

**KATHERINE J. THOMSON**  
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Arbitrator's Case No. 508-SLC  
CSMCS Case No. ARB-18-0304

**IN ARBITRATION PROCEEDINGS PURSUANT TO  
AGREEMENT BETWEEN THE PARTIES**

**In the Matter of a Controversy between**

**AFSCME, LOCAL NO. 444,  
Employee Organization,**

**and**

**EAST BAY MUNICIPAL UTILITY DISTRICT,  
Employer,**

**Involving,     Wastewater Operator II Class.**

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**ARBITRATOR'S  
OPINION AND AWARD**

March 21, 2021

APPEARANCES:

On behalf of the Employee Organization:

Alan Crowley  
Weinberg, Roger & Rosenfeld  
1375 55th St.  
Emeryville, CA 94608  
(510) 337-1001

On behalf of the Employer:

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This arbitration involves the grievance of a Class of bargaining unit members. It arises pursuant to the agreement between the East Bay Municipal Utility District, hereinafter the District, and the AFSCME Local 444, AFL-CIO, hereinafter the Union, under which KATHERINE J. THOMSON was selected as Arbitrator pursuant to Section 22.5 of the contract between the parties and the procedures of the California State Mediation and Conciliation Service. This award is binding on the parties.

The parties had full opportunity to call witnesses and present evidence and argument during an evidentiary hearing, which was held by Zoom in California, on October 15, and November 17, 2020. Witnesses were sworn. A verbatim record of the hearing was prepared, and a transcript was made available. The record was closed and the matter was submitted for decision on February 19, 2020, when the Arbitrator received post-hearing briefs. The parties stipulated that the matter was properly before the Arbitrator, time-lines having been met or waived. The parties further stipulated that the Arbitrator will retain jurisdiction over the award resulting from this proceeding for a period of 12 months for purposes of resolving any dispute over implementation of the remedy, if any, but not to reconsider the merits of the decision, which is final.

#### **STATEMENT OF THE ISSUE**

The parties did not agree to a statement of the issue to be determined, but stipulated at the hearing that the Arbitrator may draft the issue statement based on the evidence, the collective bargaining agreement, the grievance, and the arguments of the parties. The Union proposed:

Whether the District violated the Memorandum of Understanding, particularly MOU Section 6.5 and 6.5.1, and Civil Service Rule 4, subsections 3 and 5, by failing to maintain proper class descriptions for the Budget Unit 608 Operators, also known as Reclamation Operators, and whether the District's denial of the Reclamation Operators' requests for Reclassification violated the contract or was otherwise arbitrary and in bad faith? If so, what is the appropriate remedy?

The District proposed:

Did the District's determination that Operator positions in reclamation work within the Wastewater Plant Operator II classification violate some express

provision of the MOU or rules governing personnel practices. If so, what is the appropriate remedy?

The 2018 grievance alleged a failure to maintain the classification system by neglecting repeated requests to appropriately classify the B608 operators. It demanded an appropriate classification. (Jt. Ex. 5) After the classification study was issued, the Union rejected its conclusion that the B608 operators' work was within the scope of their class description. The following is the statement of the issue to be determined :

Whether the District violated the Memorandum of Understanding, particularly MOU Section 6.5 and 6.5.1, and Civil Service Rule IV, subsections 3 and 5, by failing to maintain proper class descriptions for Budget Unit 608 Operators, also known as Reclamation Operators? If so, what is the appropriate remedy?

Whether the District's determination that Operator positions in reclamation are properly allocated to the Wastewater Plant Operator II classification violated an express provision of the MOU or rules governing personnel practices and/or was otherwise arbitrary or in bad faith? If so, what is the appropriate remedy?

### **RELEVANT CONTRACT LANGUAGE**

The parties' collective bargaining agreement, effective April 17, 2017 through April 25, 2021, (Joint Exhibit 2) states:

#### **ARTICLE 3. DISTRICT RIGHTS**

3.1.1. The rights of the District include, but are not limited to, the exclusive right to ...determine the procedures and standards of selection for employment and promotion; direct and assign its employees; ... determine the personnel by which District operations are to be conducted; determine the content of job classifications;... provided, however, that the exercise of such District rights shall not conflict with the express provisions of this Memorandum.

3.1.2. District and Union mutually intend and agree that District may unilaterally exercise any and all rights reserved by this Article without further meeting and conferring with the Union. It is further mutually agreed that Union and District have met and conferred on all matters reserved to District by this Article and Union does expressly waive any and all rights to further meet and confer on such issues, or any of them, during the period of this Memorandum. Any dispute concerning the interpretation or application of District's rights shall be deemed a grievance and must be processed under Article 22.

...

#### **ARTICLE 6**

6.5 New Classifications. The Union recognizes the right of the District to establish job classifications and to amend existing class descriptions to reflect changes in assigned duties and responsibilities. ...

6.5.1 Classification Study Requests. Employees are encouraged to first discuss any concerns regarding the classification of their position with their immediate supervisor. If review of the issues with the supervisor

and appropriate department management staff does not resolve the classification concerns, an employee may submit a written request for a study of their position. The District shall determine whether the issue causing the request is clearly one of classification. In conducting this initial review, staff may discuss the request with the employee, their supervisor, and/or other management personnel in the department. The District will issue a memo to employees with a copy to the union acknowledging the receipt of a written classification study request within 15 workdays of receiving the request. If the written request is found to be one in which a classification study is appropriate, the District will also provide a projected timeframe for conducting the study. In the event that the study results in reclassification of the employee and their position to a higher pay level, the effective date of the higher salary would be retroactive to the lesser of four months or the date the employee submitted the formal request.

...

## **ARTICLE 22. GRIEVANCE PROCEDURE**

22.1. Intent. The District and the Union recognize the necessity for speedy and equitable adjustment of all complaints as close as possible to the point of origin. Whenever possible, grievances should be settled with supervisors in the department/division where the grievance originates. It is the intention of the District and the Union to eliminate unnecessary grievances, and to promptly and equitably adjust all those grievances which are meritorious.

...

22.2.1.1. A grievance is any dispute between the District and an employee or group of employees concerning the interpretation or application of this Memorandum; or the interpretation or application of rules or regulations governing personnel practices or working conditions; or the consequences of a District Rights decision on wages, hours and other terms and conditions of employment.

...

22.5.3.3.2. The arbitrator shall in no case make any recommendations:

1. contrary to, or inconsistent with or modifying or varying in any way, the terms of the Memorandum, or the terms of rules or regulations governing personnel practices or working conditions;

...

6. reversing, overruling, or otherwise modifying any District decision or omission except after finding ( a) the District decision violated some express provision of the Memorandum rules and regulations governing personnel practices or working conditions; or (b) the District decision or omission was under the circumstances arbitrary, capricious or discriminatory.

### **Rule IV (Classification) of the Civil Service Rules (Jt. Ex. 1) states in part:**

Section 3. Class Descriptions. A class description shall be prepared for each class and shall include an appropriate class title, an outline of typical duties and responsibilities, and the knowledges, skills, abilities and other qualifications required of employees in the class. Class descriptions shall be prepared after due consultation with supervisors, incumbents, other persons technically familiar with the work and the affected union.

Section 4. Interpreting Class Descriptions. Class descriptions are to be considered descriptive and explanatory and not restrictive. They are intended to be illustrative of the kinds of positions allocated to the various classes and should not be construed as limiting assignments which may be made to a particular position. Typical duties outlined shall be representative of work performed but are not intended to prescribe all duties of positions in the class, or to exclude duties of similar kind or level. Knowledges, skills, abilities, and other qualifications shall include only those which are job-related and considered necessary for proficient job performance. Nothing in a class description is to be interpreted as restricting the assignment of an employee to perform duties of a higher class for limited periods during the absence of others. Procedures governing the assignment of and compensation for such duties shall be adopted as necessary.

