

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
MANITOWOC COUNTY COURTHOUSE EMPLOYEES :
UNION, LOCAL 986-A, AFSCME, AFL-CIO :
and : Case 230
MANITOWOC COUNTY (COURTHOUSE) : No. 43748
: MA-6058
- - - - -

Appearances:
Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40,
AFSCME, AFL-CIO, on behalf of Local 986-A.
Mr. Mark Hazelbaker, Corporation Counsel/Administrative Coordinator, on
behalf of the County.

ARBITRATION AWARD

According to the terms of the 1988-1990 collective bargaining agreement between Manitowoc County (hereafter the County) and Manitowoc County Courthouse Employees Union, Local 986-A, AFSCME, AFL-CIO (hereafter the Union) the parties requested that the Wisconsin Employment Relations Commission appoint a member of its staff to act as impartial arbitrator of a dispute between them involving the County's promotion of bargaining unit member Jennifer Hudon to the position of Deputy Clerk I in the County Clerk's office over other bargaining unit members who also applied for the promotion. The undersigned was designated arbitrator and made full written disclosures to which no objections were raised. Hearing was held on June 4 and September 21, 1990 at Manitowoc, Wisconsin and a stenographic transcript of the proceedings was made. The parties filed their written briefs by November 14, 1990, and they were thereafter exchanged by the undersigned. The parties waived the right to file reply briefs herein.

ISSUES:

The parties stipulated that the following issues are to be decided in this case:

- 1. Did the Employer, Manitowoc County, violate the agreement by promoting Jennifer Hudon to the position of Deputy Clerk I.
- 2. If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS:

ARTICLE 3 - MANAGEMENT RIGHTS RESERVED

Unless otherwise herein provided, management of the work and direction of the working force, including the right to hire, promote, transfer, demote, or suspend, or otherwise discharge for just cause, and the right to relieve employees from duty because of lack of work or other legitimate reason, is vested exclusively in the Employer. If any action taken by the Employer is proven not be justified, the employee shall receive all wages and benefits due him or her for such period of time involved in the matter.

Manitowoc County shall be (sic) the sole right to contract for any work it chooses and to direct its employes to perform such work wherever located subject only to the restrictions imposed by this Agreement and the Wisconsin Statutes. In the event the Employer desires to subcontract any work which will result in the layoff of any County employees, said matter shall first be reviewed with the Union.

Unless otherwise herein provided, the Employer shall have the explicit right to determine the specific hours of employment and the length of work week and to make such changes in the details of employment of the various employees as it from time to time deems necessary for the effective operation of its department. The Employer may adopt reasonable work rules except as otherwise provided in this agreement.

The Employer agrees that all amenities and practices in effect for a minimum period of twelve (12) months or more, but not specifically referred to in this Agreement, shall continue for the duration of this

agreement.

. . .

ARTICLE 22 - JOB POSTING

Notice of vacancies and new positions shall be posted within five (5) working days after the vacancy occurs on the bulletin board in each department as well as the bulletin boards in the Courthouse (located in the office of the County Clerk and the Personnel Department) for five (5) working days. The notice of posting shall include the following minimum information: wage rate, hours of work, department, position title, job description, and qualifications. Any employee desiring to fill any such posted vacancy or new position shall make application in writing at the Personnel Department. After the conclusion of the posting period, the applications shall be opened at the Personnel Department in the presence of a representative of the Union and a representative of the County Personnel Committee, or its designee, at a time to be mutually agreed upon.

Whenever any vacancy occurs, it shall be given to the employee with the greatest seniority within seven (7) work days after the completion of the posting period.

When objections are made by the Department Head regarding the qualifications of an employee to fill the position, such objections shall be presented to the employee and the Union in writing by the Department Head or the Department Head's designee.

If there is any difference of opinion as to the qualifications of an employee, the County Personnel Committee and the Union Committee shall take the matter up to adjustment through the grievance procedure.

. . .

ARTICLE 24 - PROMOTIONS

Promotions within the Courthouse shall be granted on the basis of seniority providing the applicant for such position is qualified and eligible for such position.

