MINNESOTA BUREAU OF MEDIATION SERVICES

IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

CITY OF BENSON MINNESOTA,

EMPLOYER,

- and-

ARBITRATOR'S AWARD

Contract Interpretation

BMS Case No 08-PA-1361

AMERICAN FEDERATION OF STATE,

COUNTY & MUNICIPAL EMPLOYEES,

COUNCIL 65, Local 2538,

UNION.

ARBITRATOR:	Rolland C. Toenges
GRIEVANT:	Matthias Goebel
DATE OF GRIEVANCE:	April 28, 2008
DATE ARBITRATOR NOTIFIED:	October 13, 2008
DATE OF HEARING:	January 7, 2009
RECEIPT OF HEARING TRANSCRIPT:	January 20, 2009
DATE POST HEARING BRIEFS RECEIVED:	February 19, 2009
DATE OF AWARD:	February 21, 2009

ADVOCATES

FOR THE EMPLOYER:	FOR THE UNION:
David A. Clark, Attorney	Teresa Joppa, Attorney
David A. Clark, Attorney-At-Law	AFSCME, Council 65

WITNESSES

Elliot Nelson, Public Works Director

Glen Pederson, Finance Director

Rob Wolfington, City Manager

Matthias Goebel, Grievant

James Moore, Staff Representative

Russell Borstad, Water Operator II

COURT REPORTER

Patricia A. Tschida, RPR

ISSUE[1]

Did the Employer violate the Collective Bargaining Agreement, when it laid the Grievant off rather continue his employment in the Water/Wastewater Department; transfer him to another position; or, allow him to bump a less senior bargaining unit employee?

JURISDICTION

The matter at issue, regarding interpretation of terms and conditions of the Collective Bargaining Agreement (CBA) between the Parties, came on for hearing pursuant to the Grievance Procedure contained in said Agreement. Relevant provisions of the Grievance Procedure, (Article XVII), provide as follows:[2]

> "17.1, **Definition of a Grievance.** A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement.
>
> **Step 4.** If this fails to settle the grievance, it may be taken to arbitration, and the decision of the arbitrator shall be final and binding on the parties. If the parties are unable to agree upon the appointment of the arbitrator within five (5) days after submission of the grievance to arbitration, either party

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[1] Although the issue statements submitted by the Parties varied, the essence of both statements is represented herein.

[2] Employer Exhibit #II.

> may then request the Director, Minnesota Bureau of Mediation Services, to furnish a list of five (5) prospective arbitrators. From this list, each party shall, in turn, strike one name until one name remains, and the last remaining individual shall be the arbitrator. A hearing on the grievance will be held promptly by the arbitrator and a decision shall be rendered by him within thirty (30) days after the date of hearing. All expenses and costs of the arbitrator shall be shared and assessed equally to the parties. Sundays and holidays shall not be included during these proceedings.
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> 17.3, **Arbitrator's Authority.** The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of laws, rules or regulations having the force and effect of law. The arbitrator's decision shall be final and binding on both the Employer and the Union, and shall be based solely on the arbitrator's interpretation or application of the express terms of this Agreement and to the facts of the grievance presented.
>
> 17.31, If either party desires a verbatim record of the proceedings, the cost shall be shared equally."

The Parties selected Rolland C. Toenges as the Arbitrator to hear and render a decision in the interest of resolving the disputed matter.

The Arbitration hearing was conducted as provided by the terms and conditions of the CBA and the Public Employment Labor Relations Act (MS 179A.01 – 30).

The Parties were afforded full opportunity to present evidence, testimony and argument bearing on the matter in dispute. All witness were sworn under oath and were subject to examination and cross-examination.

The Parties stipulated that the matter at issue was properly before the Arbitrator and there were no procedural defects.

A stenographic record was made of the hearing and a copy of the transcript was provided to the Arbitrator and both Parties to the dispute.

BACKGROUND

The City of Benson (Employer/City) is located in west central Minnesota, in the County of Swift. The City has a population of about 3,400 residents. The City provides typical city services, including water, wastewater, streets, parks and electrical service. There are a number of commercial and manufacturing industries ranging in size from small to medium. The surrounding area is primarily agricultural.

AFSCME, Council 65 (Union) represents some 22 City of Benson employees, including those in the Public Works Department, where the instant grievance arose.

The Grievant was employed by the City of Benson in 1999 as a technician in the City's Water/Wastewater Operation. At the time laid off, the Grievant was classified as Water/Wastewater Operator IV, and was one of four employees assigned to the Water/Wastewater Department.