Section 5. Revision of Class Descriptions. The Manager of Human Resources shall take necessary steps to ensure that class descriptions are accurate by directing the study of position duties, responsibilities, and qualifications, and recommending revisions of class descriptions as appropriate. Such revisions shall be approved and adopted by the General Manager.

Section 6. Allocation of Positions. Except as provided in Section 10 of this Rule, each position when created shall be allocated to one of the classes within the approved classification plan, and employees shall be notified of the allocations of their positions. In determining the allocation of any position, the position shall be compared with others, considering general duties, responsibilities, qualifications and relationships to other positions. Any number of positions may be allocated to a single classification if they have duties and responsibilities sufficiently similar that:

- A. The same descriptive class title may be used to designate each position allocated to the class.
- B. The same schedule of compensation may be applied with equity to each position allocated to the class.
- C. The same qualifications and examinations of those qualifications are appropriate each position allocated to the class.

Section 7. Classification Study Requests. The Manager of Human Resources shall recommend the proper allocation of a position and/or evaluate the need for a revision to class description upon the request of a department or division head, or upon the written request of an employee concerning the employee's position, or upon the Manager of Human Resources' own initiative, in one or more of the following circumstances:

- ...
- d. Changes in position duties and responsibilities have already occurred.
- e. Maintenance of the classification plan requires the review of positions and their allocation.

Section 8. Procedures in Classification Studies. One or a combination of the following procedures shall be observed in the allocation of positions:

- a. The department or division head concerned shall transmit to the Manager of Human Resources a comprehensive statement of the facts and circumstances related to the allocation request, including a detailed summary of position duties and responsibilities proposed or currently in effect.
- b. The Manager of Human Resources shall direct a study of the duties and responsibilities of the position, the qualifications required, and the relationships of position to others.
- c. The Manager of Human Resources shall recommend whether a new position should be allocated to a new class or an existing class, and whether an existing position is properly allocated or should be reallocated to a new class or an existing class.
- d. The Manager of Human Resources shall recommend to the General Manager the steps necessary in approving the allocation or reallocation, including the adoption of such new or revised class descriptions as may be required. No new position shall be filled until there is an approved class description covering the work to be performed, and no position reallocation to a new classification shall be final until approved by the Board of Directors.

## **FACTUAL SUMMARY**

The District is a local public agency that treats wastewater before it is discharged into the San Francisco Bay. Most wastewater goes through primary and secondary treatments before it is released. A portion of the wastewater is treated a third time so that

it can be reclaimed for industrial purposes. The class of grievants is a group of Wastewater Plant Operator IIs known as Budget Unit 608 Operators who perform these tertiary treatment duties at one or more of three water reclamation facilities the District operates.

The District's main facility, the SD-1 plant, conducts primary and secondary level treatment of 55 million gallons of wastewater daily for pollution control. At the time this grievance was filed, the wastewater plant operator IIs who worked at the main plant were in Budget Unit 913.

The main plant also contains a reclamation facility, the East Bayshore facility, established in 2007, that recycles water for industrial customers. In addition, the District operates two other reclamation facilities. The North Richmond facility began providing recycled water for Chevron's cooling towers in 1994, and the Richmond Advanced Reclamation Expansion (RARE) facility started providing highly treated water for Chevron's refinery boilers in 2010. The treatment processes for recycled water are in addition to the primary and secondary processes that are required for releasing treated wastewater into the Bay. The operator IIs in Budget Unit 608 operate these reclamation facilities, which process seven to eight million gallons of treated wastewater daily.

Wastewater first enters the primary treatment section of the main plant where sedimentation occurs and solids settle. On each shift there is an influent pump station operator II and a sedimentation tank operator II, as well as an assistant shift supervisor for the primary area on the day shift. Operators remove debris from the raw sewage to prevent interference with pumps and other equipment. Based on parameters set by supervision, operators at the influent pump station in the primary section adjust the flow of wastewater so that a steady flow occurs. They may adjust the flow by up to five million gallons without checking with their supervisors. They monitor the hydrogen sulfide levels of sewage coming into the plant using an inline analyzer and adjust hypochlorite feed to control odor based on supervisors' parameters; they may adjust by one part per million on their own.

The wastewater slows as it enters the sedimentation basins, where solids sink and scum floats. The sedimentation tank operators must determine whether to increase pumping of sludge out of the sedimentation basins or to slow effluent pumping if the sludge is too watery. To ensure the health of the microorganisms in the activated sludge in the secondary process, they also sample effluent for chlorine levels at the end of the sedimentation basins before it flows into the secondary section of the plant. If the hypochlorite levels are not within parameters provided on printed sheets, they advise IPS operators that the hypochlorite feed needs to be adjusted, and if the chlorine level is too high, will inform the secondary operators. Operators in primary also have to be alert for petroleum smells or other pollutants and, if detected, quickly divert water into a holding tank on their own initiative.

The liquid primary effluent then goes to the secondary section of the main plant where microorganisms consume sewage until they sink to the bottom of the clarifiers, which remove sludge. Equipment distills air into 100% oxygen and dissolves it in the liquid. There are typically three operators in the secondary area, as well as an assistant shift supervisor for the area during the day. Operators sample the effluent for the purity and level of oxygen to maintain the health of the microorganism colony. They adjust oxygen levels to stay within parameters. Operators also inventory the size of the colony. They use guidelines to adjust the wasting of microorganisms and the rate of return of activated sludge each day.

The operators in the secondary area take samples for settleability tests, which they perform on their own, and plot results to see if they are trending out of preset parameters. They also send other, composite samples to a laboratory. In the lab, chemists and microbiologists analyze the samples. Operators do not independently interpret the microbiologists' reports. Supervisors or the process control officer, who is the plant superintendent, receive the analyses and make process control changes by adjusting the wasting rate and return rates to control the size of the microorganism colony. Process changes are changes to the parameters that the operators use; they adjust their equipment to stay within the parameters that supervision sets.

The secondary effluent is chlorinated in the secondary process by operators who add hypochlorite according to supervision's parameters and information from the dechlorination operator concerning the chlorine residual in the secondary effluent. Operators adjust the feed to stay within the parameters. As the effluent leaves the secondary area, it must be dechlorinated before being discharged into the bay. The operator at the dechlorination facility tests the water for residual chlorine and adds sodium bisulfate to remove the chlorine. Primary and secondary operators make all of the adjustments relating to chlorination and dechlorination based on operating parameters set by supervision, except that the operator at the end of the line may have to add more sodium bisulfate if the operator finds that the chlorine residual is still too high to release the water into the Bay.

In the solids area of the main plant, operators run sludge from the primary and secondary sections through digesters and a dewatering building. In the digesters a colony of anaerobic microorganisms produces methane gas and carbon dioxide. Operators at the digesters monitor the temperature of the digesters, transfer solids from primary digesters to secondary digesters and to the dewatering section, and monitor the proportions of carbon dioxide and methane gas. They confer with the solids assistant shift supervisor or the shift supervisor if a digester starts to sour; supervision decides whether to take it out of commission. However, if operators see a digester not cooling down, they will independently troubleshoot the heat exchangers.

In the dewatering section, solids are processed in a centrifuge. The operator at the dewatering equipment samples the sludge cake to determine its water content. Eventually the solids are trucked offsite.