However, when the County deems it necessary to fill a position of deputy to an elected official, promotions to that position will be made from within the bargaining unit and shall be determined on the basis of relative skill, ability, experience and other qualifications. Where qualifications are relatively equal, seniority shall be the determining factor.

BACKGROUND:

Notably, the language contained in Article 24 - Promotions at paragraph 2 was changed by the parties (based upon a County proposal) in the collective bargaining agreement that immediately preceded the effective agreement here. At that time, the County and the Union disagreed as to the proper interpretation of the language directly involved in this case and letters from both the Union and the County on this point (dated in March, 1987) were placed in the record herein. The Union asserted in its letter that Article 24 should be interpreted as requiring the union applicant who is selected for a promotion to be "head and shoulders above" the senior applicant. The County responded to the Union's letter and therein its corporate counsel stated that he interpreted the language to mean that where there were "minor differences in qualifications, seniority would be considered." The Union did not reply to the County's letter and the matter was never raised again until this grievance was filed. The instant case is the first one to go through the arbitration procedure to this stage which addresses the question of the proper interpretation of this language in Article 24.

FACTS:

In January, 1990, Ms. Debra Peterson resigned her position as Deputy I, County Clerk, (hereafter DCI) a Courthouse bargaining unit position, and the County thereafter posted the position pursuant to the effective contract. Eight members of the Courthouse bargaining unit applied for the job opening (one later withdrew her application). In addition, one member of the County's Social Services bargaining unit applied for the position but did not pursue the promotion, and her involvement herein is not in issue in this case. The seven Courthouse bargaining unit members who applied were as follows, and their seniority dates appear next to their names:

Cheryl Duchow	11/2/87
Charlotte Endries	06/17/74
Jennifer Hudon	01/21/86
Lois Kiel	07/22/88
Charlene Koch	01/30/84
Edythe Sporleder	02/22/82
Jeanne Wolfe	09/22/86

Letters dated January 12, 1990 went out to the seven applicants for the DCI position stating that the test would be given on January 16, 1990 beginning at 5:30 p.m. at Lakeshore Technical College in a certain room. These letters also quoted from Article 24 - Promotions, paragraph 2 and then stated, inter alia: 1/

....The tests will include a general clerical test (vocabulary, reading comprehension, spelling, filing, sentence structure, etc.), basic arithmetic, typing and shorthand tests. You should allow between 3 and 3 1/2 hours to complete all segments of the test. All materials you will need for the tests will be furnished....

On January 16th the seven applicants traveled to Lakeshore Technical College (hereafter LTC) where each applicant took the same four tests, administered to each applicant under the same circumstances by LTC personnel. 2/ The tests administered can be described as follows:

1. General clerical, including proofreading, filing, word usage, sentence structure, punctuation and capitalization, spelling, reading comprehension, vocabulary and grammar.
2. SRA arithmetic, including addition, subtraction, multiplication, division, fractions, decimals and percentages.

1/ Prior to the test, Charlotte Endries approached Mr. Fischer alone and asked him how the County was going to make its selection from among the applicants for the DCI position. On cross examination, Ms. Endries admitted that she also asked Fischer what the County's testing procedures would be for the position. Endries stated that Mr. Fischer answered her that he did not know.

2/ It is undisputed that there was dense fog on the roads on the night the examinations were given at LTC and that all applicants had to travel through the fog to take the tests; that the machine transcription test did not go smoothly -- the tape was difficult to hear and all applicants were given the opportunity to hear the tape recording twice; that all applicants had put in a full workday for the County before traveling to LTC to take the tests.

- 3. A five minute timed typing test.
- 4. A machine transcription exercise used to measure shorthand ability at 80 wpm.

