

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 2414, AFSCME, AFL-CIO

and

MUSKEGO-NORWAY SCHOOL DISTRICT

James King Posting Grievance

Case 48

No. 49042

MA-7806

Appearances:

Wisconsin Council 40, AFSCME, AFL-CIO, Post Office Box 6724, Racine, WI 53401-6724 by Mr. John Maglio, Staff Representative appearing on behalf of the Local Union.

Quarles & Brady, S.C., 411 East Wisconsin Avenue, Milwaukee, WI 53202 by Mr. Robert Duffy, Attorney at Law, appearing on behalf of the Employer.

ARBITRATION AWARD

The Muskego-Norway School District (hereinafter referred to as the District) and Local 2414, AFSCME, AFL-CIO (hereinafter referred to as the Union) jointly requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen, an arbitrator on its staff, to hear and decide a dispute concerning the District's decision to by-pass senior employee James King for promotion to Head Custodian. A hearing was held on July 15, 1993 in Muskego, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. A stenographic record was made of the proceedings, and the transcript was received by the arbitrator on August 8, 1993. The parties submitted briefs and the record was closed on September 30, 1993.

Now, having considered the evidence, the arguments of the parties, the pertinent contract language, and the record as a whole, the undersigned makes the following Award.

ISSUE

The parties stipulated that the following issue was to be determined herein:

"Did the District violate Section 10.05 of the contract when it selected Lenny Underdale as head custodian rather than James King and, if so, what is the appropriate remedy?"

RELEVANT CONTRACT LANGUAGE

ARTICLE II. MANAGEMENT RIGHTS

2.01 RIGHTS: Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, demote or suspend or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reasons, including the option of subcontracting provided that no present employee will have a reduction in regular work hours, be laid off or demoted, is vested in the Employer.

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ARTICLE VI. BINDING ARBITRATION

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6.04 ARBITRATION HEARING AND DECISION: The arbitrator shall meet with the representatives of both parties, hear evidence and give an opinion within thirty (30) days of the close of the hearing. The decision of the arbitrator, if within the scope of his authority, shall be final and binding.

6.05 LIMITED AUTHORITY: It is understood that the function of the arbitrator shall be to interpret and apply the specific terms of this Agreement. The arbitrator shall have no power to arbitrate salary adjustments, except improper application thereof, nor to add to, subtract from, alter or mend any terms of this Agreement.

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ARTICLE X. PROMOTIONS AND TRANSFERS

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10.05 SELECTION: When vacant or newly created positions become available, first consideration shall be given to present employees

within the bargaining unit. Such consideration shall be based upon seniority, prior work performance, and relevant work experience, in that order. In cases where prior work performance and relevant experience are relatively equal, seniority shall prevail. The Board is not limited to considering present employees when filling new or vacant positions.

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BACKGROUND FACTS

The District is a municipal employer, providing general educational services to people in and around the communities of Muskego and Norway in southeastern Wisconsin. The Union is the exclusive bargaining representative for the maintenance and custodial employees of the district.

The grievant, James King, is a Custodian I in the bargaining unit. At the time of this grievance, King had 15 years and 3 months with the District, and fellow custodian Lenny Underdale had 10 years and 10 months with the District.

On December 23, 1992 the District posted an opening for a Head Custodian at Lakeview School. Five unit members, a non-unit District employee and one outside applicant signed for the job. Among the employees signing for the job were King and Underdale. The applicants were all interviewed by a panel consisting of Gary Rosploch, the District's Supervisor of Buildings and Grounds; Ray Kuehn and Bob Lindner, the District's non-union head custodians; and Ken Lau, a head custodian in the bargaining unit. The applicants were asked a series of questions about their relevant knowledge and experience, and their strengths and weaknesses. The applicants were then given an aptitude test, covering heating, plumbing, electrical and refrigeration. Underdale and King both scored a total of 46 points on the test, although King scored higher on refrigeration, while Underdale scored higher on the other three portions of the exam.