There is always an assistant shift supervisor or supervisor in attendance at the main plant. These supervisors may make process changes any time throughout the day, but usually make changes less than two times per shift, fewer on the off shifts. Most chemical adjustments are done in consultation with supervisors, but operators make decisions to move solids on their own. They also troubleshoot equipment independently.



There are Standard Operating Procedures for primary, secondary, solids, and the digester sections.

### **Wastewater Plant Operator II Job Description**

The District established the class description for journey level of the wastewater plant operator series, Wastewater Plant Operator II, in 1985. The document states it was reviewed in April 2010. (Jt. Ex. 9) It refers only to primary and secondary treatment processes. The definition of the class reads:

Under general supervision, operates, inspects, and maintains a variety of plant equipment in connection with the continuous operation of a large metropolitan wastewater treatment plant; directs lower level operators; and performs related work as required.

The description lists examples of the duties, including:

1. Operates pumps, valves, and other equipment by hand or mechanical means to regulate the flow of wastewater through various primary and secondary treatment processes; maintains an even, flow to assure maximum efficiency of plant equipment.
2. Takes samples of wastewater, scum, grit, sludge, and other materials at established times; makes standardized control tests.
3. Operates burners and auxiliary equipment as necessary to ensure the efficient functioning of the scum and screening incineration plant.
4. Performs record-keeping functions such as logging plant operations test results, maintenance work performed, and unusual operating conditions encountered; ...
5. Inspects plant equipment and reports any failures or operating difficulties; initiates work orders and requests for equipment repairs; stops and starts equipment as required for repairs.
6. Cleans, lubricates, and performs routine maintenance of plant equipment and facilities; ...
7. Directs and instructs lower level operators during an assigned shift.
8. ...
9. Reads meters, gauges, charts, and instruments; changes recording charts and assures their continuous operation.
10. Uses common hand and power tools; drives ....

The classification requires a working knowledge of “[t]he operation, maintenance and cleaning of primary and secondary wastewater treatment equipment and facilities; wastewater treatment principles, methods, and practices: arithmetic; safety rules, codes,

and regulations pertaining to the work; basic first aid; the methods and precautions in storing and handling chlorine and other hazardous gases and chemicals; wastewater sampling and routine process control tests” and the skill to operate assigned plant equipment “without immediate or detailed supervision.” It requires the ability to “[r]ecognize unusual, inefficient, or dangerous operating conditions and take appropriate action; accurately read and record data from gauges and meters; instruct and direct the work of lower level employees; interpret plant, piping, and distribution diagrams; perform routine control tests and adjust plant equipment accordingly, ... .” Wastewater Plant Operator IIs (WWPO IIs) must possess a state Grade II Wastewater Treatment Plant Operator’s Certificate. (Jt. Ex. 9)

### **Reclamation Plants**

The District’s first reclamation facility, the North Richmond facility receives treated water from the West County district. It uses a chemical phosphate precipitation process to recycle water for Chevron. The West County influent varies in quality in ways that sometimes require process changes, so operators test it twice per shift. They test for total chlorine, free chlorine, pH, orthophosphates, alkalinity, turbidity and total hardness throughout the treatment process. On graveyard shift, the operator will test for silica and ammonia. Operators add polymer to increase settleability, change pH by adjusting sulfuric acid flow to make the phosphates insoluble and settle out, return to a neutral pH, add chlorine for disinfection, increase caustic flow if the orthophosphates are too high, use sand filtration, and maintain breakpoint chlorination to remove ammonia that would crack Chevron’s cooling towers. The B608 operators independently make “significant adjustments” in how much chemical to use to respond to the test results. (TR 177) For example, they test for orthophosphates on samples taken from the influent, and the effluent from two other points in the plant. They usually need to dilute the influent sample and account for that arithmetically, and then compare the phosphates to those present at later points to decide whether they need to decrease or increase the flow of caustic. The reclamation operator at the North Richmond facility may, and must know how to, control all three facilities from the North Richmond control room; operators at

the other two facilities can control only their own facilities. The Richmond operator must make sure the processes are stable before going out to take samples.

The East Bayshore facility uses microfiltration to further treat water from the secondary section of the main plant. This water would otherwise be sufficiently treated to be released into the bay, but microfiltration technology requires different and more technical knowledge, like the RARE facility discussed below. While sampling at the main plant and the North Richmond facility is performed at established times, the timing of sampling at the East Bayshore and RARE facilities is based on the operators' knowledge.

The RARE facility treats water from the West County district using both microfiltration and reverse osmosis technology. Testing the influent is similar to that at North Richmond, but the operator is required to handle "a lot more intricate valves and timing of software control[s]," and analyze more pressure data and flow meter reads. (TR 111) Frank Anderson testified that it is more complicated to control compared to a constant flow of water at a conventional treatment plant. To protect the microfiltration and reverse osmosis membranes, the RARE facility uses chloramine to disinfect the water. Since the chloramination system started sometime after 2010, operators have been required to do more testing and record more data points. They analyze for free chlorine in the presence of ammonia, which interferes with free chlorine detection, so more advanced testing is required than testing for total chlorine at the main plant. They use a more sophisticated photo-spectrometer to perform these analyses. They perform complex silt density index tests, and monitor the process performance of the membrane facilities, like specific flux. The B608 operators make independent decisions on which reverse osmosis train to use and when and how to clean an RO train.

All three reclamation facilities operate 24 hours a day, 7 days a week. Seven operator IIs operate the facilities. During the day shift there is one reclamation operator at the North Richmond facility in the control room; two other operators perform testing at East Bayshore and RARE. During swing and graveyard shifts, there is one reclamation operator except on Tuesday, Wednesday and Thursday, when two operators will overlap.

Only one assistant supervisor is available at the reclamation facilities and only during the day shift, Monday through Friday. He reviews the operators' work, but performs administrative and personnel duties and attends meetings much of the time. If the assistant supervisor is not working, the reclamation operators are directed to call the main plant supervisor. However, reclamation operators find the main plant supervisors do not know the tertiary processes or the reclamation facilities sufficiently to help, except to approve a work order for a maintenance employee to fix equipment that needs repair. Superintendent Biehl sometimes checks in, but he has no work experience in reverse osmosis or microfiltration technology. Operators must contact an outside vendor for technical resources and support for the microfiltration and reverse osmosis processes.

Reclamation operators spend several hours each day taking samples of the water and make process control decisions based on settleability tests, an orthophosphate concentration test, turbidity, and tests for total chlorine residuals and free chlorine. Operator II Eric Larsen testified that, although the processes are distinct, they are also interrelated. Operators make process changes one to two times a day. Main plant operators do not need the same chemistry or advanced water treatment knowledge as reclamation operators, who need to understand the factors that affect the binding of chlorine. Main plant operators do not need to understand breakpoint chlorination, chloramine, chemical control of phosphate precipitation, or advanced membrane treatment systems. The reclamation operators use an instrument not used in the main plant, a DR 3900, to measure free and total chlorine, chloramine, free ammonia, silica, hardness, and various elements. Operators in the main plant use a simple colorimeter to assess total chlorine only. Breakpoint chlorination requires more advanced understanding of the chemical interaction of chlorine and ammonia. As Larsen explained, "[T]he analyzers themselves will read an increasing amount of chlorine concentration; and then as you get closer to breakpoint chlorination, the actual chlorine residual will drop and then come back up. So the curve kind of goes up and has a hump and then goes back down and then comes back up again. It's not linear. And so if you're not aware of that fact and you're monitoring your total chlorine, you may inappropriately or incorrectly infer how much total chlorine you have in the system." (TR 343)

In sum, the reclamation operators testified they perform frequent lab work—about two to three hours per day—and that they use test results to decide whether and how to modify the operating parameters of the plant processes without conferring with supervision. The substances they test for interact in more complex ways than at the main plant. They are in charge of entire facilities, often all three reclamation plants and the distribution system to Chevron, without the assistant shift supervisor being available except on day shift five days a week. They are responsible for the efficient operation of entire facilities, not just equipment in a particular area, and are more liable if something goes wrong that is within the purview of their certification. They are responsible for the quality of the water that is sent to Chevron 24 hours a day, seven days a week, with or without communication with supervision.