The examinations were then graded by LTC with no involvement therein by the County or its personnel. The County thereafter received the following examination results from LTC:

MANITOWOC COUNTY CLERICAL POSITION TESTING
DATED JANUARY 16, 1990

Name Correct	Manitowoc Clerical Test*		SRA Arithmetic*		SRA Typing Index	Machine Transcription Exercise	
	Raw	%	Raw	%	Correct	No. of	%
	Score	Correct	Score	Correct	WPM	Errors	
1. Wolfe, J.	242	88	43	80	64.20	3	97
2. Koch, C.	224	81	51	94	73.92	9	91
3. Sporleder, E.	231	84	47	87	60.24	9	91
4. Hudon, J.	239	87	54	100	66.40	10	90
5. Kiel, L.	222	81	46	85	55.32	16	84
6. Duchow, C.	224	81	54	100	52.20	17	83
7. Endries, C.	224	81	45	83	49.72	21	79

*Administered untimed.

NOTE: These results are not to be used as the sole determinant for hiring or promotion. They must be used with other information.

It should be noted that the County had utilized the clerical and arithmetic examinations to test for openings that had occurred in the Courthouse unit for at least the past three years, and the Union had not objected to the use of these tests. The County has also made composite scores for purposes of comparisons of the candidates, for more than the one year by taking an average of the test scores, just as the County did in this case, without objection from the Union. According to the County, the County has not regularly used the typing and machine transcription tests since most Courthouse unit positions do not require the level of typing and shorthand skills needed in the DCI position. In the instant case, the County subtracted the number of errors made in the machine transcription exercise from the total raw score to get the following percentages of correct answers, overall, for each applicant:

Jennifer Hudon	85.85%
Charlene Koch	84.98%
Jeanne Wolfe	82.30%
Edythe Sporleder	80.56%
Cheryl Duchow	79.05%
Lois Kiel	76.33%
Charlotte Endries	73.18%

The County's assistant HRD Director added the raw scores from all tests and then subtracted the number of errors each applicant made on the machine transcription test to get a total raw score for each applicant as follows:

Hudon	349.40
Wolfe	346.20
Koch	339.92
Sporleder	329.24
Duchow	313.20
Kiel	307.32
Endries	297.72

Based upon the applicants' raw test scores, the County determined that it would only interview the top four candidates for the DCI position.

It is undisputed that the County has rarely interviewed all applicants for a position. Essentially in this case, the County Clerk and Schmidt used the difference in raw scores, 16 points, between the fourth and fifth ranked applicants as a cut-off point in deciding who to interview and thereby decided to interview only the top four applicants. The County, at this juncture disregarded the percentage for purposes of deciding who to interview. It is clear that the County Clerk did not tell either the applicants or the Union in advance of his decision, that he and Schmidt would not be interviewing all applicants or on what basis the cut would be made.

Notably, no evidence was submitted to show that the County Clerk harbored any bad faith motives or animosity toward Kiel or Duchow which caused him to decide not to interview these two. In addition, the Union failed to put forth any evidence to prove that Fischer's decision not to interview Endries was based upon any anti-union or bad faith motives or any animosity toward Endries. Rather, the evidence showed that the raw scores received by Endries, Duchow and Kiel on the LTC tests were the sole determinant in cutting them from further consideration prior to the interviewing process. The County asked each interviewee the same eleven questions at the interviews conducted (on the same day) by County Clerk Fischer and County Human Resources Assistant Director Schmidt.

The eleven questions asked of each interviewee by Fischer and Schmidt were as follows:

1. What experiences have you had that would be helpful to you in this position?
2. What would you consider your greatest strength? ... weakness?
3. In your opinion what would be the necessary personal quality for success in this position?
4. What kind of people do you like working with? ... What kind of people do you find it most difficult to work with?
5. What would you expect to accomplish in this position, if you were selected, that you are not accomplishing in your present one?
6. What do you feel you could most improve upon?
7. In what ways do you feel your present or last job has developed you to take on even greater responsibilities?
8. Tell me about any computer or word processing training you have had that might be helpful in this position.
9. What are some of the things on your job you feel you have done particularly well or have the greatest success?
10. What assets do you have that would help you be successful in this position?
11. Do you have any further questions or comments before we conclude?

At the end of the interviews, Fischer and Schmidt agreed that the successful applicant should be Jennifer Hudon who had previously worked for the Parks and Planning Commission.

