BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between OSHKOSH CITY EMPLOYEES' UNION, LOCAL 796, AFSCME, AFL-CIO and CITY OF OSHKOSH	Grievance of Garth Seiler dated 12-2-93 rate for work out of class Case 215 No. 50459 MA-8262

Appearances:

Mr. Warren P. Kraft, City Attorney, City Hall, 215 Church Avenue, Oshkosh, Wisconsin 54901, appearing on behalf of the City.

Mr. Gregory N. Spring, Council 40 Staff Representative, 1121 Winnebago Avenue, Oshkosh, Wisconsin 54901, appearing on behalf of the Union.

ARBITRATION AWARD

The parties jointly requested that the Wisconsin Employment Relations Commission designate the undersigned Marshall L. Gratz as Arbitrator to hear and determine a dispute concerning the above-noted grievance under the grievance arbitration provisions of their 1991-92 collective bargaining agreement (herein Agreement).

The parties presented their evidence and arguments to the Arbitrator at a hearing held at City Hall in Oshkosh, Wisconsin, on February 1, 1994. The hearing was not transcribed, but the parties agreed that the Arbitrator could maintain an audio tape recording of the evidence and arguments for his exclusive use in award preparation. The parties summed up their positions on the record at the conclusion of the hearing.

STIPULATED ISSUES

At the hearing, the parties authorized the Arbitrator to decide the following issues:

1. Did the Employer violate the Agreement by paying Garth Seiler at Step B while temporarily assigned as Water Meter Serviceman?

2. If so, what is the appropriate remedy?

PORTIONS OF THE AGREEMENT

ARTICLE XI

PAY POLICY

. . .

Promotions and Demotions: Whenever an employe is promoted to a higher paying position, such employee shall move to the step in the new range which will provide a wage increase. Whenever an employee is demoted to a lower paying position, such employee shall go to the step in the new range which provides the same wage or least amount of wage reduction.

. . .

Temporary Assignments - Employees assigned to do work in a lower rated job classification shall be paid at their job classification rate. Employees assigned to do work in a higher rated classification for a period in excess of ten working days shall be paid for all such time in the higher classification at the rate that corresponds to the step at which he would normally be paid.

. . .

ART. XXVI

MAINTENANCE OF BENEFITS

The City will not change any benefit or condition of employment, which is mandatorily bargainable except by mutual agreement with the Union.

. . .

RATES

[Appended to the Agreement are Rate schedules effective at various dates during the term of the 1991-92 Agreement. The rates that follow are provided as a typical example.]

RATES

. . .

EFFECTIVE PAY PERIOD #14, 1992

Class	Rng.	Freq.	Span	A	B	C	D	E
Water Meter Reader	5	6 mo.	2 yr hr.	11.95	12.04	12.12	12.23	12.34
. . .								
Water Meter Serviceman	9	6 mo.	2 yr hr.	12.36	12.53	12.67	12.82	12.99

. . .

BACKGROUND

The City's Department of Public Works operates a water filtration plant and water distribution system. The Union has for many years represented a bargaining unit of non-professional, non-supervisory employes of the City's Departments of Public Works, Transportation and Parks.

In October of 1993, the Grievant, an 18 year City employe, had held the bid classification of Water Meter Reader for approximately 10 years. Accordingly, he was being paid at the Range 5, Step E rate. On October 4, 1993, without a posting, the City temporarily assigned Grievant to perform work in the Water Meter Serviceman classification. Grievant performed work in the latter classification until the City returned him to Water Meter Reader work on August 4, 1994. The City paid Grievant at the Range 9, Step B rate throughout that temporary assignment.

On December 2, 1993, Grievant filed the instant grievance asserting that, under Arts. XI and XXVI, he was entitled to be paid at Range 9, Step E.

The City denied the grievance at all of the pre-arbitral steps. Water Distribution Superintendent James Wolf's reply stated:

> I believe you should have been paid at the range and step that you would be paid at, if you were just assigned to that position on a permanent basis. In checking the Personnel records, I find this was the case. Therefore, I am denying your grievance.