The District selected Underdale and King as finalists. Another custodian, Frank Bieniewski, asked to be given additional consideration, and was also included on the final list. These three were interviewed by the same team that did the first round of interviews, with the addition of Personnel Director Jean Henneberry. The applicants were asked: (1) to discuss their background and two strongest areas; (2) to describe their methods for keeping organized; (3) the reason they should be judged the best candidate. After the applicants were finished, the interview panel assigned scores on a 0 - 5 scale in six categories, plus an opportunity to assign bonus points:

<u>Characteristic</u>	<u>King</u>	<u>Underdale</u>
◦ Presentation of self	19 (2,4,5,4,4) 1/	23 (4,4,5,5,5)
◦ Ability to Focus Comments on Subjects Raised	18 (3,4,4,4,3)	19 (3,4,4,4,4)
◦ Quality and Reasonableness of Commentaries	17 (2,4,4,4,3)	20 (3,4,4,5,4)
◦ Openness to Opinions, Values and Involvement of Others	18 (2,4,4,5,3)	20 (4,4,4,4,4)
◦ Successful Experience in Areas Discussed	17 (3,3,4,3,4)	21 (4,4,5,4,4)
◦ Credibility to Others	18 (2,4,4,5,3)	23 (4,5,4,5,5)
◦ Bonus Points	<u>5</u> 2/	<u>7</u> 3/
TOTAL	112 4/	133 4/

The members of the interview panel did not total the scores immediately. The applicants were given the SRI Perceiver, a test intended to measure the strengths of candidates for staff positions and indicate the management potential of each applicant. The test was administered by an employee of the Waukesha Schools, as a favor to the District. While the results of the Perceiver were pending, the interviewers tallied their interview scores. Each of the interviewers scored Underdale as the top candidate, while King was second and Bieniewski third. 5/

The Perceiver test results rated Underdale as the top candidate in both recommendation for support staff positions and management potential. The position was offered to Underdale. The instant grievance was thereafter filed, and was processed to arbitration. Additional facts, as

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- 1/ This shows the total score for the item, followed in parentheses by the scores assigned by Henneberry, Rosploch, Lindner, Kuehn and Lau.
 - 2/ King received 2 bonus points for no listed reason from Rosploch, and 3 for "truthfulness" on Lau's score sheet.
 - 3/ Underdale received 3 bonus points from Rosploch for "dress", and 4 bonus points from Lau for "straight forward answers - neat appearance".
 - 4/ These are of a possible total of 175 points overall - 150 points for specific categories and 25 points for the generalized bonus section.
 - 5/ The District suggests in its brief that King was third in the scoring. This is apparently a misreading of the exhibits, since District Exhibits 12 and 18 rather clearly indicate that Underdale received 133 total points, King received 112 total points, and Bieniewski received 91 total points.

necessary, will be set forth below.

POSITIONS OF THE PARTIES

The Union's Brief

The Union takes the position that the selection process used to promote Underdale was flawed, and that the grievant was entitled to the position of head custodian because of his greater seniority. More specifically, the Union argues that the aptitude test, interview process and Perceiver Test constitute entirely subjective grounds for determining the relative ability of the applicants, and should be discounted.

The Union points out that a test, if it is to be valid, must be (1) specifically related to the requirements of the job; (2) fair and reasonable; (3) administered in good faith and without discrimination; and (4) properly evaluated. (See Elkouri and Elkouri, *HOW ARBITRATION WORKS*, 4th ed., BNA (1985), hereinafter referred to as Elkouri, at page 620). The aptitude test, although marginally relevant, is not determinative, since both King and Underdale scored the same total points. The remainder of the selection tools used by the District are, the Union argues, invalid under the criteria set forth in Elkouri.

Neither the Perceiver nor the interview process put any technical questions to the applicants regarding the actual duties of the head custodian's position. Thus neither is specifically related to the requirements of the job, and cannot be countenanced as means of denying the senior applicant's claim on this job. Moreover, since these devices are not related to the actual requirements of the job, the tests cannot be fair or reasonable in the context of this selection process.

As for the third criteria, there is very substantial question about the District's good faith in administering the selection process. Bob Lindner, a member of the interview committee, expressed the opinion that two other committee members, Ray Kuehn and Ken Lau, were biased against the grievant. Furthermore, committee member Rosploch wanted the grievant to stay in his current job, and seemingly telegraphed an intention to select someone else when he responded to the grievant's concerns by telling him an anecdote about the a custodian in a neighboring district who was passed over for having a poor attitude. Finally, Personnel Director Henneberry, the fifth member of the committee, conceded that she knew nothing about the technical duties of a head custodian. Thus two members of the final selection committee were biased against the grievant, one wanted him to remain in his current job and another knew nothing about the job. Such a process cannot be termed an exercise in good faith.

The Union questions whether the Perceiver was properly evaluated, given that the person who administered the test said that there were no right or wrong answers. In the absence of right or wrong answers, and in light of the fact that King was found to be "recommended" under the scoring system for the Perceiver, the Committee must have improperly evaluated the results if it concluded that the senior applicant should be passed over in favor of a junior employee.