By letter dated January 22, 1990, the unsuccessful applicants for the DCI position received letters from the County which read in part as follows:

....It was a difficult decision to fill this vacancy as all applicants tested did well on the exams. If you are interested in seeing your individual test scores, or if you have any questions concerning this position, please feel free to contact this office at your convenience.

The County further clarified its reasons for promoting Hudon in its January 9, 1990 communication to the Union in response to a Union request for information regarding Hudon's selection, were as follows:

After completing the interviews and reviewing the information provided by the candidates, Jennifer Hudon was selected to fill the position based on her computer experience and word processing. She has had extensive experience preparing detailed minutes for Board of Adjustment and Park and Planning Commission meetings. She has had to prepare agendas and send notices to the newspaper; prepare ordinances and resolutions for County Board action. Jennifer also has office management experience from previous employment where she supervised a staff of ten.

In addition, Jennifer ranked highest on the tests administered by LTC.

The final decision to hire Jennifer was Dan Fischer's; however Dan and Diane (Schmidt) concurred that the combination of her test scores and qualifications definitely was superior to that of the other applicants.

The Union's grievance filed on January 22, 1990, was filed on behalf of grievants Endries, Koch, Wolfe, Duchow and Kiel and in its letter dated February 26, 1990, the Union stated, inter alia as follows:

....Local 986A and the grievants...believe that the testing procedures were unfair. Not all applicants were interviewed. The Employer did not know or could not inform the applicants in advance how qualifications for the job award would be judged. The "skill, ability, experience and other qualifications" of some of the applicants were not evaluated. The process was prejudiced in favor of applicants who tested well and against senior applicants with experience....

The Deputy I County Clerk Position

The incumbent DCI must administer the County-wide election program, prepare election ballots, legal notices, the DCI also coordinates election supplies, instructs local clerks on proper election procedures, coordinates the preparation of materials for County Board meetings, attends County Board meetings and takes minutes thereof, transcribes these minutes and prepares proceedings for annual publications of the Board in the form of a County Board Proceedings Book, advises two Clerk's office staff members on proper office procedure for issuing marriage licenses and verifying other official County records; the DCI trains staff, maintains permanent files of leases, contracts, pending legal actions, etc. The DCI also must fill in for the County Clerk as well as any other office staff who are absent from time to time and whose job duties must be performed. The DCI updates information for the County Directory and proofreads and submits the final draft thereof that goes to the printer. The DCI maintains and updates mailing lists, arranges for the annual printing, publication and distribution of the County's Statistical Report of Property Values and provides clerical assistance to the County Clerk as required.

The seven applicants had various backgrounds and experiences both within and outside of County employment prior to their application for the DCI position. Since the County decided to interview only the four applicants who ranked highest on the examinations administered and graded by LTC, the County never inquired and therefore it was never fully aware of all aspects of the bottom three applicants' qualifications and experience.

Qualifications of the Applicants for the DCI Position

County Clerk Fischer testified at the instant hearing that he made the final decision regarding who should receive the DCI position but that he and Ms. Schmidt concurred and agreed at the end of the interviewing process that Hudon was the best candidate for the job. In regard to the process of selection, Fischer stated that after the County received the results of the applicants' tests and reviewed their other qualifications, as reflected in their county personnel files, he and Assistant HRD Director Schmidt decided not to interview Endries, Kiel and Duchow because Fischer and Schmidt did not believe these three had a "legitimate chance" of being selected for the DCI position.

Specifically in regard to Duchow (employed at the County Public Health Nursing Department at the time of her application), Fischer stated that although she had done well on the arithmetic test (rank, tied for first), she did relatively poorly on the general clerical (rank, tied for fourth), typing (rank, sixth) and shorthand tests (rank, sixth). Also, Mr. Fischer knew based on her personnel file, that Duchow had not had experience working on County Board minutes, agendas and resolutions and that her experience with computers was not as extensive as that of the other candidates.

In regard to Lois Kiel, Fischer stated that since she was the Account Clerk 2 in his office at the time of the posting of the DCI position, he knew her work, which Fischer stated was "very good." Fischer also stated that Kiel had ranked fifth on the math and typing tests, fifth on the shorthand test and seventh (last) on the general clerical test. He then implied that in his mind, Kiel did not have a chance to get the DCI position given the other candidates in the pool.