Director of Public Works Gerald Konrad's response read as follows:

> You were temporarily assigned to perform duties as a meter service man. You performed these duties for a period of time in excess of 10 working days.
>
> When working a higher classification for a period of 10 working days or more, it has been the practice to pay wages of the higher classification in the next highest step above one's present pay scale. In your situation, payment was made on this basis. Payment would not necessarily be made in the same step in the higher classification that one holds in the lower classification because if one were to be permanently reclassified he would start in a lower step and work his way up through the steps as he gains experience.
>
> In your situation you were paid according to past practices and, therefore, I must deny this grievance.

The grievance remained unresolved and was submitted to arbitration as noted above.

At the hearing, it was undisputed that the Temporary Assignments language first appeared in the parties' 1989-90 Agreement (executed March 16, 1989), whereas the Promotions and Demotions language of Art. XI was in at least one prior agreement. The parties jointly submitted a May 21, 1990 arbitration award in which Arbitrator Richard McLaughlin determined that employes Keith Vienola, Pete Hathaway and Warren Schneider were each entitled to out-of-class pay for work performed in 1988 during the absence of an employe in a higher rated classification, and ordered that the City "make [each of them] whole by paying him the difference between the wages and benefits paid him during the period of time he filled in for [an employe in a higher rated classification] on a full-time and continuous basis, and the wages and benefits he would have been paid at the [employe's bid job] rate." Arbitrator McLaughlin concluded his award by stating that he would "relinquish jurisdiction over this matter on June 20, 1990, unless, prior to that date, I am advised of a valid reason not to."

The parties also jointly submitted a MEMORANDUM OF UNDERSTANDING dated October 3, 1990, [herein Exhibit 10] signed by authorized City and Union representatives, which read, in pertinent part, as follows:

> The [City and Union] agree that the following remedy resolves the Out-of-Class Pay Grievance [above, pending before Arbitrator McLaughlin] . . . :

1. Paid leaves shall be paid at the employee's normal wage rate. Paid leaves shall not interrupt continuous out-of-class service, but shall not count toward it.

2. Re-assignments to the employee's original job classification does not interrupt continuous out-of-class service.

3. For the purpose of resolving this dispute, the City agrees that time spent hauling mix shall count toward the out-of-class pay settlement for Pete Hathaway. Likewise the Union agrees that time spent operating the Water Wagon shall not count as out-of-class work for Mr. Hathaway. The parties agree that this section of the MEMORANDUM is without prejudice to either party and shall not be used as a precedent.

4. The calculations in parts 5, 6 and 7 below are based on the attached document and the 1988 wage schedule.

5. Under this settlement, Keith Vienola is entitled to payment of $46.40 or 4.34 hours of compensatory time. This is based on 235.75 hours at the out-of-class rate. (29 days x 8 hrs. + 2.5 hrs. OT). Multiplying those hours by $.20 (the difference between the Construction Crewman I and Construction Crewman II wage rates) results in $46.40. This amount divided by his normal 1988 rate of $10.68 equals 4.34 hours.

6. Under this settlement, Pete Hathaway is entitled to payment of $91.35 or 8.9 hours of compensatory time. This is based on 217.5 hours at the out-of-class rate. (27 days x 8 hrs. + 1 hr. OT). Multiplying those hours by $.42 (the difference between the Construction Crewman I and Equipment Operator I wage rates) results in $91.35. This amount divided by his normal 1988 rate of $10.26 equals 8.9 hours.

7. Under this settlement, Warren Schneider is entitled to payment of $24.60 or 2.36 hours of compensatory time. This is based on 153.75 hours at the out-of-class rate. (18 days x 8 hrs. + 6.5 hrs. OT). Multiplying those hours by $.16 (the difference between the Sewer Maintenance Man and the Equipment Operator II wage rates) results in $24.60. This amount divided by his normal 1988 rate of $10.41 equals 2.36 hours.