Assistant shift supervisors, shift supervisors and operations coordinators in B913 and B608 corroborated these contentions in their responses to the survey questions of Lori Worden, who conducted the classification study discussed below. She prepared a chart of the differences and similarities the supervisory staff identified. They reported that the reclamation operators “have the independence, authority, and are expected to make parameter changes. They check lab data/reports and make adjustments according to the information given. In general, they do not confer with the Supervisor before making the change. The Supervisor is notified, often through the electronic log or email, of the change.” (Jt. Ex. 6, p. 14) They also observed that the reclamation operators “independently” initiate and implement changes to recording charts, whereas the B913 operator IIs make parameter changes only in “consultation with supervisory or coordinator staff.” (Ibid) While the supervisor or coordinate approves a process change at the main plant, the reclamation operator “[i]ndependently initiates a process change” and then notifies supervision. (Ibid) The reclamation operators also have more independence to initiate a cleaning and maintenance process in consultation and coordination with supervision. (Id., pp.15-16)

Prior to 2010, an operator could bid by seniority into the reclamation plants. The Wastewater Trades Training Program that prepares operators for primary and secondary

treatment positions did not include training for the tertiary processes that an operator must know to operate a reclamation facility, so the operators had to learn on the job.

Due to the start-up of the RARE facility, on August 23, 2010, the District separated bidding for B608 positions in the reclamation facilities from bidding for B913 positions. To reduce the impact of annual bidding and establish a “stable B608 workforce,” operators could bid only within their own section. The District justified the segregated bidding because “stability is required to promote the retention of operators with the requisite facility-specific knowledge, skills, and abilities to operate the recycled water facilities in a manner that satisfies all contractual and regulatory requirements.” (Un. Ex. 6) The East Bayshore and RARE plants are considered advanced water treatment facilities.

Although the Union initially resisted the bidding segregation, the B608 Operator IIs agree that one or more years of on-the-job training at the reclamation plants is necessary before an operator is able to proficiently operate the three facilities alone. In addition to on-the-job training, new reclamation operators receive training from outside consultants, vendors and industry groups that provide multi-day training conferences.

In September 2012, the District briefly considered staffing the North Richmond and RARE reclamation plants only with Senior Water Treatment Operators. (See, Un. Ex. 13) The senior WTOs have a WT III certificate that allows them to operate potable water or reclamation facilities alone, although they cannot work at a primary or secondary wastewater treatment plant. As the senior WTOs would have replaced the WWPO IIs in reclamation, the Union protested. The District abandoned its plan. (Un. Ex. 14)

In May of 2013, the District began a recycled water system training rotation for main plant Operator IIs. Reclamation Operator IIs trained the recycled water operators-in-training for three to four months as part of that rotation. The rotation system continued for several years, but is not currently active.

In 2013, the state changed the certification requirements for wastewater treatment plant operators assigned to work alone. Lone operators would have to possess WT III or

WW III certificates. The change did not affect the Operator IIs at the main plant since assistant supervisors with the higher certification are always present, but it affected the B608 Operators IIs on the swing, graveyard and weekend shifts because they worked without on-site supervision. Although many of the B608 operators had a Grade III certificate, Frank Anderson and Nick Kukich did not. They were told to obtain a grade III certification if they wanted to stay in reclamation. (Un. Ex. 17) They receive a \$15 premium per month for obtaining a certification higher than required for the class. (See, Jt. Ex. 2, Sec. 6.6.2)

The state Water Resources Board permitted Anderson and Kukich to continue operating the reclamation plants alone until May 2014, but restricted their duties “to include little operational discretion” and required “fail-safe procedures in place to access a Grade III Operator or higher.” (Un. Ex. 15) The District notified the Union that Anderson and Kukich would need to “voluntarily obtain a higher level certification” than required in their current classification. (Un. Ex. 16, p.2) After Anderson and Kukich obtained the Grade III certification, they returned to their regular level of duties.

In 2014, the Union filed an unfair practice charge with PERB regarding alleged unilateral staffing changes due to the new certification requirement. Part of the charge was dismissed as untimely, and the PERB agent found the Union did not state a prima facie case on the remaining charge. (Jt. Ex. 3, pp. 3, p. 11 of warning let.) When the charge was amended in May 2015, the Union charged that the District: 1) made a unilateral change when it stated it would not assign Operator IIs with Grade II certification to reclamation facilities and refused to bargain over the effects, and 2) failed to meet and confer over a proposed new job classification, description, and wage scale. PERB noted that the District had a managerial prerogative to change the minimum qualifications for the position to require Grade III certification. With respect to the first allegation, the PERB agent found that the Union failed to allege that any Operator II with Grade II certification had been reassigned or that the District had failed to negotiate over the effects of the decision to do so in the future. (Jt. Ex. 3, p. 7)

With respect to the second allegation, the Board agent found that Article 6.5 of the MOU specifically reserves to the District the right “to amend job descriptions to reflect changes in assigned duties and responsibilities,” and that the MOU had a zipper clause that waived the Union’s right to demand mid-term bargaining over changes to job descriptions, creation of a new job classification, or wage scales. (Jt. Ex. 3, p. 8)

### **Reclassification request and study**

As early as October 2010, the District was aware of the Union’s concerns about the accuracy of the WWPO II classification. (Un. Exs. 8, 11) The employee who conducted class studies retired in May 2011, and was not replaced until December 2014. (Jt. Ex. 7, Ex. A) The Union proposed a new class for B608 operators in 2013 negotiations, but did not manage to require a reclassification study in the MOU. In 2014, the Union filed the unfair practice charge alleging that the District was unlawfully failing to meet and confer on a new job classification. In January 2015, the parties discussed a job classification study. In April 2016, the Union filed a grievance demanding the District begin the study. (Un. Ex. 24) It was not until November 2016, that the District provided a Job Audit Request Survey to Eric Larsen on behalf of B608 Operators to gauge whether a reclassification study was appropriate. (Jt. Ex. 6) Although Human Resources found the responses supported a formal study, the first meetings did not happen until February 2017. (Id. p.2)

By June 2018, the study still had not been completed. There is evidence that the delay may have been related to anticipated changes to advanced treatment plant operator certifications, which would have given the Union another chance to bargain salary range changes for the reclamation operators. The Union filed another grievance. (Jt. Ex. 4) The District responded that the study was underway and would be “generated no later than December 31, 2018.” (Jt. Ex. 5)

The resulting study is dated December 31, 2018. (Jt. Ex. 6) Senior HR Analyst Lori Worden conducted the study. She sent surveys to the operator IIs in reclamation and interviewed them. She visited the jobsite on two days to shadow them.



Worden reviewed the staffing plan for the Operator series in wastewater. Trainees promote to operator I and begin on-the-job training for three years until they are qualified to become operator IIs or are terminated. Operator IIs are journey-level and provide direction to the lower level operators. She noted that the reclamation operators were operator IIs who moved to reclamation from the main plant and who received training upon their reassignment, but she did not discuss the additional training. (Jt. Ex. 6, p. 9)

Worden also obtained information from assistant wastewater shift supervisors, shift supervisors, operations coordinator, and superintendent at both the main plant and reclamation facilities. Worden reported their assessment of the differences between the tasks and responsibilities in B913 positions and those of B608 positions. (Jt. Ex. 6, p. 14) She spoke to the water treatment superintendent, although his input was not discussed in the report.