With regard to Endries, Fischer stated that she too was working in his office at the time of the posting and he was familiar with her work which he stated was good. Fischer stated that Endries placed sixth on two of the tests and seventh (last) on the other two tests given by LTC. Fischer also stated that Endries had had some problems in the office dealing with conservation agents which, in Fischer's view, tended to indicate that Endries would have difficulty handling the pressures of the DCI position with a positive attitude.

However, notably, Fischer's views on this point, he stated, did not enter into his decision not to interview Endries, as that decision was based on her test scores alone. Fischer also admitted that he never formally warned or disciplined Endries for any problems that arose between her and any member of the public including County Conservation agents. Fischer stated that Endries lacked experience with County Board resolutions, minutes and agendas which he knew that Hudon had had in her job at the Parks and Planning Commission.

In regard to why the County Clerk and Ms. Schmidt selected Jennifer Hudon as the DCI, Fischer stated that Hudon ranked first overall on all of the examinations. Specifically, Hudon ranked third on the arithmetic test, second on the general clerical test, second on the typing test and fourth on the shorthand test. Hudon, at the time of the job posting was working at the Parks and Planning Commission as a secretary and Fischer knew the duties of that job because his outgoing DCI, Debra Peterson, had come to the DCI position from the Parks and Planning Commission. For example, Fischer knew that Hudon had had experience at Parks and Planning with County Board minutes, agendas, resolutions, State Statutes, budgetary and account preparation and record-keeping as well as experience working with computers and word processors. Fischer stated that after the interviews were over, Hudon's discussion of her work experiences including her non-County supervisory work boosted her above Jeanne Wolfe (whose raw test score was only 3 points less than Hudon's)

demonstrating that Hudon was "far and away the best candidate" for the DCI position, and showing that none of the other candidates was relatively equal to Hudon in skill, ability, experience or other qualifications. Fischer stated that in his mind Charlene Koch was the second best candidate for the DCI position after the interview process had been completed. He stated that the reason that Koch was second was that Koch did not have the level of computer and word processing skills and experience that Hudon possessed and that Hudon's supervisory and other work experiences at the Parks and Planning Commission made Hudon the best candidate for the DCI position.

Finally, it should be noted that the Union submitted much documentary and testimonial evidence regarding the qualifications and experience of Duchow and Endries which the County did not consider and/or was unaware of due to the County's decision not to interview Endries and Duchow based on their overall performance on the standardized tests given to all seven applicants. For the reasons stated infra in the Discussion Section of this Award, I find it unnecessary to recount or summarize that evidence herein. 3/

POSITIONS OF THE PARTIES:

Union

The Union's major argument was that the procedure used by the County to select which of the unit applicants to promote to Deputy Clerk I was unfair, arbitrary and capricious, and that because all of the applicants were minimally qualified and none was outstandingly qualified for the Deputy Clerk I job, the most senior unit employee who could satisfactorily complete a trial period in the job should have been given the job, not Ms. Hudon. Specifically, the Union asserted that all seven applicants should have been interviewed for the position since there was not a significant difference between the applicants' test scores, in the Union's opinion. Because only four applicants were interviewed, the Union contended, the skill, ability, experience and other qualifications of the other three were not considered by the County -- only their test scores. The Union urged that since the County failed to assess the relative skill, ability, experience and other qualifications of Endries, Duchow and Kiel, merely eliminating them from the interviewing process on the basis of their test scores, the County thereby violated the contractual requirement to consider such skill, etc.

The Union quoted extensively from Roberts' Dictionary of Industrial Relations, Third Ed., BNA as well as the Dictionary of the English Language, Unabridged Ed., Random House, 4/ for definitions of such terms as ability, arbitrary, capricious, discrimination, experience qualifications, skill and unreasonable.