8. As part of this settlement, the Union will notify Arbitrator McLaughlin that the parties have resolved their dispute and will instruct him to relinquish jurisdiction over the above-entitled case.

The calculations in paragraphs 5, 6 and 7 of Exhibit 10 treated the grievants as if their 1988 rates had been adjusted as follows during the temporary assignments for which the parties had agreed to

compensate them at a higher rate:

Exhibit 10-Vienola
from
Range 7 Step E (top rate for bid Construction Crewman I)
to
Range 9 Step E (top rate for Construction Crewman II)
where Range 9 Step D also exceeded Range 7 Step E.

Exhibit 10-Hathaway
from
Range 2 Step C (top rate for bid Construction Crewman I)
to
Range 7 Step E (top rate for Equipment Operator I)
where Range 7 Step A-E rates exceeded Range 2 Step C.

Exhibit 10-Schneider
from
Range 5 Step E (top rate for bid Sewer Maintenance Man)
to
Range 6 Step E (top rate for Equipment Operator II)
where no other Range 6 rate exceeded Range 5 Step E.

Based on the foregoing evidence and brief testimony from the Grievant, the Union rested its case.

The City presented testimony by its Director of Administrative Services Norbert Svatos. Svatos testified that the parties' 1989-90 negotiations concerning out-of-class pay focused on when the employe would be entitled to such pay and not on the step at which the employe entitled to such pay would be paid. Svatos further testified that during those negotiations it had been his intent that the language added concerning Temporary Assignments would mean that employes eligible for pay for work performed on a temporary assignment would be paid at the step to which they would normally be moved on a permanent promotion.

Through Svatos, the City also presented payroll records regarding eight temporary assignments occurring from January of 1976 through June of 1994 as to which no grievances were filed regarding the rates paid. According to those records, the employes involved were paid rates as follows during their temporary assignments:

Exhibit 12 -- January, 1976
from
Range 2 Step C (top step of bid Laborer position)
to

Range 4 Step D (top step of Equipment Operator I)
where Range 4 Step C paid less than Range 2 Step C

Exhibit 13 -- January, 1987
temporary assignee continued at Range 2 Step C (top step) when temporarily assigned to another classification in the same range.

Exhibit 14 -- May, 1989
from
Range 3 Step C (top step of bid Equipment Operator I) to
Range 7 Step D (not the top step of Parks Maintenance Man)
where Range 7 Step C paid less than Range 3 Step C.

Exhibit 15 -- November, 1991
from
Range 2 Step C (top step of bid Transit Operator job)
to
Range 5 Step C (not the top step of Groundsman)
where Range 5 Step B paid less than Range 2 Step C

Exhibit 16 -- July, 1993 and again in August, 1993
from
Range 5 Step E (top step of bid Equipment Operator II) to
Range 6 Step E (top step of Parks Maintenance Man)
where Range 6 Step D paid less than Range 5 Step E

Exhibit 17 -- June, 1994
from
Range 5 Step E (top step of bid Equipment Operator II) to
Range 6 Step E (top step of Sewer Maintenance Man)
where Range 6 Step D paid less than Range 5 Step E

Exhibit 18 -- August, 1994
from
Range 5 Step E (top step of bid Equipment Operator II)
to
Range 6 Step E (top step of Sewer Maintenance Man)
where Range 6 Step D paid less than Range 5 Step E.

Svatos further testified that had Grievant been promoted to Water Meter Serviceman, he would have moved to Range 9 Step B and would not have reached Range 9 Step E until spending 6 months at each of Steps B, C and D. He also asserted that under the City's interpretation of the Agreement, Grievant should have been granted an increase to Range 9 Step C after he had spent 6 months at Step B, though Svatos was not sure whether the City had in fact granted Grievant that

step increase.