The report contains several inaccuracies. It lists the knowledge, skills and abilities from the current class description, but embellishes a couple in materially inaccurate ways. It states that operator IIs:

Recognize and report unusual, inefficient, or dangerous operating conditions and exercise independent judgment within established guidelines; take appropriate action

However, the class description (Jt. Ex. 9) states only that the operator II must have the ability to “Recognize unusual, inefficient, or dangerous operating conditions and take appropriate action.” More importantly, “independent judgment” appears nowhere in the WWPO II class description.

The list also states the operator IIs must have skill in “operation of sophisticated treatment equipment.” (Jt. Ex. 6, p.6) But the class description does not use the word “sophisticated.”

The report indicates the reclamation operators claimed to be Designated Operators in Charge when they were working alone. They did not. The Designated Operator in Charge is a state-required designation of an employee of a specified certification level who is in charge of overall operations of the plant if the chief plant operator is unable to

carry out the responsibilities of the CPO role, such as compliance with effluent limitations and regulations. Reclamation operators were asserting only that they were serving as the operators-in-charge when they work alone, not DOICs. This term is used in the class description of the Senior Water Treatment Operator (Un. Ex. 3) to which the reclamation operators seek to be compared. The Sr. WTO class description also states, “Work requires independent judgment, initiative and action within established operational parameters.” (Id., p. 1)

The report recites that the reclamation operators assert they should have a different class description because they have responsibilities that involve:

- Independent decision making
- Working alone without direct supervision
- Requirement of holding a Grade III state wastewater operator license
- Operating and maintaining advanced tertiary treatment plants
- Routinely acting as operator-in-charge of two independent Class IV plants

(Jt. Ex. 6, p. 3) Worden concluded, however, that the reclamation operators were working within the class description. She wrote with respect to independent decision-making:

Equipment and processes [in Org 608 and Org 913] are different, however both work within the scope of the WWPO II class description (i.e., operating assigned plant equipment without immediate or detailed supervision) ...

Both Org 913 operators and Org 608 Operators operate equipment according to protocols and procedures and according to SOPs. These guidelines are developed by supervisory and managerial staff ...

Operators in Org 608 currently follow a different procedure, which allows them to identify a process change and to carry out the change, without discussing or consulting with the Assistant Wastewater Shift Supervisor prior to making the change. This allows for more independence of action for the org 608 Operators, operating within the scope of their class with respect to the skill in making operating adjustments and operating assigned plant equipment without immediate or detailed supervision. ...

(Jt. Ex. 6, p. 17) She dismissed the reclamation operators’ claim that they were working at the level of assistant WW shift supervisors when they “review and analyze test results, computer data, daily logs and other operating information.” (Id. p. 18) She responded that they were working within their classification performing “routine control tests” and

adjusting plant equipment accordingly, accurately reading and recording data from gauges and meters, and logging test results. (Ibid) Regarding process changes, she wrote that the reclamation facilities in Richmond “function through stand-alone processes,” they are not as interdependent on upstream/downstream processes, and did not have “the same ripple effect/impact of decisions.” (Id., p. 14) She explained in a later memo,

At the Main Wastewater Treatment Plant the practice includes the element of ensuring that those changes do not adversely impact another part of the treatment plant since the primary, secondary, and solids facilities are all integrally related. Regarding our recycled water function, the same interdependencies are not found within each three facilities. Thus, the practice is to note changes in the log book (e-Log) and confer with the supervisor (either on duty or on standby) for unusual situations.

Worden found that the level of supervision of both B913 and B608 operators was consistent with their journey level. She found that staffing configurations were the reason for more process decisions by reclamation operators. She was unaware whether the main plant assistant shift supervisors had any knowledge or experience with reclamation. She was unaware that the Wastewater Operating Training program did not include training in tertiary processes that is necessary for operating reclamation plants.

Worden found that the Grade III certification requirement for the reclamation operators was due to staffing configurations. She rejected their assertion they were operators in charge if the assistant WW shift supervisor was not on duty because the B608 operators are not DOICs. She maintained that the need for a higher certification did not require reclassification.

The supervisors observed that the B608 operators “are the ones who have the most direct operational experience that enable them to provide valuable input to achieve the most efficient and effective day-to-day operation of the facilities,” whereas at the main plant, operators merely assist with the development of operating procedures. (Jt. Ex. 6, p. 15) She responded by noting that the responsibility for developing operating procedures is a supervisory duty, but all operators are expected to provide assistance in the development of SOPs. She believed that all Operator IIs were guided in their work by Standard Operating Procedures, but had not viewed the SOPs. The reclamation operators

contend that there are no accessible SOPs for reclamation, at least not online, although there are some in a binder in the storeroom. Supt. Biehl acknowledged that there are no SOPs for the East Bayshore facility.

The report noted that consultants had found the WWPO II class to match well with similar classes at eight comparable water/wastewater utility district employers that have been determined to be comparable employers for labor market purposes. She compared salaries with these matching classes in other districts, although the reclamation operators had not requested a salary review. The report noted the KSAs and duties of the OIT, Operator I and Operator II level classes in Central Contra Costa Sanitary District and another district that matched EBMUD's existing classification structure, but did not discuss the Plant Operator III class at Central Contra Costa Sanitary District, which is a comparator agency. (See, Un. Ex. 29) Worden explained that she found no agency that split reclamation operators from wastewater operators in their classification plans. She testified she wanted the reader to know that other agencies had a wastewater II classification. Worden had, in past classification studies, looked at whether job duties were higher or lower than similarly named classes in other agencies. (See Un. Ex. 30) The study also did not discuss the Santa Clara Valley Water District's Water Plant Operator class description, which refers to microfiltration and reverse osmosis processes that the operators use to produce potable water. The Santa Clara Valley class requires a Grade III certification, and the description notes that experience at an advanced recycled water treatment facility can qualify an applicant for the position. (Un. Ex. 28)

Nor did the report address any similarities with the District's own Sr. Water Treatment Operator class, which the reclamation operators asked Worden to consider. The District's Water Treatment Operator I is the journey level, and the Senior WTO is an advanced level. In a later memo, Worden asserted there was no need to compare to the Sr. WTO because the reclamation operator duties fit within the WWPO II class description. (Jt. Ex. 7, p.2) She testified she found the dissimilarities with the Sr. WTO class outweighed the similarities, as well as the fact the classes are in a different union and department.

Worden looked at level of work, hierarchy, reporting relationships and nature and scope of work. She testified she found more substantial similarities than differences between the reclamation operators and the main plant operators. Where there were differences, the duties and responsibilities all fit within the journey level and the “independent decision” rubric, a phrase that is not written in the WWPO II description.

After the completion of the study, the grievance process resumed at the Board of Adjustment. Worden responded to the Union’s objections to the study in a March 5, 2019 memo. (Jt. Ex. 7) She reiterated that she “did not find the level of independence for operational decisions was sufficient to require the development of a new classification.” She noted, “It is common for positions within the same job class to exist within different organizational structures and to have different reporting relationships.” (Jt. Ex. 7, p. 4)

In Spring 2019, the District proposed and the Union agreed to include a month of training in B608 of Operator Is in the Wastewater Treatment Plant Operator Trades Training Program. (Un. Exs. 20, 25) Because of the pandemic, this proposal has not moved forward. Nor has a District proposal to have all Operator IIs report to the main plant and work from a control center at the main plant to operate the reclamation plants.

