

IN THE MATTER OF AN ARBITRATION BETWEEN

CITY OF MADISON

and

TEAMSTERS UNION LOCAL NO. 695

Case ID: 256.0000

Case Type: MA

AWARD NO. 7909

Appearances:

Kyle A. McCoy, Soldon Law Firm, 1678 Glenwood Road, Ann Arbor, Michigan, appeared on behalf of the Union.

Greg Leifer, Labor Relations Manager, City of Madison, City County Building, 210 Martin Luther King Jr. Boulevard, Madison, Wisconsin, appeared on behalf of the City of Madison.

ARBITRATION AWARD

On October 14, 2014, the City of Madison and Teamsters Union Local No. 695 filed a request with the Wisconsin Employment Relations Commission seeking to have William C. Houlihan, a member of the Commission's staff, appointed to hear and decide a grievance pending between the parties. A hearing was conducted on December 9, 2014, in Madison, Wisconsin. A transcript of the proceedings was taken and distributed on December 18, 2014. Post-hearing briefs were filed and exchanged by January 28, 2015.

The parties stipulated to the following issue for decision:

Did the City violate the collective bargaining agreement when it did not award the Class A Mechanic position to the grievant? If yes, what is the appropriate remedy?

BACKGROUND AND FACTS

The City of Madison runs a bus service through its Transit Division. The City and the Union have been signatories to a series of collective bargaining agreements reaching back decades. The relevant provisions of the current collective bargaining agreement are set forth below. The parties refer to a Class A Mechanic position which is referred to as a Class A Maintenance Employee in the glossary of the collective bargaining agreement.

The Grievant, Chris Halverson, has been employed by the City of Madison, Department of Transportation, Transit Division, since he was hired in November 1982. Prior to working for the City of Madison, Halverson worked for Nelson Industries running tests for diesel engines. He has a Diesel and Heavy Equipment Degree from Madison Area Technical College. Halverson worked as a Class C Mechanic for approximately ten years. In that capacity, he worked on a variety of assignments repairing buses. Halverson became a Class B Mechanic in 1994 and worked primarily on wheelchair lifts at that time. In 1995, Halverson went to the Tire Shop, where he worked on tire-related maintenance and repair. While in the Tire Shop, Halverson performed little work that was not tire related. While in the Tire Shop, Halverson received little training in non-tire-related maintenance and repair. After he applied for the Class A Mechanic position, Halverson has availed himself of training opportunities beyond those involving tires.

On February 23, 2013, the City posted two Class A Mechanic positions, which had come vacant due to retirement. A number of employees signed the posting. Halverson was the most senior of those employees. Halverson was deemed not qualified and the positions were awarded to employees Ward and Buege, who were the second and third most senior employees to sign the posting.

Historically, vacancies have been filled by seniority. The record indicates that this is the first vacant position that has not been filled by seniority in a 30 to 40 year period. Halverson is the first job bidder to be disqualified for failure to meet the minimum job qualifications. Testimony indicates that prior to the matter giving rise to this dispute, all promotions from Class C to Class B Mechanic and all promotions from Class B to Class A Mechanic have gone to the senior applicant.

Testimony indicated that much of the Class B Mechanic work is different from that performed by Class A Mechanics. Class A and B Mechanics do not work side by side. Many of the tasks of a Class A Mechanic, including tune-ups, are not performed by Class B Mechanics. The testimony indicates that there is a good deal of on-the-job training that accompanies promotion to a Class A Mechanic position. Coworkers help one another. There are manuals that serve as reference guides for many of the maintenance and repair tasks associated with the buses. A considerable amount of training is available and the City puts newly promoted Class A Mechanics through certain specific formal training programs.

It was the uncontroverted testimony of two witnesses that the City has previously never evaluated the background and skill set of applicants for vacant positions. There has never been a checklist of skills and qualifications that had to be satisfied to be deemed qualified for a promotion.