The Union pointed out that elimination of Endries, Duchow and Kiel from interviews on the basis of their test scores showed that the County's actions here were arbitrary and capricious. The Union took exception to the complaints raised about Endries' ability to work well with the public. The Union felt it was entirely unfair of the County to raise these matters for which Endries was never disciplined and which did not actually enter into the County's decision not to promote Endries, at the instant hearing. The Union also pointed out that the County was unfair to consider Hudon's Parks and Planning experience and her prior supervisory experience, but fail to consider Endries' supervisory experience and her experience in Parks and Planning.

In these circumstances, the Union asserted that the County had failed to meet its burden of proof that it did not act in an arbitrary, capricious or discriminatory fashion and that it reasonably and correctly determined the applicants' ability where, as the Union asserted here, seniority should have been the determining factor in the decision who to promote to Deputy Clerk. The Union asserted in this regard, that the tests were "unilaterally chosen and administered by the Employer;" that test conditions were poor; that knowledge of fractions is not actually necessary to perform the Deputy Clerk's position; that Hudon did not score "head and shoulders" above the other applicants on the tests; and that the unfair use of composite or average scores did not even reveal a substantial difference between Hudon and the other applicants. Therefore, the Union contended that it had shown a contractual violation in this case and asked that the undersigned sustain the grievance and "order any and all remedy appropriate under the circumstances."

County

The County noted that the labor agreement provides that promotion to a Deputy position shall be from within the bargaining unit, the decision to be

3/ The Union did not call Kiel as a witness nor did it put in materials relating to her qualifications/experience. Based upon the same reasoning as above, I have not summarized any record evidence submitted regarding Kiel's qualifications/experience.

4/ The Union did not cite the year of publication of either volume it cited.

made on the basis of relative skill, ability and experience and only if the qualifications of the unit applicants are relatively equal may seniority be considered. Here, the County urged, County Clerk Fischer acted in a fair, reasonable and non-arbitrary fashion in reaching his decision regarding who should be promoted to the Deputy Clerk I position. Further, Mr. Fischer's decision to rely upon standardized tests, given and scored by an independent agency, Lakeshore Technical College (LTC), demonstrates the County's fairness in this case. The fact that the tests were given at LTC after all applicants had worked a full day for the County, the fact that the weather was foggy and difficult to drive in for all applicants on the way to LTC, the fact that the tape recording was not easy to hear and had to be replayed to all applicants, the County argued, do not require a conclusion that the County's selected testing procedures were unfair. Rather, in the County's view, as all applicants were subjected to the same testing conditions, any flaws therein should not be the basis for concluding that the tests themselves were unfair.

The County pointed out that its use of standardized tests as a part of the decision-making process in this case, pursuant to Article 3 of the agreement, was consistent with a 3-year past practice, not previously objected to by the Union, wherein the County has used such tests in hiring for entry level positions as well as in promotions to upper level positions. The County pointed out that it was obliged to administer a fair series of tests, not a perfect one.

In addition, the County contended that the record showed that Jennifer Hudon's qualifications were far superior to other applicants so that the testimony of the applicants not interviewed regarding their qualifications would never come into play. First, the County pointed out, Hudon's test scores were superior to those of all other applicants. Hudon scored first on the math test, second on the typing and clerical tests and fourth on the shorthand test resulting in Hudon's receiving the highest raw score among all of the applicants. The County Clerk and Ms. Schmidt's impressions from the interviews of the top four candidates also favored Hudon. Hudon's experience and abilities also surpassed those of the other applicants, notably in the areas of computer skills, supervising, bookkeeping, maintaining leasing files and payment schedules and working with governing bodies.

Thus, the County contended, none of the other applicants for the Deputy Clerk position was relatively equal to Hudon in knowledge, skill, ability, experience or other qualifications. In this regard, the County noted that although Char Koch's seniority was greater than Hudon's and that Char was a good candidate, County Clerk Fischer noted that Koch lacked the word processing and computer skills, the supervisory experience and the experience with Board minutes, agendas and budgets that Hudon possessed.

The County also noted that the Union never declared one person who should have been awarded the Deputy Clerk job but left it up to the Arbitrator to find who the successful applicant should have been if the Union prevailed. This, the County believed, demonstrated the true political motivation of the Union in bargaining the instant grievance. The County therefore asserted that based upon the record herein, the grievance must be denied and dismissed.