### **POSITION OF THE UNION**

The District violated Section IV of the Civil Service Rules. It failed to maintain a class description for the reclamation operators that accurately sets out the minimum qualifications, knowledge, skills and abilities to operate and maintain the reclamation facilities. The 2018 classification study was internally inconsistent and devoid of relevant or accurate information, and its conclusions are not supported by its findings.

The District admitted that the B608 operator IIs have such unique knowledge, skills and abilities that bidding should be segregated. Specialization has only increased. The reclamation operators require additional training and certification beyond the four-year Wastewater Plant Operator Trades Training Program, which does not train employees on reclamation duties. Reclamation operators perform more complex lab work and make process changes without supervision. District witnesses did not rebut the need

for significant additional training for reclamation operators or differences in duties, KSAs and discretion as described in the Union's chart comparing duties.

The Civil Service Rules require that the job description contain the responsibilities and required knowledge, skill, abilities and other qualifications for the class, but the WWPO II position description does not mention the KSAs for a reclamation operator. Since the class was last revised in 1985, before the first reclamation plant, the description does not mention responsibility for reclamation equipment or facilities, tertiary processes, the Grade III certification, the lack of on-site supervision, the independent decision-making, or the more advanced lab work reclamation operators perform. Thus, the District is in violation of Rule IV, section 3.

Section 4 requires that the class description include only KSAs that are considered "necessary for proficient job performance." Eight elements of the class description do not apply to the reclamation operators. Knowledge of primary and secondary processes is not necessary for reclamation operators, as shown by the District's attempt to replace them with water treatment operators.

Therefore, the District violated Section 5 of Rule IV. It did not take steps to ensure the description was accurate and direct a study until the grievance was filed.

The District violated MOU Section 6.5.1 when its classification study arbitrarily found that the reclamation operators were working within the scope of the 1985 class description. There were so many errors that its conclusion is not supported. It fails to describe the minimum requirements reclamation operators need. It does not include nine types of KSAs that are needed, such as understanding breakpoint chlorination and other aspects of tertiary processes. It discusses DOICs even though the reclamation operators never claimed to be DOICs. It adds to the summary of the class description words that do not appear in the class description. It fails to note that the reclamation operators operate three facilities, rather than just equipment in one area of a plant.

The reclamation operators' duties are most similar to those of the Water Treatment Operator duties. They perform 15 of the 16 duties in the Sr. WTO description.

Worden did not analyze the similarities and differences since the two classes are not in the same bargaining unit, but the Civil Service Rules apply to all bargaining units. This reasoning is not consistent with her comparison of the WWPO II class description to class descriptions from other agencies. That comparison did not address the reclamation operators' claims—that the WWPOII class description does not describe their work. She did not compare to the Plant Operator III class of the Central Contra Costa Sanitary District, even though requested since those operator IIIs possess lead responsibility and are responsible for handling more complex problems. She would have seen the lower level of duties of Operator IIs. She ignored the description from the Santa Clara Valley Water District, which is relevant because of the tertiary processes the operators there use and their required certification.

The study fails to analyze whether the differences between the B913 and B608 work fall outside of the 1985 job description. There are merely conclusions. The study did not comply with the covenant of good faith and fair dealing. Its study was arbitrary, capricious, and conducted in bad faith in violation of MOU Section 6.5.1.

PERB's decision did not address whether the District failed to comply with its own Civil Service Rules, the primary focus of this grievance. Its decision letter was based on failure to state a prima facie case of refusal to engage in effects bargaining and the MOU's zipper clause.

The Arbitrator should sustain the grievance and order the District to reclassify reclamation operators into a separate classification from the 913 operators. The Union withdraws its out-of-class pay remedy request.

### **POSITION OF THE EMPLOYER**

The District's decision that operator duties in reclamation are properly assigned to the operator II class was a discretionary determination that did not violate the MOU or Civil Service Rules.

Section 3.1.1 of the MOU clearly gives the District the exclusive right to determine the content of job classifications and determine the personnel by which

operations are to be conducted. In Section 6.5, the Union recognizes the District's right to establish new job classifications and amend existing ones to reflect changes in assigned duties and responsibilities. The Personnel Rules provide that Human Resources recommends whether an existing position is properly allocated or should be reallocated to a new or existing class. Thus, the District has complete discretion in determining where to allocate job responsibilities and positions within the classification system.

The MOU prevents arbitrators from issuing any order that reverses, overrules or modifies a District decision unless the decision violates the MOU or was arbitrary, capricious or discriminatory.

Operator IIs at the main plant perform complex work and are responsible for safe processing of a constant stream of raw sewage into clean water that flows into the Bay. It is highly regulated work. All Operator IIs are required to pass the same certification test, no matter what type of treatment or technology is used. There are no advanced operators. Just as operators in the main plant work within parameters, the reclamation operators produce treated water that meets the parameters set by Chevron or other customers. The water they work with is already treated sufficiently to release to the Bay.

When the State first required reclamation operators to hold a Grade III certification, the reclamation operators' duties did not change. Therefore, nothing that happened in 2013 required creation of a new class.

PERB has already rejected the Union's arguments. It noted that the "organization and assignment of work are generally matters of management prerogative." PERB has held the establishment of minimum qualifications for a position is managerial prerogative. In rejecting the Union's assertions, PERB agents stated that the "assignment of duties reasonably comprehended in a job description is not an unfair labor practice." (quoting Jt. Ex. 3)

The Union did not meet its burden. There is nothing arbitrary or capricious about the District deciding that differences in duties of reclamation operators do not warrant creating a unique classification for Operator IIs in reclamation. The class description is



written broadly enough to cover duties in reclamation. The Union ignores that different assignments within a classification can have different layers of supervision. More supervision is called for at the main plant because the influent is raw sewage. Worden did not find that other agencies had a practice of separating reclamation operators from other wastewater operators.

The District's classification study properly concluded that Operator IIs in reclamation were performing journey-level duties within their classification. Descriptions are illustrative, not restrictive. Both reclamation and main plant operators must make operating adjustments, operate and troubleshoot assigned plant equipment, and react to dangerous or inefficient conditions without detailed supervision. While the class description has not been updated since 1985, it fully describes journey-level duties.

The Union's desired remedy of a unique new classification is not available through arbitration because the District has sole discretion over the classifications and allocation of job responsibilities. The Arbitrator would only have authority to order the District to revise the Operator II class description, but not to prescribe how it should be updated. The requested remedy does not relate to a dispute concerning the interpretation or application of the MOU or of the Personnel Rules.

## **DISCUSSION**

### **Class Description**

Section 6.5.1 of the MOU gives employees the right to request a classification study of their position. An employee, Steve Coulson, apparently did so in 2013. By July 2016, it was clear to all sides that a classification study had been requested. (Un. Ex. 24) The District then stated it could not commit to completing the study because it was inundated with such requests. This was not a valid excuse, since the District did not replace the HR person who had had the primary responsibility for classification studies between the time of his retirement in May 2011 and December 2014, when Worden was hired. (Jt. Ex. 7, Att. A) Although begun in November 2016, the study was not issued until December 2018, more than a two-and-a-half years after a clear request and well

after the District knew there was a question of proper maintenance of its classification plan.

The repeated delays in taking steps to maintain its classification plan amount to a violation of MOU Section 6.5.1. The last three sentences of that section refer to timelines, time frames, and a four-month remedial time limitation. It is clear the Union bargained for classifications studies to be completed within a reasonable time after the request. Two-and-a-half years is not a reasonable time.

