

**State of Connecticut
State Board of Mediation and Arbitration**

In the Matter of	:	Case No. 2021-A-0297
	:	
The Metropolitan District Commission	:	Date of Award: July 27, 2022
	:	
-and-	:	Date of Virtual Hearing: April 12, 2022
	:	
Local 184, Council 4, AFSCME	:	
AFL-CIO	:	

AWARD

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Betty Kuehnel, Labor Member
Michael Culhane, Management Member

John S. Mirtle, representing the District
Anthony J. Bento, Esq., representing the Union

Procedural History and Issue

This is a dispute between the Metropolitan District Commission (District) and Local 184, Council 4, AFSCME, AFL-CIO (Union) concerning a claim of working out of class and corresponding pay by Gregory Spillman (grievant). After due notice, the parties appeared virtually on April 12, 2022 and presented evidence and witnesses and had opportunity to cross-examine same. The parties filed post hearing briefs.

The parties stipulated to the following issue:

1. Was Gregory Spillman working out of class as a Crew Leader from February 21, 2021?
2. If so, what shall the remedy be?

Relevant Collective Bargaining Provisions

Section 2.1 - Unless expressly limited by a specific section of this agreement the rights, authority, powers and responsibilities of the District, as conferred by any general or Special Act of the Legislature or any District ordinance or regulation including but not limited to all control and direction over employees of the District as well as the complete operational management of all facilities, policies, and procedures.

Section 2.2a- The District shall retain the full and exclusive right to determine standards of quality, schedules of operations, classification of jobs, the assignment of work and methods, processes and levels of productivity, to introduce new or improved production methods, facilities, services or products and to extend, limit or curtail the operations of facilities or the number of employees, unless expressly limited by specific terms of this agreement. (Joint Exhibit 2).

Section 9.14 Temporary Assignment in Higher Classification – Employees, assigned temporarily to work in higher- classified positions by the Department Head with written notice to the Director of Human Resources beyond five (5) consecutive days, shall be paid at a rate in the higher classification that provides for at least a one-half step increase not to exceed that maximum step of the higher classification. The pay adjustment shall be effective the first day following the qualifying period while still performing the higher-classified work. For purposes of qualification, the first week may be any part of a full week.

Where possible, these assignments shall be rotated among the bargaining unit employees capable of performing the higher-classified work.

Section 18.6a The arbitration panel shall decide only one (1) grievance. The decision of the panel shall be final and binding as provided by law. The panel shall be bound by, and must apply all

the terms of this agreement, and shall have no power to add to , subtract from, or in any way modify the provisions of this agreement.

Findings of Fact

1. The District and the Union negotiated a collective bargaining agreement in 2015 which in part took a number of function specific job classifications and rewrote them into more broad multi-tasking classifications. (Joint Exhibit 3). Employees were now able to work across the District's functional areas of delivery of drinking water, sewers, hydrants and the gate system.

2. The grievant filed his grievance on February 22, 2021, alleging that his position, Utility Maintainer 2 (UM2) is "being asked to perform work that was previously performed by a crew leader (working out of class)". He requested that the "vacant position was held by a crew leader and should be filled by a crew leader, and or make the aforementioned employee whole." (Joint Exhibit 4).

3. Specifically, the grievant was placed on the on-call sewer crew list for the week of March 5, 2021 with a Utility Maintainer I (UM1). There was no crew leader assigned to this list with them which the grievant believes violated the collective bargaining agreement.

4. At the hearing, the Union presented job descriptions representing those of UM2 and Utility Maintenance Crew Leader. The Director of Human Resources, Jamie Harlow (Harlow), competently testified that those descriptions were not accurate and that she had never seen them before. The actual current approved job descriptions were entered into evidence as District Exhibits 1 and 2.

5. There is no requirement that a crew leader be placed on an on-call list. Of the seven on-call crews that rotate each week, four have crew leaders.

The grievant testified in his opinion, that the work of setting up an emergency repair site, determining whether a police officer should be involved for traffic control, working in confined space with the required gas metering, is all work that a crew leader should do. However, the complained of work is covered by the UM2 job description. The job description states that the UM2 "Responds first to reported system emergencies...determines responsibility for

correction...Determines whether repairs can be made alone or if assistance is needed...Works in residences, commercial and industrial premises, and in pits and vaults; Responds to utility emergencies at any time of day or night, as directed. Serves on-call for emergencies, as assigned.” (District Exhibit 2).

6. The grievant received training in traffic control procedures. He testified that if he needs the assistance of a crew leader in these tasks, he can call one. If one is not available, he can call a supervisor. He has not had any difficulty receiving guidance from either when necessary.

The grievant was called in six times in the recent past from the filing of the grievance for emergency work. On three of those dates, 4/17/21, 11/01/21 and 12/19/21, the grievant did not request the assistance of a crew leader or supervisor. On three other dates, 4/18/21, 12/20/21 and 3/14/22, a crew leader or supervisor was present.

Arguments of the Union

The Union argues that it has established by a preponderance of the evidence that the grievant should be paid at the Crew Leader level for the work that he performs. Creating traffic patterns, laying out traffic cones, deciding whether police officers should be involved, monitoring and reporting confined space work, taking gas readings and leading crews is all work of a Crew leader and the grievant should be compensated for that work.

Since the grievant is out on an emergency, working as a crew leader, then he should be paid at the Crew Leader level.

Arguments of the Employer

The District argues that the work the grievant describes is entirely within the job description as agreed to by the parties. That the grievant is trained for all aspects of the work described, and that he is encouraged to ask for assistance whenever he determines that he cannot handle the emergency conditions he finds, either from a Crew Leader or a Supervisor.

Discussion

The Union has the burden to demonstrate by a preponderance of the evidence that the District is in violation of the collective bargaining agreement. It has not met that burden.

There is no element of the grievant's complained of work that does not appropriately appear in the UM2 job description. And, although some judgments the position is called upon to make are important ones, the grievant's own testimony established that if he ever needed help with those decisions, he always can call a Crew Leader or Supervisor.

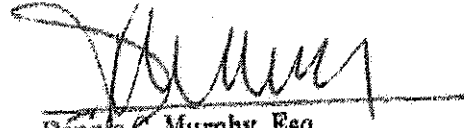
The parties established the current distribution of work responsibilities in the 2015 negotiations for a successor collective bargaining agreement. The Union's request now to have this work of the UM2 be paid at a higher level does not comport with the prior agreements made.

The grievance must be denied.

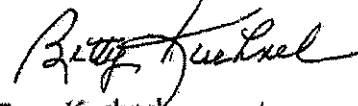
AWARD

Gregory Spillman was not working out of class as a Crew Leader from February 21, 2021

By the Panel



Dennis C. Murphy, Esq.
Chair and Public Member



Betty Kuchnel
Labor Member



Michael Culhane
Management Member