The Union points out that the grievant has acted as a head custodian many times in the past. His service has been exemplary in his time with the district, both in the capacity of acting head custodian and as a school custodian. He, like others, follows a fixed flow chart designed by Rosploch for major mechanical problems. In all respect, his past service shows him to be well qualified for the position of head custodian. As the only reliable evidence of skills and ability, the grievant's work record should overcome the subjective opinions relied upon by the District.

For all of these reasons, the Union urges that the grievant be granted the promotion to Head Custodian, and be made whole for his losses, while the junior bidder, Lenny Underdale, be reinstated to the position he held prior to the District's initial, incorrect decision.

The District's Brief

The District takes the position that the promotion of Underdale was dictated by his clear superiority in prior work performance and relevant experience. Seniority governs only where these other two factors show the applicants to be "relatively equal". The language specifically contemplates the promotion of junior applicants, and the District's decision may only be overturned where the evidence shows it to have been arbitrary, capricious or discriminatory. The preponderance of the evidence in this case demonstrates that the District correctly judged Underdale to be the more appropriate choice under the contract language.

The District defends its selection process as fair and thorough, and notes that it has been used before without challenge from the Union. The process included a review of technical, organizational and managerial skills needed for the head custodian's job, as listed in the job posting. While King may have felt that the decision was preordained, there is simply no evidence to support his suspicions. All members of the committee who testified indicated that they made the decision based on information gleaned through the process. Even Lindner, who initially doubted the fairness of the process, came to support Underdale as the best choice, and indicated that the process was fair to all applicants. The District points out that the decision in favor of Underdale was unanimous.

The District urges that the objective evidence supported the selection of Underdale. While both employees were very proficient in the relatively simple cleaning tasks, the position of head custodian requires a strong mechanical background. Underdale emphasized this point as one of his strengths in his interview, while King did not. King admitted to the committee several times that he had no experience in maintenance. Throughout the interviews, Underdale's answers indicated a much clearer understanding of the head custodian's duties than did King's. The District stresses that Underdale had capably served as a head custodian for a four months stretch, while King had only one six week period as a substitute head custodian. The longer exposure to the duties of a head custodian gave Underdale a decided advantage in the committee's view.

In addition to Underdale's greater experience in the head custodian's job, the committee found his much better attendance record an important attribute. A head custodian must attend

work regularly in order to direct and perform work, and King's record raised questions about his ability to perform this important job. Underdale also demonstrated leadership and managerial aptitudes that were lacking in King's background. Even though King had greater seniority than Underdale, both were long service employees, and the relatively minor advantage King enjoyed from his longer service was greatly outweighed by the demonstrable superiority of Underdale in work history and experience.

Although the grievant blames the committee for ignoring his background, he admitted that he was vague in the interview because he "felt" that the committee members would know of his qualifications for the job. Indeed, just the opposite occurred. Kuehn testified that he went into the interviews believing that King would have substantial knowledge of the job's duties and concluded after listening to him that he did not. Since he had previously applied for a job and been passed over, even though he was then the senior applicant, the grievant should have known he could not afford to "blow off" the interview process. Instead of making a positive impression, he stressed his lack of maintenance knowledge. In short, the grievant believed that his seniority would assure his selection, and failed to make any effort to impress the committee with his knowledge or qualifications. Given the information the committee possessed, and all of the facts as established at the hearing, they made the correct decision. Thus the grievance should be denied.

DISCUSSION

The contract specifies the criteria to be applied in a competition for open jobs:

When vacant or newly created positions become available, first consideration shall be given to present employees within the bargaining unit. Such consideration shall be based upon seniority, prior work performance, and relevant work experience, in that order. In cases where prior work performance and relevant experience are relatively equal, seniority shall prevail. The Board is not limited to considering present employees when filling new or vacant positions.

Plainly the contract contemplates that a junior bidder might claim a job sought by a senior unit employee. The questions here are, first, what are the permissible means by which the District may judge an applicant's work performance and relevant experience, and second, what is the appropriate weight to be given seniority in arriving at the ultimate decision, and, finally, whether the District in this case properly evaluated the relative merits of King and Underdale's bids for this job.

The Means of Evaluating the Candidates

The Union challenges the selection devices used by the District, particularly the scored interviews and the Perceiver test, as entirely subjective and unworthy of weight. The District argues that all three phases of the selection process -- the skills screening, the interviews and the Perceiver -- are reliable, reasonable and fair measures of the applicants strengths and

weaknesses.