The evidence shows that the District was on notice for years that it needed to review the WWPO II class description. The Civil Service Rules require the Manager of Human Resources to make sure class descriptions are “accurate” and to “maintain” the classification plan. Maintenance of the classification plan is an active process, as illustrated by Rule IV, Sec. 7.e, particularly when there have been changes in position duties and responsibilities. (Sec. 7.d) HR may recommend the “proper allocation” of a position and/or the revision of a class description to maintain the classification plan. (Sec. 7) The Union claims the District did not maintain appropriate class descriptions for the B608 operators.

As the Civil Service Rules provide, class descriptions set out typical duties in general terms. Positions within the class need not require the performance of all the duties and may include duties that are not listed, but are of a “similar kind or level.” (Sec. 4) Thus, the fact that reclamation operators do not sample scum and grit would not make the class description inappropriate for them if they do similar duties at the same level. Conducting more testing in itself does not render the class description inaccurate, as long as the testing is of similar level.

A class description must have the “knowledges, skills, abilities and other qualifications required of employees in the class.” (Sec. 3) Here, the Union contends that the reclamation operator positions are allocated to the wrong class because they have different duties, responsibilities, KSAs, and qualifications than are listed in the WWPO II class description.

The Union correctly contends the Definition section in the WWPO II class description is not accurate for the reclamation operators. In addition to operating, inspecting and maintaining a variety of plant *equipment*, they operate reclamation processes and entire facilities under general supervision. An assistant shift supervisor reviews their work, including process changes, after the fact and only on five weekday shifts.

The Union contends the distinguishing characteristics are inaccurate for the B608 operators' work. They are responsible for the efficient operation of designated wastewater treatment equipment during an assigned shift, but many reclamation operators are also responsible for the entire operation of a facility or facilities during their shift, since the assistant shift supervisor is on duty for a limited time. In addition, a review of the description in context shows that operator IIs are primarily responsible for *equipment*, rather than "treatment processes" that are the primary responsibility for assistant shift supervisors. As discussed below, reclamation operators are responsible for both equipment and processes without conferring with supervision. Like the definition, this section does not accurately convey the scope and level of the work for most of the B608 operators.

The first example of duties is inaccurate because it does not mention tertiary treatment processes. It also omits the operation of centralized computer-controlled equipment to regulate flows through the tertiary processes. As discussed below, this omission is significant because operator work in the tertiary process is different in kind and level. The difference is significant enough that the District segregated bidding because there were "facility-specific knowledge, skills, and abilities to operate the recycled water facilities," particularly for RARE. (Un. Ex. 6)

The second example is inaccurate because the reclamation operators at the East Bayshore and RARE facilities do not take samples at established times; the timing of their wastewater samples is based on their knowledge of the processes. This difference is a one of level, particularly as they use higher level knowledge, as discussed below. The testing that all reclamation operators do is standardized, but they test for more kinds of

constituents. While performing different kinds of tests may not make their work a different level, the fact that they analyze more test results using a higher level of knowledge of chemistry (breakpoint chlorination and chloramination, chemical control of phosphate precipitation) does. Nothing in the WWPO II class description refers to the analysis of test results that B608 operators perform.

Although the third example of duties does not apply to B608 operators, it does not render the class description inaccurate. The Civil Service Rules explains that the list of duties is not meant to be exact, just representative.

The fourth and fifth examples of duties are common to the operator IIs in both the main plant and the reclamation facilities. Reclamation operators perform at least part of the duties in the sixth example. Examples 8 through 10 also appear to accurately describe duties of reclamation operators.

The seventh example of duties, directing lower level operators, has been accurate in substance at times when the District has rotated operators from the main plant through a reclamation facility for several months. These rotations occurred for several years and are again proposed, but do not happen currently. Experienced reclamation operators do help with on-the-job training of new reclamation operators.

The knowledge section of the class description is inaccurate, since it does not mention tertiary processes or equipment. Tertiary treatment is not a similar kind or level of work such that the mention of primary or secondary processes can be considered “representative” as required in Rule IV, Section 4. The testing is different and of a higher level, as discussed above. The equipment at the East Bayshore and RARE facilities is more technologically advanced. Knowledge of the control systems, particularly at the North Richmond plant that controls all three facilities, is a material omission from the class description. There is no dispute that operator IIs from the main plant must go through a lengthy on-the-job training process, as well as receive external training, to become fully proficient reclamation operators able to operate a facility or facilities alone. This year-long training shows that the tertiary process operator work is not of similar kind as the primary and secondary operator work.

The skills and abilities listed in the WWPO II class description apply to operator IIs in the main and reclamation facilities. What they omit, however, is the ability to operate a reclamation facility and adjust processes based on the data from testing. As the supervisors explained in their survey responses and the reclamation operators attested, most of the reclamation operators analyze test results and make process/parameter changes without supervisor approval. Even when the assistant supervisor is on duty, he is not always onsite, and the reclamation operators have the authority to make process changes.

The most important defect of the class description as applied to the reclamation operators, however, is the requirement of a Grade III Wastewater Treatment Plant Operator certification. This is a minimum requirement. Newly assigned reclamation operators must obtain the certification within a short period of time. (See Un. Ex. 18) Along with the inaccuracies identified above, this failure to list the higher qualification renders the class description inaccurate in violation of Rule IV, sections 3 and 5.

In addition, it is conclusive evidence that most, if not all, reclamation operator positions are not allocated to the correct class description. Section 6 provides that different positions “may be allocated to a single classification” if the “same qualifications and examinations of those qualifications are appropriate for each position allocated to the class.” Here, they clearly are not. Operators in reclamation positions must possess a Grade III certification; main plant operator II positions do not require it. At least by the time they possess a Grade III certificate, reclamation operators should not be in the same classification.

Supt. Biehl testified to his belief that reclamation operator duties are not more complex than those at the main plant, based in part on his experience as a reclamation operator. However, his experience was limited, as it was before the RARE and East Bayshore facilities—which use reverse osmosis and other advance membrane treatment and controlled by centralized computer systems—began operations. Supt. Biehl contended that the work is not as responsible because of the hazardous nature of main plant influent. While there are more permit requirements for the main treatment plant, no

individual operator is responsible for the quality of the effluent to the Bay. The reclamation operators, however, are responsible for the quality and constituents of the water that leaves their facilities and that must satisfy exacting requirements for Chevron to prevent damage to refinery equipment. The Employer did not contradict the assertion that the reclamation operators make process changes independently without supervision, and that the work of swing shift and weekend operators is not reviewed for hours or days afterwards.

The District argues that differences in supervision can vary within a class. That may be true in some circumstances, but here the difference in supervision makes a difference in the exercise of independent judgment and responsibility for the quality of the water that goes to EBMUD customers, a difference in level of work.

The District points to the fact that supervisors at the main plant decide on process changes because the processes in one section of the plant are interdependent with upstream and downstream processes. Testimony indicates, however, that the processes in the reclamation facility are also interrelated; the operator must understand how to change pH to manage one constituent and then return to neutral pH and manage the need for different levels or proportions of chlorine at different stages in the treatment process.

The District contends that PERB already rejected the Union's arguments in this case. The PERB case dealt with many of the same facts, but not all the same legal and contractual arguments. PERB's decision did not address whether the District failed to comply with its own Civil Service Rules, a primary focus of this grievance.

The District argues that the Grade III certification requirement is not relevant because no duties changed. This contention ignores the fact that the class description may not have been accurate even in 2013, as the responsibilities and KSAs for reclamation operators changed substantially with the RARE and East Bayshore facilities as far back as 2010 (Un. Ex. 6). It also fails to recognize that the State's restriction on the duties of reclamation operators without the Grade III certification—"to include little operational discretion" and requirement of "fail-safe procedures in place to access a Grade III Operator"—proves the higher level of work that reclamation operators normally did.