Halverson was not offered the job because the City did not regard his years working in the Tire Shop as the kind of mechanical experience in the repair and maintenance of transit vehicles contemplated by the contractual definition of minimum qualifications. The City values Halverson's work in the Tire Shop, but feels that it is not the kind of preparation for a Class A Mechanic contemplated by the contract. The City further indicates that the diesel engine has continued to evolve over the years, and is now a far more complex piece of equipment to maintain and repair. In summary, the City did not believe that Halverson possessed the minimum qualifications for the Class A Mechanic job.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

GLOSSARY AND MINIMUM QUALIFICATIONS

* * * * *

Class "A" Maintenance Employees are maintenance employees who are capable of and can satisfactorily make, in a reasonable length of time, without the aid of supervision, any and all repairs either major or minor to, or service such vehicles or equipment or units thereof, as may be assigned by the Employer for repairs or service, and who can satisfactorily direct the activities of other employees of the maintenance department.

Class "A" Maintenance Employees Minimum Qualifications. Two (2) years of mechanical experience in the repair and maintenance of transit vehicles and equipment at the level of a Class "B" mechanic with Madison Metro, or with less than two (2) years experience, then other combinations of training and/or experience which can be demonstrated to result in the possession of the knowledge, skills and abilities necessary to perform the duties of this position will also be considered. Possession of a valid Wisconsin driver's license, and the ability to receive a passing score on a job-related performance test. Must possess Class B Commercial Driver's License, without an Air Brake restriction; "P" endorsement is not a requirement. (Current active employees within the above defined classification would be grandfathered from this requirement if that employee is not

presently in possession of the CDL requirement at the time of the execution of this Agreement.

Class "B" Maintenance Employees are maintenance employees who are capable of and can satisfactorily make, in a reasonable length of time and with a minimum amount of supervision when necessary, any and all repairs, either major or minor to, or service such vehicles or equipment or units thereof as may be assigned by the Employer for repair or service. Tire employees are Class "B" Maintenance Employees who are capable of and can make, in a satisfactory manner, any and all repairs to tires including mounting and dismounting and painting wheels, and in addition, can do Class "B" Maintenance work if there is no tire work. Tire employees shall be paid Class "B" Mechanic wages.

Class "B" Maintenance Employees Minimum Qualifications.

Two (2) years of mechanical experience in the repair and maintenance of transit vehicles and equipment at the level of a Class "C" mechanic with Madison Metro, or with less than two (2) years experience, then other combinations of training and/or experience which can be demonstrated to result in the possession of the knowledge, skills and abilities necessary to perform the duties of this position will also be considered. Possession of a valid Wisconsin driver's license, and the ability to receive a passing score on a job-related performance test. Must possess Class B Commercial Driver's License, without an Air Brake restriction; "P" endorsement is not a requirement. (Current active employees within the above defined classification would be grandfathered from this requirement if that employee is not presently in possession of the CDL requirement at the time of the execution of this Agreement.

Class "C" Maintenance Employees are maintenance employees who are trainees for the classification of Class "B" Maintenance Employee and are capable of and can satisfactorily assist, with proper supervision, any type of work encountered in repairing or servicing such vehicles or equipment or units thereof as may be assigned by the Employer for repair or service.

Class "C" Maintenance Employees Minimum Qualifications.

Six (6) months of experience at the level of a Service Worker with Madison Metro, or with less than six (6) months experience, then other combinations of training and/or experience which can

be demonstrated to result in the possession of the knowledge, skills and abilities necessary to perform the duties of this position will also be considered. ...

* * * * *

**ARTICLE 1 – RECOGNITION, NON-DISCRIMINATION
AND WORK PRESERVATION**

* * * * *

1.7 Management Rights. The Union recognizes the prerogative of the City to operate and manage its affairs in all respects in accordance with its responsibility and the powers or authority which the City has not officially abridged, delegated, or modified by this Agreement and such powers or authority are retained by the City.

* * * * *

ARTICLE 10 – MAINTENANCE OF STANDARDS

10.1 The Employer agrees that all conditions of employment relating to wages, hours of work, overtime differentials and general working conditions in effect at the time of signing this Agreement will be maintained at the standard in existence at the time unless a different provision is made therefore in this Agreement.

10.2 This Article shall not be construed to apply to permissive subjects of bargaining. Disputes concerning whether or not a subject is a permissive subject of bargaining shall be decided by the Wisconsin Employment Relations Commission.