Aptitude Test

At the outset, I have attached no weight to the screening test used by the District to identify finalists, nor the Perceiver test used to confirm their final choice. The skills test used to screen applicants is irrelevant to the decision in this case for two reasons. First, the grievant and Underdale received identical scores on the screening. While the District argues that Underdale scored better on the more relevant portions of the screening 6/, accepting this argument undercuts the validity of the test. If some portions of the mechanical aptitude screening are more important than others, a scoring system that gives them equal weight is arbitrary. Thus the two candidates either showed equal ability on this test, or the test was not a valid instrument for this opening. Either way, their performance on the aptitude test does nothing to resolve the question of which applicant was ultimately entitled to the head custodian's job.

The second reason for discounting the screening test is that the District itself ignored it in adding Frank Bieniewski to the list of finalists after the screening had been finished:

A: We felt that Mr. King and Mr. Underdale should be involved in the second interview.

Q: Is that what ultimately happened?

A: No. We did add one more to that second interview process, and that was Mr. Frank Bieniewski.

Q: Why did you do that?

A: Frank did not fair (sic) very well on the aptitude, but he requested that because he had filled in for head custodians before and had been involved with district maintenance that he would like to be included with the Perceiver.

Also, Frank had seniority over at least one other applicant that we would be looking at, so per his request in looking at things overall, we then included him in the second interview.

(Testimony of Gary Rosploch, Transcript, pages 144-145)

6/ Specifically, the District avers that King scored well on the "Refrigeration" section of this test, which is irrelevant to the head custodian's job at Lake View School, because there is no central air conditioning at the school.

If the aptitude screening is intended to show some minimum level of qualifications for the head custodian's job, and if the District has confidence in its accuracy and reliability for that purpose, Bieniewski's inclusion makes very little sense. It may well be that the District intended to honor the portion of the contract that requires first consideration of seniority by extending this courtesy to Bieniewski. But without more explanation than has been offered, I must conclude that this action substantially undercuts the value of the aptitude test in deciding the ultimate question of relative qualifications.

Given that neither party challenges the selection of Bieniewski, Underdale and King as the finalists for the job, the issues surrounding the means by which these three were chosen need not be resolved. It is sufficient to decide that the aptitude test has no weight in arriving at the Award.

The SRI Perceiver

Just as the aptitude test has little bearing on the outcome here, the SRI Perceiver test used to confirm the results of the second interview is not entitled to any weight. The decision to select Underdale was made before the results of the Perceiver were known. Personnel Director Jean Henneberry speculated that a contrary result on the Perceiver might have caused the District to reconsider its decision, but that is not what happened. In prior cases directly involving the issue, I have found that the use of a trait test such as the Perceiver to defeat seniority requires much more thorough proof of validity and job-relatedness than was presented on the record in this case. However, given the undisputed evidence that the Perceiver was not used as a selection instrument, its validity is at best a tangential issue. The possible flaws in its application here do not draw into question the District's decision to promote Underdale over King, but neither does Lenny Underdale's better score on the Perceiver support the District's action.

The Interviews

From the record evidence, the decision to select the junior applicant was primarily based upon the results of the interviews with Rosploch, Lau, Kuehn, Lindner and, in the second round, Henneberry. The second round of interviews was scored by each of the five panelists on a 1-5 scale in six categories, with the possibility of five bonus points. Underdale received 133 points out of a possible total of 175, while the grievant received 112 points. These figures give the appearance of mathematical precision to the scored interviews, but a closer review of the scoring system and the general methodology suggest that they are, at the very most, a reflection of the subjective impressions each panelist had of the applicants.

Of the points assigned to the two men, 7 of Underdale's and 5 of the grievant's were "bonus" points. Underdale's came for being neatly dressed and answering questions in a straight-forward manner. The grievant's came for "truthfulness" and for no listed reason. The use of bonus points in the scoring system is rather questionable under the contract

language. The contract demands that the decision "shall be based upon seniority, prior work performance, and relevant work experience." Neat appearance, truthfulness and a straight-forward manner are all generally desirable things in an employee, but the assignment of points for these traits is difficult to reconcile with a system supposedly designed to meet the contract's requirement that District management weigh prior work performance and relevant work experience. Further, it is evident that little guidance was given to panel members in assigning bonus points -- presumably Underdale was as neatly dressed for all of the panelist as he was for Lau and Rosploch, yet only those two assigned him points for his appearance. Along the same lines, since there were not individual interviews by each panel member, the grievant was probably just as truthful in his answers to all panelist as Lau perceived him to be when he alone assigned bonus points for that trait.