The Job Description for Water/Wastewater Operator I-IV specifies the qualification requirements, essential functions and physical requirements for employees in these four classifications.[3]

The Grievant's primary duty was to work in the laboratory where testing is performed to ensure that treatment of water and wastewater meets standards established by the Minnesota Department of Health. As a Water/Wastewater Operator IV, the Grievant was required to have the following licenses, certifications and registration:

- Wastewater Treatment Facility Operator Class B.
- Water Supply System Operator Class C.
- Waste Disposal Facility Type 4 Operator.
- Second Class C Boiler License.

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[3] Employer Exhibit #VI.

- Certified Pool Operator certificate and registration.
- Individual Sewage Treatment System Pumper apprentice registration.

The Grievant was also involved with the general operation and maintenance of the City's water plants, wastewater plant and distribution systems. This involved driving the "Jet Truck" and "Tanker." The Grievant also drove the "Sludge Truck," but only to move it in and out of the garage. The Grievant serviced and maintained water plant equipment, flushed hydrants, cleaned sewer lines and investigated water related complaints from city residents and industries.

The Grievant has some 20 years of experience in the water/wastewater field. Prior to employment with the City of Benson, the Grievant took training at St. Cloud Technical College in wastewater technology and was employed by the City of Fargo. He holds a Class "A" license in Waste & Collection and a "B" in water. He holds a Second Class "C" Boiler Operator's License and is certified as a "Swimming Pool Operator." The Grievant is also certified as a "Top Monitor," during situations where underground utility work is taking place.

In early 2008, the Minnesota Department of Health conducted an audit of the City of Benson's Water/Wastewater Testing Laboratory. The audit is performed to ensure that the tests and test results are in compliance with state standards. The state has been raising laboratory-testing standards. The result of the audit was that, for the City to meet the current state standards, it would need to upgrade its laboratory equipment and procedures.

The City found that the cost of upgrading its laboratory to meet the new state standards was in the five-figure range and decided to evaluate alternatives. The City obtained several bids and found that it was more cost effective to contract out the laboratory operations than to continue with its own staff and equipment.

The City decided to eliminate the position occupied by the Grievant, as the contractor would now perform most of the work the Grievant had been doing. The Grievant was given notice on April 8, 2008 that his position was being eliminated

and that he was to be laid off.[4] He was escorted off the job on this same day, but was paid through April 19, 2008.

In its notice of lay off to the Grievant, the City explained that it had considered transferring him to another position for which he was qualified, but there was no such position available. The City also explained that it had considered allowing the Grievant to exercise "bumping rights," based on seniority pursuant to the CBA, but determined that the Grievant was not qualified for positions occupied by less senior employees. The City informed the Grievant of his recall rights under the CBA, subject to his ability to do the job.[5]

After layoff of the Grievant, three workers remain in the Water/Wastewater Department. All have more seniority with the City of Benson than does the Grievant.[6] Two of the remaining employees are classified as Wastewater Operator II and one is classified as Wastewater Operator V.

The Union filed a grievance on behalf of the Grievant dated April 28, 2008.[7] The Grievance stated that the City had violated the CBA by its decision to eliminate the Grievant's position and having denied him an opportunity to: 1). Perform other available work within the Water/Wastewater Department; 2). Transfer to another bargaining Unit position; or, 3). Exercise his bumping rights under Article XIV of the CBA, Sections 14.9 and 14.10, and any other applicable provisions.

Thereafter, the Union and City engaged in discussions regarding the status of the Grievant. The City offered a severance payment, but the Union sought continued employment for the Grievant, focusing on having the Grievant perform work in the

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[4] Employer Exhibit #III.

[5] Employer Exhibit #III.

[6] Employer Exhibit V.

[7] Employer Exhibit #IV.

Water/Wastewater Department that City employees from other City Departments do occasionally.

The Parties being unable to reach a mutually satisfactory resolution of the matter, the Union filed a grievance claiming violation of Article 14.9, 14.10, and any other applicable provision of the CBA, alleging the Grievant was not given an opportunity to transfer to another position or bump a less senior employee. Upon receipt of the Union's grievance, the City denied the grievance and withdrew its offer of a severance payment. Thereafter, the Union filed for arbitration, which brings the matter to the instant proceedings.