* * * * *

ARTICLE 29 - SENIORITY

* * * * *

29.4 Progressive Seniority (Shop).

A. Progressive seniority shall prevail within the shop. That is, upon entry into each classification, the shop employee will assume the bottom position within that classification, regardless of total shop or Transit Division seniority. With the exception of entry-level utility and entry-level "C" Mechanic positions, when a new opening becomes available, the senior most qualified employee in the next lower classification will have preference for that opening. If for any reason he/she passes the promotion, the next senior employee may pick the opening and so forth. Once having let the opening pass to a lower-seniority person the senior employee gives up all rights to "bump" the lower seniority employee upon entry into the same level. An employee's seniority within each classification is established by the entry date into that classification. Progressive seniority will also prevail for shift pick.

* * * * *

ARTICLE 35 – JOB BIDDING

35:1 Employees will be notified of any new position or vacancy to be filled by the Employer and such new position or vacancy will be posted on the bulletin board.

Shop Posting. Notice of non-supervisory vacancies shall be posted on the bulletin board for a period of four (4) work days before the vacancy is filled. Employees interested in such posted jobs shall sign the posted notice. Qualifications being reasonably equal among those employees in the next lower classification who have met the minimum qualifications, seniority shall apply in filling vacancies. After the new employee is hired, the "work schedule" shall be posted immediately and will be picked by seniority in that classification. Minimum qualifications must be reasonably related to the job. The provisions of this section shall not apply to entry-level "C" mechanic and entry-level utility positions.

DISCUSSION

There are two provisions of the collective bargaining agreement which specifically address the standard for filling vacancies in the bargaining unit. Article 29.4 provides "... when a new opening becomes available, the senior most qualified employee in the next lower classification will have preference for that opening." On its face, I find the phrase "... senior most qualified ..." somewhat ambiguous. It is entirely possible that the senior employee may not be the most qualified and vice versa.

Article 35.1 provides: "Qualifications being reasonably equal among those employees in the next lower classification who have met the minimum qualifications, seniority shall apply in filling vacancies." Under Article 35, it appears that employees have to satisfy certain minimum qualifications. Once those qualifications have been met, seniority applies if the applicants' qualifications are reasonably equal. There is no indication in the record that the reasonably equal qualification standard has ever been applied. To the contrary, the record indicates that numerous vacancies have been filled over a long period of time on the basis of seniority. There is nothing in the record to indicate that the City ever drew distinctions between the relative qualifications of employees competing for a vacant position. The reasonably equal provision is not in dispute in this proceeding. Halverson was denied the position because the City concluded that he did not meet the minimum qualifications for the Class A Mechanic.

Minimum qualifications are addressed in the glossary of the contract. The glossary defines a Class A Mechanic and goes on to set forth the qualifications for the position. The qualifications require "[t]wo (2) years of mechanical experience in the repair and maintenance of transit vehicles and equipment at the level of a Class "B" mechanic with Madison Metro." In the alternative "... other combinations of training and/or experience which can be demonstrated to result in the possession of the knowledge, skills and abilities necessary to perform the duties of this position will also be considered."

It is the view of the City that Halverson's 18 years in the Class B Mechanic position does not satisfy the requirement because his tire work did not constitute "repair and maintenance of transit vehicles." However, his work did involve the maintenance and repair of "equipment," notably tires. To remain qualified to perform Class B "tire" work, the glossary requires that Halverson be capable of performing "... Class "B" Maintenance work if there is no tire work."

In evaluating Halverson's qualifications, the City reviewed his work history with the City. It appears that the City did not evaluate Halverson's prior work record or education from the time period preceding his employment with the City.

There is a practice acknowledged by the parties in filling vacancies. Vacant positions have historically been filled by seniority. The evidence indicates that there has never been an

application of relative ability measurements nor competence screening in the job filling process. There was no indication that ability measurements have ever been employed. There was testimony that a previous vacancy was filled with a Tire Shop employee.

I think the words of the contract are ambiguous. Article 29.4 provides that “[p]rogressive seniority shall prevail within the shop.” It further provides that “... the senior most qualified employee ... will have preference for that opening.” If that individual “... passes the promotion, the next senior employee may pick the opening and so forth” There is no reference to qualifications in the second round of job bidding. The references to senior qualified and senior employee are used in a context which suggests that they are equivalent. It would seem a strange construction of the provision to conclude that the initial candidate for a position had to pass a qualification measurement, but if the process moved on to the next candidate, who would ostensibly be less senior, that candidate would not be subject to such a requirement. Article 29.4 provides that the process moves on if the (senior) individual “passes the promotion.” It does not say if the senior individual is passed over or is disqualified. The paragraph is structured as if the senior employee is entitled to the vacancy. In light of the practice, I believe the parties have interpreted senior most qualified as senior.