Anderson testified his duties were restricted until he obtained the Grade III certification, when they returned to normal.

As the evidence and the discussion above show, the WWPO II class description is not accurate for the operators in reclamation positions. The District failed to revise the WWPO II classification as it applied to reclamation operator positions in violation of Section 5.

Beyond the need for revisions, Civil Service Rule 6 prescribes that those reclamation operators who are required to have a Grade III certification should not be in the same class as those who have only Grade II certifications. In addition, the inaccuracies with regard to level of work performed make it inappropriate to allocate the reclamation positions to the current WWPO II classification. Section 8.c provides the HR manager has authority to recommend “whether an existing position ... should be reallocated to a new class ...” to comply with the obligation to maintain the classification plan. (See, Secs. 7.e, 8.c) A different class needs a different class description. The District failed to maintain the classification plan in violation of Rule IV, section 3 by not having an appropriate class description that stated the typical duties and responsibilities, KSAs and required qualifications for all reclamation positions.

### **Classification Study**

The District correctly contends that the District has a great deal of discretion over the content of its class descriptions. Like all good civil service rules, however, the District’s Rules contain standards. The Arbitrator has authority to decide whether a District decision or omission violated the Rules or was arbitrary or capricious.

Once a classification study is requested and the District determines the study is appropriate, part of the process involves deciding “whether an existing position is properly allocated or should be reallocated to a new class or an existing class.” (Sec. 8.c) Or revised class descriptions may be required. (Sec. 8.d) Rules for allocation of positions (Section 6) guide the analysis as well as considerations stated in Sections 3 through 5.

For the reasons discussed above, the Arbitrator finds that the study's conclusion that all of the B608 operators are working within the scope of the current WWPO II classification is mistaken. The definition and distinguishing characteristics sections do not describe the higher level of work of reclamation operators who are proficient in tertiary processes. The first and second examples of duties describe a lower scope and level of work than proficient reclamation operators perform. The knowledge, skills and abilities sections omit the tertiary processes, chemistry knowledge, analysis of test results and use of those results to change parameters of the processes, as well as the operation of an entire facility (or facilities) that runs interrelated processes.

Worden explained several reasons that she found the reclamation operators' work is within the scope of the WWPO II class description.

First, she found they were performing journey-level work, just on different processes and equipment. This is a conclusion that is not supported by the assertions of supervisory personnel that she surveyed. The study did not differentiate between main plant operator IIs making equipment adjustments within parameters and making decisions to change parameters, which are process changes that B608 operators make independently. It characterized the reclamation operators' process changes as "independence of action" without noting the qualitative difference in responsibility and need for judgment of operators making process changes without supervisors being on duty to review them until hours or days later in many cases.

Worden testified that independent decisions are part of the Operator II journey-level job. However, the word "independent" is not in the WWPO II class description; nor is the phrase "exercise of independent judgment," which the study wrongly asserts is an example of a KSA in the class description. The District has used "independent judgment" as characteristic of the work of a lead or advanced working level position that also works under "general supervision." (See, Sr. WTO class, Un. Ex. 3)

Not only does the WWPO II class description not contain "exercise of independent judgment," the assistant supervisors/shift supervisor/coordinator survey responses did not use these words with respect to B913 operators. In contrast, they stated



that the B608 operator IIs “have the independence, authority, and are expected to make parameter changes.” They “independently” initiate and implement changes to recording charts, and “independently” initiate a “process change” and then notify supervision. (Id. pp.15-16) The evidence indicates the scope of the independent decisions that main plant operators make relates to equipment (i.e., trouble-shooting heat exchangers) rather than treatment processes or taking sour digesters out of service.

The study dismissed the significance of the lack of a reclamation assistant shift supervisor on duty for the majority of the hours of the week as a difference in “current procedure.” It asserted this difference in procedure allowed an opportunity for main plant operators to consult on process changes. First, there is no evidence that the reclamation operators’ independent decisions to make process changes is temporary or recent. Second, the absence of supervisory review of reclamation operators’ work for up to two-and-a half days (Friday to Monday) amounts to a substantive difference in responsibility, not a procedural one. The study’s assertion that all operators follow SOPs is not accurate, as even Supt. Biehl acknowledged that not all the reclamation facilities have SOPs.

The study found that reclamation operators’ testing responsibilities were the same as at the main plant without acknowledging that they had the independence, authority and responsibility to make parameter changes based on lab data and reports, according to supervisory staff.

The study did not recognize the importance of the Grade III certification requirement for operators in reclamation positions. While all operator IIs have wastewater certification, not all operator IIs are required to have the Grade III certification. The study seemed to view the certification as a mere regulatory requirement without recognizing the fact that Grade III certification requires greater knowledge, which is assessed by an examination. In addition, as explained above, the study ignored the fact that the Civil Service Rules require that positions should not be in the same classification unless the “same qualifications and examinations of those qualifications are appropriate for each position allocated to the class.” (Sec. 6.c) The reclamation operators are required to have higher qualifications and take an extra examination. Thus, the

decision of the study that all reclamation positions were correctly allocated to the WWPO II class violates the standard in Section 6.

The District argues that there is no practice in other agencies of separating reclamation operators from other wastewater treatment operators. That could be because supervisors in tertiary areas are present and make all process change decisions. Or it may be because there are more levels of operators in the comparator agencies. At Central Contra Costa Sanitary District, which is a comparator agency, the Operator III class description includes references to primary, secondary and tertiary treatments within the *duties* section, unlike the lower classifications. (Un. Ex. 29) More important than what other agencies do is the level of the actual work that operators in the District's reclamation facilities do. Here, the reclamation positions have more responsibility and authority to make independent decisions about process changes and control an entire facility that has interrelated process changes based on higher level knowledge. The independence of decisions and action is important in classification since it is an indicator of level of work.

The decision to continue to allocate all reclamation positions to the WWPO II class violated Rule IV of the Civil Service Rules. Being mistaken, however, is not arbitrary or capricious. There is insufficient evidence that the study was arbitrary or capricious.

### **Remedy**

The Union has proven that the WWPO II class description is not accurate and should be revised if it is to apply to reclamation operator positions without continuing violation of Rule IV. It has shown that the level of duties, responsibilities, KSAs, and qualifications required in reclamation positions is higher than the WWPO II class and that reclamation positions should not be allocated to the current WWPO II class.

The Arbitrator's authority to order a remedy is limited, however. The District shall revise the job description for operators in reclamation. The District shall create a class description that complies with Rule IV for reclamation operator positions that are

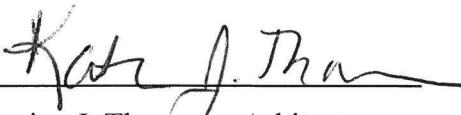
required to have Grade III certification and/or that work at a higher level requiring KSAs above the current WWPO II class.

### AWARD

**The grievance is sustained.** The District violated MOU Section 6.5.1 when it did not timely complete a classification study. The District violated Civil Service Rule IV, subsections 3 and 5, by failing to maintain proper class descriptions for Budget Unit 608 Operators. The District's determination that Operator positions in reclamation are properly allocated to the Wastewater Plant Operator II classification violated an express provision of the rules governing personnel practices.

The District shall revise the job description for operator positions in reclamation. The District shall create a class description that complies with Rule IV for reclamation operator positions that are required to have Grade III certification and/or work at a higher level and require higher level KSAs than the current WWPO II class.

DATE: March 21, 2021.

  
Katherine J. Thomson, Arbitrator