EXHIBITS

JOINT EXHIBITS:

I. Employer's Statement of Issue in dispute.

II. Current Collective Bargaining Agreement between the Parties.

III. Notice of lay off to Grievant.

IV. Grievance Statement.

V. Annotated Hire (Seniority) list.

VI. Job Descriptions:

a. Street Maintenance/Equipment Operator.

b. Parks Department/Caretaker.

c. Liquor Clerk.

d. Billing Cashier.

e. Bus Driver.

f. Water/Wastewater Operator I-IV

g. Water/Wastewater Operator V.

UNION EXHIBITS:

I. Resume of Matthias L. Goebel, provided to the City of Benson in 1999.

II. Resume of Matthias L. Goebel, as of the date of his lay off (April 2008).

III. Water/Wastewater Operator I, II, III & IV Job Description, developed in year 2000.

IV. Employee Review Form for Matthias L. Goebel, dated 12/15/1999.

V. Water/Wastewater Operator I – IV Job Description, dated 2003.[8]

VI. News articles:

a. City of Benson will outsource wastewater testing.

b. Morris, City of Benson to share men, machines for sewer work.

c. Benson Council to Discuss Eliminating Position at Treatment Plant.

d. City Employee Going to Arbitration.

e. City Headed to Arbitration.

VII. City of Benson AFSCME Seniority List.

VIII. Job Announcement, dated 6/21/2006, Parks Department/Caretaker.

IX. Job Announcement dated 1/28/2005, Public Works Assistant.

X. Job Description, Street Maintenance/FT Equipment Operator.[9]

XI. Grievant's Driving Record, showing Grievant obtained a "Commercial Drivers License,"' with "air brake endorsement", dated 7/17/08.

XII. Listing of City of Benson Public Works Department Employees and Operator Endorsements.

POSITION OF THE PARTIES

THE UNION SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The Employer violated the CBA when it failed to allow the Grievant to bump into another City position after the City eliminated the Grievant's job.

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[8] Exhibit is same as Employer Exhibit #VI, f.

[9] Exhibit is same as Employer Exhibit #VI, a.

- Under the CBA, a senior employee whose position is being eliminated shall be transferred or shall have the right to bump into other jobs held by junior employees.
- The City's position that the Grievant was not qualified for any other City job is ridiculous.
- The Grievant should be given the opportunity to perform a job before the City determines he is "unqualified."
- The Grievant is a nine (9) year employee with a good record.
- The Grievant, having grown up on a farm, has experience operating motorized equipment.
- The Grievant has experience operating a tractor with a snow blower, used in clearing lift stations around town and also operated a "Jet Truck" with air brakes and drove the sludge truck in and out of the garage.
- The Grievant has experience operating articulated loaders while working for the City of Fargo and a tanker with air brakes for the City of Benson.
- The Grievant is senior to other City employees and is qualified for a number of City jobs held by less senior employees.
- The City refused to transfer the Grievant or allow the Grievant to exercise his bumping rights under the CBA, saying he was not qualified to do other jobs.
- The Grievant should be made whole, including back pay and benefits.
- The Grievant has maintained his licenses, including a "Commercial Drivers License" and can do other jobs in the City.
- At the time of his lay off, the Grievant was licensed to operate all the street maintenance equipment owned by the City, except the "Pup Trailer."
- There is work at the Water/Wastewater Department that is being performed by employees from other departments, such as: jetting the sewers; reading meters; repairing water breaks and pool cleaning. This work was sufficient to provide a full time position for the Grievant rather than lay him off.
- The CBA does not specify that a position must be "open" for the Grievant to be transferred.
- The Grievant was not offered an opportunity to train for another position as were the Liquor Store employees when they were being considered for lay off. These employees were allowed time off work to practice driving the transit bus and the City paid for their medical exam and other costs.

- The Grievant's immediate supervisor in the Water/Wastewater Department is due to retire soon and the City would be well served to retain the Grievant.
- The City should be ordered to reinstate the Grievant in a position of his choice that is occupied by a less senior employee, if it is a position he can reasonably do with his present qualifications or with a month of training on the job. This should include obtaining a passenger endorsement to drive the City Transit bus, if that is his choice.
- The Grievant should be made whole, including back pay, benefits and the cost of obtaining insurance coverage during the lay off. He should also be reimbursed for the cost of securing a commercial drives license, the cost of obtaining a passenger endorsement, if necessary, and such other costs as are reasonable in making him whole.
- The Arbitrator is asked to retain jurisdiction for ninety days (90) in order to resolve any differences or disputes that may arise in making the Grievant whole.