DISCUSSION:

This case raises the question whether any employee who applied for the DCI position who was more senior than Jennifer Hudon possessed overall qualifications relatively equal to Hudon's so that the County should have promoted that employee over Hudon. In arriving at the answer to this question, I note initially that the contract does not purport to limit the County's right to set and determine the qualifications for the position in question here. Thus, it is a generally acceptable arbitral principle that unless the Union can affirmatively prove that the employer's determination and analysis of the applicants' qualifications was arbitrary, capricious or discriminatory, the Employer's determination of the applicants' qualifications should stand.

In this regard, I note that the evidence showed that the tests were standardized tests given to all seven applicants at the same time and under the same conditions by an independent testing service, LTC, at the LTC facility; that LTC personnel graded the tests without any involvement by the County; that two of the tests given (math and general clerical) were tests that the County had been using for more than the past 12 month period whenever bargaining unit openings arose, without objection from the Union; that the other tests (machine transcription and typing tests) were directly related to job duties of the DCI, such as the need to accurately take and transcribe County Board minutes; that after the County Clerk and Ms. Schmidt received the test results, they reasonably decided that based upon raw scores alone, they would only interview the top four applicants so that the candidacy and the qualifications of Endries, Kiel and Duchow were not considered thereafter; that the County Clerk and Ms. Schmidt then interviewed Hudon, Koch, Wolfe and Sporleder on the same day and asked each of them the same eleven questions; that after these interviews concluded both County Clerk Fischer and Ms. Schmidt agreed that Jennifer Hudon possessed the best qualifications, skills, ability and experience for the DCI job. Ms. Hudon was then awarded the job. Thus, given the record here, the Union has failed to prove that there was anything arbitrary, capricious or discriminatory about how the County determined and analyzed the seven applicants' skill, ability, experience and other

qualifications.

In particular, the record demonstrates that tests administered were fair to all applicants and that all applicants labored under the same testing conditions. The County is correct in its assertion that it does not have to give a perfect battery of tests only an even-handed one which gives everyone the same chance. Thus, for example the fact that questions relating to fractions were on the math test did not make that test unfair or unreasonable given the fact that all applicants took the same math test and the fact that math skills are clearly necessary for the incumbent of the DCI position. Finally, the fact that Mr. Fischer either refused to answer or could not answer Charlotte Endries' questions regarding how the County would decide who would receive the promotion to DCI and what the testing procedures would be, tends to show that the County Clerk was trying not to give an advantage to any one applicant, as the County has asserted.

The Union objected strongly to the fact that the County did not interview all seven applicants for the DCI position. As I noted above, there is no contractual or other requirement that the County interview all applicants for a promotion. In fact, the County submitted uncontradicted evidence that it has had a practice of not interviewing all applicants for County openings. In addition, the County's use of raw test scores to eliminate the bottom three candidates from further consideration for the DCI position is reasonable on its face. Notably, there was a difference of 16 points between Sporleder (the applicant who placed fourth on the tests) and Duchow, the highest scorer of the three candidates eliminated from consideration before the interviews. Furthermore, whether or not one ascribes any validity to the composite scores calculated by Ms. Schmidt, these composite scores indicated that the County's method of cutting off the three bottom candidates was essentially reasonable because it eliminated anyone who scored less than 80% overall on the tests.

Therefore, in these circumstances, where the Union has failed to prove that the County's determination and analysis of the applicants' overall qualifications for the DCI position was arbitrary, capricious or discriminatory, the County's decision not to interview Duchow, Kiel and Endries must stand. Although there is abundant evidence regarding Duchow and Endries' qualifications on this record, I shall not and I need not consider or discuss this evidence since I find that the County's decision not to interview (and therefore eliminate) Duchow, Kiel and Endries was reasonable on its face.