POSITION OF THE UNION

The Grievant's right to have been paid at Step E of the classification to which he was temporarily transferred is established by clear contract language, bargaining history and past practice.

The Temporary Assignments language in Art. XI provides that employes in Grievant's situation are to be paid "at the rate that corresponds to the step at which he would normally be paid." As a Water Meter Reader, Grievant would normally be paid at Step E (the top rate), so that is the rate at which he is entitled to be paid while he worked as a Water Meter Serviceman.

When the parties first added the Temporary Assignments language to the 1989-90 Agreement, they chose different language to specify the rate payable to temporary assignees rather than using the pre-existing rate language in the Promotions and Demotions paragraph. That use of different language indicates that the parties did not intend that employes in Grievant's situation were to be limited to a "move to the step in the new range which will provide a wage increase."

After entering into the 1989-90 Agreement, the parties clearly revealed their intended application of that new language by entering a carefully drafted written settlement memorandum (Exhibit 10) signed by the parties' representatives including Svatos, and expressly making only one section non-precedential. In sections of that memorandum that were not non-precedential, the parties moved Vienola from Range 7 Step E (the top step) to Range 9 Step E (the top step) even though Range 9 Step D would have provided him an increase, and they moved Hathaway from Range 2 Step C (the top step) to Range 7 Step E (the top step) even though Range 7 Steps A-D would have provided him an increase. The City has shown no special circumstances rendering those aspects of Exhibit 10 non-precedential.

Compared with that carefully drafted and signed settlement agreement, the City has offered no instance in which an employe was paid at a lower-lettered step during a temporary assignment the way Grievant was in this case. While in situations such as Exhibit 14 the employe coming from the top step was probably entitled to be moved to the top step of the temporarily assigned classification, the Union has not been shown to have been made aware of any such situation and therefore cannot be charged with knowledge or approval of it. In any event, the proper outcome in such a situation need not be decided here because it is factually unlike Grievant's situation. In contrast, the Exhibit 10-Vienola situation is factually indistinguishable from Grievant's situation in this case.

Finally, it is neither absurd nor illogical to pay employes on temporary assignments at a higher rate than might be paid to an employe promoted to the same position through the posting procedure. It is logical that an employe involuntarily temporarily assigned outside the employe's bid classification should be paid more advantageously than a promoted employe who voluntarily bids for the new position in response to a posting. Because management decides whether and how long to impose a temporary assignment, the potentially higher temporary assignment rate discourages the City from resorting to abusively long or repetitive temporary assignments in lieu

of posting a vacancy. Moreover, except for employes promoted to the top step in a classification, promoted employes enjoy step increases while working in the new classification, whereas temporarily assigned employes do not enjoy such increases during their temporary assignments.

For those reasons, the Arbitrator should order the City to pay Grievant the difference between what he was paid during the temporary assignment in question and what he would have been paid had he been paid at Range 9 Step E.

POSITION OF THE EMPLOYER

The City has properly interpreted the Agreement as entitling an employe temporarily assigned to a classification in a higher-rated classification to be paid at the lowest rate in that pay range, if any, that provides the employe with a rate increase. The last sentence in the Temporary Assignments language is properly to be interpreted as providing the rate at which the employe would normally be paid if permanently promoted to the position rather than temporarily assigned to it.

Whether the Union claims that Grievant was entitled to be paid at Step E because that is the letter at which he was paid as a Water Meter Reader or because he was paid at the top rate in Water Meter Reader range, the Union's interpretation must be rejected as absurd, illogical and inconsistent with past practice. Either of those interpretations could require the City to pay a temporary assignee more than it would pay the same employee if promoted to the position through a posting. Thus, the Union's interpretation might also require a temporary assignee to take a cut in pay when and if that employe successfully bid for a promotion to the position involved. Because of the nature of the rate schedule, paying the temporary assignee at the like-lettered step of the higher-numbered range could cause the employe to take a cut in cases such as that involved in Exhibit 14. The Union's interpretation could also deprive the temporary assignee of step increases after 6 months.