THE EMPLOYER SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The Grievant was the least senior of the four employees in the Water/Wastewater Operation and was properly laid off under the terms and conditions of the CBA.
- The Grievant lacked the skill and experience necessary to replace less senior employees in the classification of Street Maintenance/FT Equipment Operator.
- The Grievant tried out for the position of "Street Maintenance/FT Equipment Operator and failed to demonstrate the level of skill required to operate heavy equipment in an efficient and effective manner.
- The Grievant was not qualified to replace the less senior employee in the classification of "Parks Department/Caretaker.
- The Grievant did not have the "Arborist Certification" required for the "Parks Department/Caretaker" position and could not have obtained it in a timely manner.
- The Grievant has not demonstrated the level of communication (people) skills critical to the Park Caretaker position when working with families selecting gravesites for their deceased. It would be difficult to train for the "people skills" important to the Park Caretaker position.
- Given enough time, Grievant could probably be trained for equipment operation and park maintenance, but it would have to be extensive.

- The Grievant has never operated a "Motor Grader." Operating a motor grader with a sidebar on a busy city street with vehicles all around takes considerable skill and experience. Assigning an employee to a job for which the employee is not qualified involves safety and liability risks.

- The Grievant has also not operated a dozer, backhoe, street sweeper or pavement compaction roller. There is no distinction between the types of equipment operated by the Street Maintenance/FT Equipment Operator positions. They all do whatever is necessary.

- The City has had to reduce the number of workers in the Street Department through attrition from eight (8) to four (4). The Grievant is the only reduction in the Water/Wastewater Department.

- The Grievant did not have the experience and skill necessary to replace less senior employees in the positions of "Billing Cashier" and "Liquor Clerk." Considerable training and experience would be necessary for the Grievant to perform the duties of these positions.

- The Grievant was not qualified to perform the job of "Transit Driver." At the time of his layoff, he did not have the required "Commercial Drivers License" with "Passenger Endorsement." It takes six (6) to eight (8) weeks to obtain this license.

- At the time of his lay off, the Grievant did not indicate any interest in bumping any employee other than in the Street Department.

- In evaluating the Grievant's qualifications, the City reviewed his personal file, including his resume', compared this information with the essential requirements of job classifications held by less senior employees and evaluated training necessary to equip the Grievant with these essential requirements.

- The Grievant was not transferred to another City job under the provisions of CBA, Article XIV, 10, because there was no open position.

- Although there is no CBA provision requiring severance pay, the City was prepared to pay it to the Grievant, but he chose to file a grievance.

- Article XIV, Sections 14.8, 14.9 and 14.10 are germane to the procedure to be used in the Grievant's lay off and the City properly interpreted and applied these provisions.

DISCUSSION

The instant matter involves interpretation of the CBA, principally Article XIV, Sections 14.8, 14.9 and 14.10 that address 'Transfer," "layoff" and "position elimination." The parties have stipulated that there are no substantive or procedural issues involved in the instant matter. The Parties also stipulated that "severance pay," which was a topic of discussion during efforts of the Parties to revolve the grievance, is not an issue relevant to the instant matter.

The instant matter evolves from the Employer's decision to contract out the work performed by the Grievant, resulting in elimination of his position. The CBA contains a provision regarding the Employer's right to contract out work and this is not an issue in the instant proceeding:

> "**Article XVIII, Right of Subcontract.**
>
> 18.1 Nothing in this Agreement shall prohibit or restrict the rights of the Employer from subcontracting work performed by employees covered by this Agreement."

The Grievance statement[10] alleges the Employer violated the CBA by denying the Grievant an opportunity to:

1. Perform other available work within the Water/Wastewater Department;
2. Transfer to another bargaining unit position;
3. Exercise his bumping rights over less senior members of the bargaining unit.

The record shows that the grievance resolution preferred by the Grievant was to continue working in the Water/Wastewater Department. The Grievant's argument in support of this alternative is that work in the Water/Wastewater Department performed by employees from other departments, if instead assigned to him, would provide him to with continued employment.

This argument fails for three different reasons:

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[10] Employer Exhibit #IV.

1. The City's decision to contract out the work performed by the Grievant was to reduce its costs. This was accomplished by avoiding the purchase of laboratory equipment and supplies needed to conform to new standards established by the Minnesota Department of Health. It was also accomplished by being able to eliminate the Grievant's position. It is axiomatic that the objective of contracting out the laboratory function would not be achieved if the Grievant's position were not eliminated.