Turning now to the County's analysis and determination of the ultimate qualifications of the top four candidates who were interviewed for the DCI position, I note initially that only Sporleder and Koch possessed greater seniority than Hudon, therefore even under the Union's analysis of this case, Jeanne Wolfe would not have had a chance to acquire the DCI job over Hudon unless Wolfe had scored higher on the tests than Hudon and/or performed better on the interview than Hudon. In this regard, I note that Wolfe placed second overall on all of the tests, scoring 3 raw score points less than Hudon. In regard to Wolfe's other qualifications, I accept Mr. Fischer's testimony that Wolfe lacked training and/or experience using State statutes and using the County Clerk's computer system; that Wolfe also lacked prior supervisory experience and had had limited experience in the accounting and bookkeeping area. Thus, it appears that based upon the County Clerk's assessment of all of Wolfe's qualifications after interviewing her and the others, that Wolfe was not better qualified for the DCI position so as to justify a decision to give Wolfe that position over the more senior Hudon. As there is no evidence on this record to show that the County's interviewing process was arbitrary, capricious or discriminatory, 5/ I shall not disturb the County's assessment of Wolfe's qualifications as stated by Mr. Fischer at the instant hearing. I note that the Union submitted no independent evidence or testimony regarding Ms. Wolfe's qualifications, ability, skill or experience.

Similarly, in regard to Ms. Sporleder, the Union again put in no independent evidence or testimony to demonstrate that Ms. Sporleder's qualifications, etc., were different from Mr. Fischer's assessment of them. Again, as Fischer's assertions regarding Sporleder's suitability for the DCI position stand uncontradicted, I have credited Fischer's account thereof. In this regard, for example, Fischer stated that Sporleder (who placed fourth overall on the tests) lacked the word processing and computer skills and ability necessary to handle the County Clerk's election program; that Sporleder lacked experience using and applying statutes; that although Sporleder had had some experience with agenda minutes and resolution preparation, she did not have to use shorthand in performing this work, as the DCI would have to do; that Sporleder did well -- in the middle of the group -- in the word processing, typing and shorthand tests and, therefore, Sporleder did not do as well as Hudon in these areas; that Sporleder had had no previous supervisory experience, but that Fischer expected that Sporleder would do well serving the public. Fischer concluded that Sporleder was less qualified to step into the DCI position than Hudon, and Fischer and Schmidt agreed that Hudon, as the best

5/ In this regard I note that Fischer asked each interviewee the same eleven questions and that Ms. Schmidt, a long-time Human Resources Department employe, concurred in Mr. Fischer's selection of Hudon as the DCI.

qualified applicant, should be selected for the job over Sporleder.

With regard to Charlene Koch, Fischer stated that Koch placed third on the test and was the second best candidate for the DCI position following the interviews. Fischer stated that Koch had good skills in typing and shorthand, although lesser skills than Hudon; that Koch had not worked with word processors in as much depth as Hudon had done previously; that Koch had had experience using statutes in the Register of Deeds office and in the Clerk's office, but Koch had not had the experience with agenda minutes and resolution preparation that Hudon had had at the Parks and Planning Commission; that Koch had not had the supervisory experience that Hudon had; that Fischer believed that Koch would do well serving the public, learning new things and maintaining lease files and payment schedules, as would Hudon. Fischer stated that the reason that Koch was the County's second choice for DCI was because Hudon had greater word processing and computer skills than Koch and because Hudon's supervisory and other work experiences at the Parks and Planning Commission made Hudon the best candidate for the DCI position, in Fischer's opinion. Fischer stated that Koch's skills, ability, experience and other qualifications were not relatively equal to Hudon's and that both he and Schmidt agreed that none of the other six candidates skills, etc., were relatively equal to Hudon's. Ms. Koch did not testify herein, so that Fischer's statements stand uncontradicted in regard to Koch's abilities, etc.

Based upon the record in this case, in light of the level of proof presented by the Union here as well as the other relevant evidence in this case, I conclude that the County's decision to promote Jennifer Hudon was reasonable and that it should stand. I therefore issue the following

AWARD

The Employer, Manitowoc County, did not violate the agreement by promoting Jennifer Hudon to the position of Deputy Clerk I.

The grievance is, therefore, denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 4th day of February, 1991.

By _____
Sharon Gallagher Dobish, Arbitrator