was sufficiently qualified to work as a Sewer Maintainer during the period in dispute.

### **TRADES TECHNICIAN**

There is one relevant position of Trades Technician (carpenter Trades Technician). At least one grieving employee did have the qualification to replace the Trades Technician. The Trades Technician is essentially a "jack-of-all-trades" position. The following are its functions:

- Elevator inspection
- Brine system maintenance
- Maintain DPW heating and air conditioning systems
- Maintenance of the fire suppression and other systems at the parking garage

The Employer has maintained a program of cross-training in which Equipment Operator I's could understudy the Trades Technician for a period of time as the Trades Technician Helper.

Mr. Blair is the senior employee seeking to bump into the Trades Technician position. He does have work experience as the assistant to the masonry Trades Technician.<sup>22</sup> That position is not the one in dispute. He does not have sufficient relevant experience to be qualified for the position in dispute. Mr. Raduechel is the next senior grievant applying to bump into the disputed Trades Technician position.

Mr. Raduechel participated in that cross-training program for two years, during which period the Trades Technician resigned. Mr. Raduechel then performed all of the duties of the

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<sup>21</sup> July tr. p. 207

<sup>22</sup> July tr. p. 256

Trades Technician position that existed at that time. I note that the broad range of changing duties requires that the Trades Technician have the ability to learn new skills quickly.

Mr. Skare testified Mr. Raduechel was not qualified for the position because he could not perform the duties which have changed since Mr. Raduechel did that work<sup>23</sup> for the following reasons.

1. He was not able to maintain the fire suppression system at the Jefferson Street parking garage.
2. He was not able to maintain elevators at the level of responsibility required of the Trades Technician.
3. He was unable to maintain the new computerized brine system
4. He did not know various codes for the fire system or to enter locked doors.
5. He was not trained to deal with rooftop HVAC systems.
6. He cannot work on airport hangar doors.

The Trades Technician is responsible to test the fire recall system at the Jefferson Street Parking Garage and, in that regard, must properly inform the fire department that a test is in progress. Mr. Raduechel does not know the current codes for the fire system and the protocol for dealing with the fire department. The fire sprinkler system flopper valve occasionally loses air pressure. It takes about three hours of work to reset it. Mr. Skare's testimony indicates that Mr. Raduechel could easily be familiarized with the proper codes and shown what else needs to be done as to the fire sprinkler system in short order.<sup>24</sup>

The Trades Technician has responsibilities for such a large number of different systems that employees in this position tend to quit frequently.<sup>25</sup> This appears to have been one of the purposes of Trades Technician Helper program in which Mr. Raduechel participated; to cross-train employees to fill in. Mr. Raduechel has demonstrated the ability to learn quickly. It appears that putting Mr. Raduechel in this position temporarily would have been consistent with the Employer's interests in that he would have a chance to upgrade his skills.

Mr. Raduechel worked on the Employer's old brine system. The Employer purchased a new computerized brine system and trained the current Trades Technician, Mr. Bradfish, on the system. Mr. Raduechel was not trained with respect to the new system. The better view of the evidence is that it is unlikely that there would have been any work to do on the brine system during the period in dispute. The current Trades Technician along with every other laid off employee would have been available for recall during the period in the unlikely event of a need for work on this system.

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<sup>23</sup> July tr. p. 30, August tr. 237-

<sup>24</sup> See, August tr. p. 241-2 for example

<sup>25</sup> August tr. p. 236

It is unclear whether there would have been any work on hangar doors at the airport. The flying season generally was a close at the time of the dispute. The Employer had installed new hangar doors. Any work which would have occurred would have involved trouble shooting skills Mr. Raduechel has already demonstrated.

Similarly, the better view of the evidence is that work with the roof top HVAC systems is also work which Mr. Raduechel could perform with a minimal amount of familiarization. Accordingly, the Employer violated the agreement by not allowing Mr. Raduechel to bump into this position during the period in dispute.