2. According to the record, the work performed in the Water/Wastewater Department by employees from other Departments is intermittent, essentially in response to emergencies occurring on an average of about once every two weeks.[11] This intermittent work is not consistent with a full time position and a single worker would not supplant the need for a work crew when emergencies occur.

3. The Employer's decision to continue covering additional/emergency work in the Water/Wastewater Department using a crew from another department, rather than retain the Grievant, does not constitute a grievance under the CBA. There is no provision in the CBA that requires the Employer to retain employees it determines are not needed.

The CBA contains the following provisions relating to "Transfer:"

> "**Article XIV, Transfer.** The City may at its discretion approve employee job transfers from one job to another. [Emphasis Added]
>
> 14.8, 1). To be eligible for a voluntary transfer, employees must meet the requirements of the new position and have held their current position for at least six months.
>
> 2). Eligible employees who request a transfer will be considered in the following order:
>
> > a. Employees in the same department as the opening. [Emphasis Added]

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[11] Testimony of Russel Borstad at pg. 94 of transcript.

> b. Employees in departments other than the one where the opening occurs. [Emphasis Added]
>
> 3). Transferred employees will be subject in their new positions to an introductory period of one month. During or at the conclusion of the introductory period an employee may voluntarily return to their previous position or be returned based on an evaluation of the Department Supervisor."

The Grievant's argument that the Employer violated the CBA by *not* transferring him to another bargaining unit position also fails. The record shows that there were no "open" [vacant] positions at the time of the Grievant's lay off. The Grievant's claim that an open position is not a prerequisite for a transfer is clearly without basis in the CBA.

Further, the provisions of the CBA cited above clearly state that transfers are at the Employer's "discretion" and there is no provision in the CBA that requires the Employer to create an open position.

The relevant CBA provision relating to **Layoffs** is as follows:

> "14.9 **Layoffs.** Employees within each affected department are to be selected for layoff in the following order:
>
> c. Regular Part-time and then Full-time employees based on seniority provided that the employees retained have the demonstrated ability and fitness to perform the available work. . .
>
> 14.91 Employees will be recalled based on seniority and their ability to do the job."

The record shows that the Grievant was the least senior employee in the Water/Wastewater Department. Therefore, when one position was eliminated in the Water/Wastewater Department, the above CBA provision required layoff of the Grievant.

Accordingly, the Grievant should be the first recalled in the Water/Wastewater Department when a position for which he is qualified becomes available.

The relevant CBA provision relating to **Position Elimination** is as follows:

> 14.10 **Position Elimination.** In the event of a position within the bargaining unit being eliminated, the employee(s) filling that position shall: 1) be transferred to another position if qualified; or 2) exercise "bumping rights" based on seniority to a position if qualified, either to be in lieu of layoff or termination, due to the elimination of a position. Bumping rights shall apply separately within full-time positions and part-time positions.

The issue of the Grievant's right to be transferred has been addressed earlier, with the finding that transfer is a discretionary matter and subject to there being an opening.

The Grievant argues that, rather than be laid off, he should have been allowed to bump a less senior employee. The record shows that there were seven (7) full-time bargaining unit employees less senior than the Grievant:[12]

NAME	HIRE DATE	DEPARTMENT	STATUS
BREHMER, GAIL R.	12/20/1999	BILLING OFFICE	12/20/1999
HOFFMAN, MICHAEL A.	03/12/2001	STREET DEPT.	03/12/2001
MINOR, DENNIS	11/09/2003	PUBLIC TRANSIT	07/20/2007
OLSON, RUSSELL	06/07/2004	STREET DEPT.	09/12/2004
O'CONNOR, TIMOTHY J.	07/19/2005	LIQUOR FUND	07/19/2005
HOPP, DUANE E.	07/16/2007	PARK DEPT.	07/16/2007
HIPPEN, MONICA J.	10/01/2007	PUBLIC TRANSIT	03/24/2008

The record shows that the Grievant acknowledged in his testimony that he is not qualified to bump into the position of Billing Cashier.

Witness, Glen Pederson, City Finance Director and Assistant City Manager, is in charge of City finances and the City's Liquor Operations. Pederson has been with the City 24 years, 15 in his current position. Pederson testified that he reviewed the

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[12] Employer Exhibit #V.

Grievant's qualifications for the Liquor Clerk position and determined he did not have the minimum experience (one-year retail) required to qualify for this position.