Article 35 has two references to qualifications. The first is that the qualifications of applicants are assessed to determine if they are reasonably equal. That has never been done and it is not argued to be a part of this dispute. The second reference to qualifications is that an applicant must meet the minimum qualifications to have seniority considered. Once the minimum qualifications have been satisfied seniority shall apply.

The glossary sets forth the minimum qualifications for a Class A Maintenance Employee. Those qualifications can be satisfied in one of two ways. The first is to work for two years as a Class B Mechanic, performing repair and maintenance of transit vehicles and equipment. Halverson was deemed not qualified under this provision because his Tire Shop work was not credited. The provision makes specific reference to equipment. I would construe equipment for a bus to include tires. The sentence does not specifically address engines. The second route to qualifying is for an assessment of an applicant’s other training or experience which might demonstrate the knowledge, skills and abilities to do the job. Halverson was not so evaluated. He failed to qualify under this provision because his prior work experience and formal instruction was too old. The City believes the increasing complexity of the diesel engine is such that it has meaningfully outstripped the experience that could have been gained before Halverson was hired.

The glossary paragraph titled Class B Maintenance Employee requires that Class B Maintenance Employees be able to do “... Class "B" Maintenance work if there is no tire work.” That provision cannot support a presumption that a Class B Tire Mechanic is not qualified to perform the repairs described in the Class B Maintenance Employee paragraph. The record supports a finding that Class B Mechanics do not perform Class A Mechanic work,

nor do they work alongside Class A Mechanics. Class B Mechanics perform Class B Maintenance work. There is an on-the-job training component to a promotion into Class A.

The practice is not ambiguous. It paints a picture as to how these parties have interpreted the various provisions set forth above. The practice has existed for decades and has involved numerous events. The seniority based selection of applicants for vacancies clarifies how the parties have reconciled the internal inconsistencies of Article 29.4. The parties have treated the terms senior most qualified as synonymous with the term senior employee. That has removed the ambiguity and conformed the paragraph to the topic sentence, “[p]rogressive seniority shall prevail within the shop.”

With respect to Article 35, the parties’ practice has treated Class B Mechanics as having satisfied the minimum qualifications for entry into Class A Mechanic jobs.

As to the requirements set forth in the glossary, the practice is that two years as a Class B Mechanic has satisfied the experience requirement. Halverson has several years’ experience of repair and maintenance of tires. The City believes the requirement must be read to include engine and mechanical repair. While that might be a logical inference to be read into the sentence, it is not how these parties have interpreted the provision. The parties have applied this provision to have seniority carry the day. A prior Tire Shop employee was promoted to Class A Mechanic. There has never been a qualifications screen to promote to a Class A Mechanic position.

The City is concerned that the diesel engine has become so complex that a higher training and skill level is required to promote into the Class A Mechanic position. There are times when practices give way because the facts giving rise to the practice change. Evidence submitted at hearing indicates that the diesel engine has evolved over a period of decades. The engine and accompanying environmental regulations have evolved over a period of decades. This is not an overnight phenomenon. The evolution of the seniority-based practice has occurred alongside the evolution of the diesel engine and environmental regulations.

I conclude that the practice of filling vacancies by seniority has evolved so as to interpret the meaning of the articles discussed above. It has become so engrafted onto the contract as to provide clear and unambiguous direction as to what the various provisions of the contract mean.

In essence, the City is attempting to change the practice unilaterally. It is the view of the City that the complexity of the diesel engine is such that it can no longer live with the current system. However, the practice has become a part of the contract, in that it interprets and gives meaning to a series of provisions that are otherwise ambiguous. As such, it cannot be changed unilaterally. The changes sought by the City can only be achieved at the bargaining table.

AWARD

The grievance is granted.

REMEDY

Mr. Halverson is to be placed in a Class A Mechanic position, retroactive to March 20, 2013, and made whole for his losses.

Signed in Madison, Wisconsin, this 24th day of March 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

William C. Houlihan, Arbitrator