The Temporary Assignments language was added to the Agreement to answer the questions raised by then-pending grievances regarding whether and when a temporary assignment entitles an employe to the rate payable for the work temporarily assigned. Svatos' testimony that that was the parties' 1989-90 bargaining table focus, rather than the rates payable to temporary assignees, is uncontroverted. Thus, consistent with Svatos' uncontroverted understanding and intent, the question of what rate the employe would receive was to continue to be governed by an existing past practice of paying the lowest rate in the temporarily-assigned classification, if any, that would provide the employe with an increase. That practice is consistent with the approach expressly agreed upon by the parties in the Promotions and Demotions language which pre-existed the Temporary Assignments language.

The City followed that practice in Exhibits 12 and 14 by paying other than the like-lettered step because paying the like-lettered step would have cut the employe's rate. The City also followed that practice in Exhibits 14 and 15 by paying an employe coming from top step at less

than the top step of the temporarily assigned classification. The non-filing of any grievance concerning those outcomes binds the Union to a mutual understanding as to their propriety whether stewards or other Union officers knew about them or not, just as the Union often insists on holding the City to practices based on the actions of first line supervisors not known to higher levels of management.

Exhibit 10 resulted from special circumstances as indicated by the statement in paragraph 3 of that document, that "this section of the MEMORANDUM is without prejudice to either party and shall not be used as a precedent." There has been no showing that the City intended, by entering into Exhibit 10, to change its above-noted longstanding practice. Accordingly, Exhibit 10 ought not be deemed a binding precedent in this case.

The City's interpretation would fairly and logically continue the City's longstanding effort to assure that a temporary assignee receives an increase, if possible, and never a rate decrease.

For those reasons, the City's interpretation should be adopted and the grievance denied.

DISCUSSION

Grievant was undisputedly an "[e]mployee[] assigned to do work in a higher rated classification for a period in excess of ten working days," within the meaning of the Temporary Assignments language in Art. XI of the Agreement. The language of that paragraph expressly provides that, as such, Grievant shall be paid for all such time in the higher classification "at the rate that corresponds to the step at which he would normally be paid." This case turns on which of the parties' competing interpretations of the latter-quoted language is more persuasive.

The City's interpretation bases the temporary assignee's rate on what step the employe would have been paid at if promoted via posting to the higher classification rather than temporarily assigned to it. The City would therefore pay the temporary assignee at the lowest step in the new range that provides a rate increase. The City would also apparently treat the employe whose temporary assignment rate is below top step as eligible for step increases during the temporary assignment, (e.g., after 6 months in the assignment, etc.), though it is not clear whether Grievant actually received such a step increase.

The Union's interpretation bases the temporary assignee's rate on the step at which the employe would have been paid if working in his bid classification. In this case, the Union asks that Grievant be paid at Step E, the top step of the assigned classification, both because he was at the top step of his bid classification and because he was at the like-lettered Step E of his bid classification. The Union argued that it and the Arbitrator ought not be obliged in this case to determine the outcomes in situations not presented by the facts of this case, such as where the assigned classification consists of more steps than the bid classification, or where the like-lettered step pays less in the assigned classification than in the bid classification, or where an employe is temporarily assigned in circumstances that raise questions about the applicability of step increases during the temporary assignment. While the Union did not unconditionally assert its position in those respects, it would appear from its statement of position at the hearing that the Union would

assert that the Agreement provides: pay at the top step of the assigned classification for employes at the top step of their bid classification regardless of step letters; pay for an employe below the top step of his bid classification at the same lettered step in the temporarily-assigned classification so long as it is not lower than the employe's bid classification rate; and no advancement to higher step rates in the assigned classification during the temporary assignment.