The record also shows that, at the time of lay off, the Grievant was not qualified to bump a Transit Driver, as he did not have a Commercial Drivers License with a "passenger endorsement."

The Grievant argued that he was qualified to bump less senior employees in the Street Department. However, the Employer argues that the Grievant is not sufficiently qualified and skilled to operate much of the equipment used in the Street Department, particularly in the hazardous conditions where the equipment is used.

The record shows that, although the Grievant has had experience operating certain equipment, he has not had experience on much of the equipment used in the Street Department. The record shows that he has not operated motor graders, dozers, street sweepers, or compaction rollers.[13] The Employer's argument is bolstered by a situation where the Grievant tried out on a front-end loader and truck/trailer, but was found to not be sufficiently skilled in its operation.

The qualifications of less senior Street Department employees are not in evidence. Therefore, the Arbitrator has no basis to compare the qualifications of the Grievant with the less senior Street Department employees. However, witness Elliot Nelson, Public works Director, presented creditable testimony in asserting that the Grievant was not qualified to bump into a Street Department position.

Nelson has been City Public Works Director for some six (6) years and has over 30 years construction experience as a private contractor. Nelson has been the Grievant's supervisor for some six (6) years and personally evaluated the Grievant's performance when he tried out operating the front-end loader and truck/trailer.

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[13] Grievant's testimony.

The record shows that the Grievant believes he could learn the duties of the Park Department Caretaker. However, at the time of his lay off, the Grievant did not have the "Arborist Certification" required for the Parks Department Caretaker and would not have been able to acquire it in a timely manner. Among the duties of the Parks Department Caretaker is being responsible for inspection of trees and arranging removal of infected trees.

Further, the Employer points out that the Parks Department Caretaker position involves working with grieving families in arranging burial sites, which requires special people skills. The employee currently in this position has a faith affiliation and cemetery experience that facilitates his ability to accommodate the bereaved. Public Works Director Nelson testified that, in his experience with the Grievant, he has not demonstrated the people skills important for this position.

The record shows that the Grievant has enhanced his qualifications since his layoff by obtaining a Class A Commercial Drives License and has maintained the licenses and certifications that were required in the position of Water/Wastewater Class IV.

The record also shows that the Grievant has a good work record with the City of Benson and elimination of his position had nothing to do with the quality of his work.

The record shows that, subsequent to lay off of the Grievant, there was a concern that lay offs would be necessary in City's Liquor Operation. The City encouraged Liquor Clerks to acquire the qualifications required for Transit Driver, as openings existed or were anticipated. The City assisted the Liquor Clerks in acquiring the necessary qualifications by allowing them to practice on City equipment. Although the Grievant was already on layoff, he was not encouraged to acquire the Transit Driver qualifications or afforded the City assistance provided to the Liquor Clerks.

The record shows that the Grievant is the first bargaining unit employee to be laid off under the terms and conditions of the CBA. Although the CBA references two

types of seniority rights (Employer and Department),[14] there is no indication in the record that either party interprets this language to limit an employees bumping rights to the department from which laid off. Accordingly, the Grievant's recall rights are for any available bargaining position for which he is senior and qualified.

FINDINGS

The Grievant did not have a right to continue employment in the Water/Wastewater Department after his position was eliminated.

The Grievant did not have a right to transfer to another position when none were open.

The Grievant was not qualified to bump a less senior bargaining unit employee at the time of his layoff.

Under the terms and conditions of the CBA, the Grievant has continuing recall rights to a bargaining unit position for which he is senior and qualified.

The Grievant has a right to be afforded the same City support to qualify for another position as is afforded other bargaining unit employees on lay off or subject to lay off.

AWARD

The grievance is denied in part and upheld in part.

The Employer did not violate the CBA by lay off of the Grievant for he was not qualified to bump another bargaining unit employee with less seniority at the time of his layoff.

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[14] CBA, Article XIV, Section 14.2.

The Employer did not violate the CBA by not transferring the Grievant. Transfers are at the Employer's discretion and are conditioned on an available open position.

The Employer did not violate the CBA by lay off the Grievant rather than continue his employment in the Water/Wastewater Department.

The Grievant has continuing recall rights to a bargaining unit position for which he is senior and qualified.

The Grievant is to be provided the same City support to qualify for another position as is afforded other bargaining unit employees on lay off or subject to lay off.

CONCLUSION

The Parties are commended on the professional and through manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this grievance matter.

Issued this 21st day of February 2008 at Edina, Minnesota.

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ROLLAND C. TOENGES, ARBITRATOR