### EQUIPMENT MECHANIC

The job description for mechanic provides that the Mechanic must have two years mechanic experience and formal course work in heavy equipment and truck repair. It specifies the duties as:

- Perform major engine repairs including valve jobs, engine overhauls, transmission, and suspension repairs
- Repair and rebuild water pumps, rear ends, steering assemblies, electrical systems, and other mechanical components on a variety of heavy equipment, including bulldozers, front-end loaders, graders, and large trucks.
- Check and repair hydraulic equipment and other specialized types of equipment such as snow blowers and steam boilers
- Perform electrical and acetylene welding as necessary for hard surfacing of plow blades and salt spreaders.
- Design and build specialized equipment as needed
- Perform some auto body repairs.
- Perform related work as required.

The Employer ordinarily has three mechanics per shift for two overlapping shifts. Mechanics are assigned and must complete individual work orders. They ordinarily work as a pair because they often handle larger pieces of equipment requiring two people. They must be able to work alone.<sup>26</sup> They are responsible for 750 pieces of equipment of which at least 40% are motor vehicles (heavy trucks, road equipment, squad cars and fire trucks). The motor vehicles include police squad cars which require frequent repair. The non-motor vehicles include the snow plow mechanism attached to various vehicles. When performing mechanical diagnostic

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<sup>26</sup> August tr. pp. 273-5

work on motor vehicles, mechanics must use the Employer's auto diagnostic computer system. Employees must make and keep records of their work to comply with U.S. Department of Transportation rules.<sup>27</sup>

The only grievant seeking to bump into the mechanic position was Mr. Wendtland. Wendtland has some experience in mechanics.<sup>28</sup> This experience does include auto repair, auto computerized diagnostics, and some hydraulic work. He also has had welding experience.

At the disputed time of year, mechanics are primarily engaged in repairing the specialized equipment of squad cars and preparing plows and salter vehicles and equipment for the snow season immediately ahead.<sup>29</sup>

It takes specialized training to work on police and fire vehicles and associated apparatus.<sup>30</sup> Even if the Employer were to try to train Mr. Wendtland to repair this equipment, it could not be completed in the disputed period. Therefore, he was not qualified to do work on the emergency vehicles and associated apparatus.

The snow vehicle work requires welding and advanced knowledge of welding. Mr. Wendtland is capable of welding, but does not have the level of knowledge necessary to work with the hydraulic systems in dispute. Mr. Skare who previously worked as a mechanic for the Employer testified that he did interview Mr. Wendtland concerning hydraulics. His testimony is credible that Mr. Wendtland is not sufficiently knowledgeable about the level of hydraulics necessary to work on the Employer's equipment. I am satisfied that Mr. Wendtland was not qualified to work as mechanic during the period in dispute.

### **APPROPRIATE REMEDY**

The Union has requested a remedy of paying all affected employees for the lost time and benefits at the pay rate of the higher position. The remedy of paying Mr. Raduechel for all lost time is appropriate, but the rate should be at the Equipment Operator I rate. Article 9, Section B specifies that employees in the specified units are to receive priority for promotions over those who have greater seniority with the Employer. This conflicts with Article 12's method of selection for layoff. The better resolution of this conflict is that the use of bumping cannot result in even a temporary promotion. Accordingly, the appropriate wage rate for this remedy is the Equipment Operator I wage rate.

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<sup>27</sup> August tr. pp. 210-221, 230

<sup>28</sup> July tr. pp. 299

<sup>29</sup> August tr. pp. 228-9

<sup>30</sup> August tr. p. 213-4

**AWARD**

The Employer violated the agreement when it did not permit Mr. Raduechel to bump into the disputed Trades Technician position. It shall make him whole for all lost wages and benefits for the period of the layoff at the Equipment Operator I wage rate. I reserve jurisdiction over the specification of remedy if either party requests that I do so in writing, copy to the opposing party, within sixty (60) days of the date of this award.

Dated at Madison, Wisconsin, this 3rd day of March, 2011.

Stanley H. Michelstetter II /s/

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Stanley H. Michelstetter II, Arbitrator