Because working in one's bid classification occurs far more often than being promoted via posting, the Union's interpretation comports somewhat better with the term "normally" that appears in the disputed second sentence of the Temporary Assignments paragraph. While the language of that sentence does not conclusively rule out the City's interpretation, the words do appear more likely to have been chosen to achieve a meaning of the sort attributed to them by the Union than to achieve the meaning attributed to them by the City.

The Temporary Assignments paragraph read as a whole makes it clear that the parties mutually intend that no employe would take a cut in pay on account of being assigned to do work in a different classification. Accordingly, the second sentence must be interpreted so as not to impose a cut in pay for work performed on a temporary assignment, even where the employe's below-top step bid classification rate exceeds the like-lettered step in the assigned classification that bears a higher pay range number (and higher top step rate) than the bid classification. While the City's interpretation lends itself more readily to such an interpretation than the Union's, the outcome urged by the Union in this case can be reached without adopting an interpretation that would require employes to take a cut in pay on account of a temporary assignment. For example, if the rate established by the second sentence were less than the employe's bid classification rate, the assignment could be viewed as other than to a "higher rated" classification, invoking the rate protection provided in the first sentence of the paragraph. A final and binding interpretation of the Agreement as regards such a situation is not necessary to a resolution of the STIPULATED ISSUES presented in this case. It suffices to conclude, as noted above, that reaching the outcome urged in this case by the Union would not mandate results in other cases that are clearly contrary to the evident mutual intent of the parties.

Reading Art. XI as a whole provides a strong and persuasive basis on which to reject the City's interpretation. The Promotions and Demotions language in Art. XI provides that whenever an employe is promoted to a higher paying position, such employee "shall move to the step in the new range which will provide a wage increase." The parties could readily have incorporated or referred to that existing language in formulating the rate language in their new Temporary Assignments provision in 1989. That they used different language to identify the rate applicable in the case of a temporary assignment to a higher rated classification persuasively indicates that they intended the rate provision in the second sentence of the Temporary Assignments paragraph to have a different meaning than the rate provision in the Promotions and Demotions paragraph.

Svatos' testimony concerning bargaining history does not persuasively contradict the implications of the parties' use of different wage rate language in the two paragraphs. If anything, the absence of bargaining table discussion between the parties about the rate language suggests that

neither party advised the other that it intended the different language used in the Temporary Assignments paragraph to have the same meaning as the promotions rate language. Svatos' testimony about his or the City team's intent and understanding about temporary assignee's rates of pay is not a persuasive basis on which to interpret the language where, as here, there is no evidence that that intent and understanding were communicated to the Union during the 1989-90 round of bargaining.

The past practice evidence also does not persuasively contradict the implications of the parties' use of different wage rate language in the two paragraphs. Exhibits 12 and 13 pre-dated the parties' March 16, 1989 execution of the 1989-90 agreement in which the Temporary Assignments language first appeared, and the rates paid in those instances appear consistent with both parties' positions in this matter. Exhibits 16, 17 and 18 appear consistent with both parties' positions, as well, and the latter two arose during the pendency of the instant grievance. Exhibit 15 is consistent with the City's position and with paying at the like-lettered step, though it is inconsistent with always paying a top step employe at top step. Exhibit 10 was entered into after the 1989-90 Agreement was executed, but it concerned temporary assignments performed in 1988 that were compensated at 1988 rates of pay, and it was entered into pursuant to an award in which the City made it clear that it had not agreed to make the Temporary Assignments language in the 1989-90 Agreement retroactive to the 1988 grievances. Exhibit 10-Vienola is inconsistent with the City's position in this case and consistent both with paying at the like-lettered step and paying the top step rate to an employe coming from top step. Exhibit 10- Hathaway is inconsistent with the City's position, inconsistent with paying at the like-lettered step and consistent with paying a top step employe at the top step. Exhibit 10-Schneider is consistent with both parties' positions.

Viewed solely as settlements of disputes about the meaning and application of the 1987-88 Agreement, Exhibit 10-Vienola and Exhibit 10-Hathaway persuasively undercut the City's reliance on past practice in this case. The City asserts that the parties' practice remained uniform before and after the 1989-90 Agreement was executed. Exhibit 10-Vienola and Exhibit 10-Hathaway persuasively indicate otherwise. Exhibit 10 is particularly reliable as an indication of the parties' mutual intent because it was reduced to writing and signed by the parties' authorized representatives and because the memorandum sections concerning rates are outside the single section expressly identified as being without prejudice to either party and not to be used as a precedent. The City has shown no special circumstances that undercut that reliability.

The City's contention that the rejection of its interpretation would necessarily result in illogical or absurd results is not persuasive. The City's interpretation is consistent with the parties' agreed-upon pay level in cases of promotion, but temporary assignments differ from promotions as regards their voluntariness, typical duration, permanence and 10-day rate-eligibility threshold. Furthermore, it is not illogical or absurd that the Union would favor a rate provision that could, in some cases, encourage the City to post a position rather than temporarily assign the work involved. While it may be more conventional to pay the temporarily assigned employe the lowest rate in the assigned classification, if any, that provides an increase, the parties in this case agreed on some comparatively unconventional language calling for payment "at the rate that corresponds

to the step at which [the employe] would normally be paid."

The application of that quoted language is surely not as straightforward as the Promotions and Demotions rate language would be in situations where the assigned classification consists of more steps than the bid classification, or where the like-lettered step pays less in the assigned classification than in the bid classification, or where an employe is temporarily assigned in circumstances that raise questions about the applicability of step increases. However, adoption of the outcome sought by the Union in this case would not mandate results in any of those situations that are contrary to the evident mutual intent of the parties. The Union may be hard pressed to persuasively establish that a temporary assignee who has just attained top step in a three step classification is thereby entitled to be paid at the top step of a five step classification that is attainable only after a substantially longer period of time in class. However, whether the temporary assignee in a case like Exhibit 14 is to be paid at his bid classification rate (because the like-lettered step in the temporarily assigned classification pays less) or is, instead, entitled to be paid at the step in the temporarily assigned classification corresponding with his time in his bid classification, need not be determined here. Similarly, whether the temporary assignee in a case like Exhibit 15 is to be paid at the like-lettered step in the temporarily assigned classification or is, instead entitled to be paid at the step in the temporarily assigned classification corresponding with his time in his bid classification, need not be determined here either. Whether the rate to be paid an employe under sentence two of the Temporary Assignments paragraph is static or can increase over time as the employe's time in his bid classification or in the temporarily assigned classification crosses a step increase threshold is also a matter not presented by the issues in this case.

Those matters need not be decided here because the Water Meter Serviceman step corresponding with the letter of the Grievant's bid Water Meter Reader classification step and the Water Meter Serviceman step corresponding with Grievant's time in his bid classification would both be Step E, and there is no step increase threshold that Grievant could be deemed to have crossed during the temporary assignment involved in this case.

For the foregoing reasons, Range 9 Step E is "the rate that corresponds to the step at which [Grievant] would normally be paid" for all of the time that he worked in the Water Meter Repairman classification, i.e., from October 4, 1993 until August 4, 1994.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole it is the DECISION AND AWARD of the undersigned Arbitrator on the STIPULATED ISSUES noted above that:

> 1. Yes, the Employer did violate the Agreement by paying Garth Seiler at Step B while temporarily assigned as Water Meter Serviceman. Under the Temporary Assignments language in Art. XI, Grievant was entitled to be paid at Step E of the Water

Meter Serviceman classification.

2. By way of remedy for the violation noted above, the City of Oshkosh, its officers and agents, shall immediately make Garth Seiler whole by paying him an amount of money, without interest, equal to the difference between what he was paid while temporarily assigned as Water Meter Serviceman and what he would have been paid had he been paid at Range 9, Step E.

Dated at Shorewood, Wisconsin this 10th day of April, 1995.

By Marshall L. Gratz /s/
Marshall L. Gratz, Arbitrator