Rosploch's assignment of 2 bonus points to the grievant for no stated reason brings the problem with the bonus points into stark relief. What is the contractually recognized trait, experience or ability that triggered this extra credit? Without any standards to guide the evaluators, the inclusion of an extra 5 points on a 35 point scale borders on being capricious.

Eliminating the bonus points from the equation, the individual scoring of each panelist for the grievant and Underdale was as follows (with individual score of the grievant appearing first, and Underdale's second):

<u>Characteristic</u>	<u>JH</u>	<u>GR</u>	<u>BL</u>	<u>RK</u>	<u>KL</u>	<u>Totals</u>
o Presentation of self	2/4	4/4	5/5	4/5	4/5	19/23
o Ability to Focus Comments on Subjects Raised	3/3	4/4	4/4	3/4	18/19	
o Quality and Reasonableness of Commentaries	2/3	4/4	4/4	4/5	3/4	17/20
o Openness to Opinions, Values and Involvement of Others	2/4	4/4	4/4	5/4	3/4	18/20
o Successful Experience in Areas Discussed	3/4	3/4	4/5	3/4	4/4	17/21
o <u>Credibility to Others</u>	<u>2/4</u>	<u>4/5</u>	<u>4/4</u>	<u>5/5</u>	<u>3/5</u>	<u>18/23</u>
<u>Totals</u>	14/22	23/25	25/26	25/27	20/26	107/126
Percent of total possible points	47/73	77/83	83/87	83/90	67/87	71/84

The results here are skewed by the very substantial disparity between the rankings assigned by Henneberry and Lau, and those assigned by the other panelists. Even though the Union suggested that Rosploch, Lau and Kuehn were biased against the grievant, Rosploch and Kuehn rated the two applicants as being very close. Lau essentially agreed with the scoring of the other custodial personnel on the panel with regard to Underdale, but gave the grievant a much lower score. For her part, Henneberry scored Underdale four points lower than the average of the other panelists, but rated the grievant a full ten points lower than the average

score assigned by Rosploch, Lindner and Kuehn. 7/ This very significant difference among panel members who heard the same presentations raises a question of whether there were standards for assigning points in this portion of the process and, if so, whether all of the panelists understood those standards.

The various flaws in the scoring of the second interview deprive the District's decision of the veneer of scientific certainty, but are otherwise not particularly significant. This is because the scoring itself is not particularly significant. The categories graded by the panelists bear only the slightest resemblance to those mandated by the contract. An argument can be made that some of the traits relate to leadership or public relations skills, but overall these appear to be rankings of how well the applicants handle interviews, rather than a measure of prior work performance or relevant experience. Indeed, they do not reflect what the applicants were asked to do in the second interview, which was: (1) to discuss their background and two strongest areas; (2) to describe their methods for keeping organized; (3) to state the reason they should be judged the best candidate. In attempting to explain why they rated Underdale higher than the grievant, not a single member of the interview panel cited the criteria scored at the end of the second interview. Instead, they cited such factors as Underdale's greater maintenance experience, his service as an acting head custodian, his better attendance record, his superior organizational skills, and his leadership ability.

Arbitrators, including the undersigned, have generally favored efforts to transform measurements of relative abilities and skills from subjective judgments to objective tests. This enthusiasm has always been tempered by the requirement that tests and rankings meet basic standards of validity, accuracy and fairness. In this case, the record is replete with tests, rankings and evaluations, some of which do not meet those standards. However, for all of the evidence concerning scores and rankings, it is clear that the actual choice of Underdale over the grievant was driven by a subjective weighing of the information the two men provided in the interviews. The substance of the information provided in those interviews must, therefore, be reviewed to determine whether the District complied with the contract when it promoted Underdale.

The Appropriate Weight of Seniority

Having determined that the information provided in the interviews provides the substantive record, the question becomes the extent to which seniority is weighed in this process. The parties have negotiated internally contradictory terms regarding the relative weight of seniority, work experience and past performance, in Section 10.05 of the contract:

7/ It is possible, of course, that the other panelists incorporated their impressions from the prior interview and their greater understandings of the work of the District's custodial personnel. While this would explain the striking difference in Henneberry's scoring, it would raise further questions about what these scores actually reflect.

10.05 SELECTION: When vacant or newly created positions become available, first consideration shall be given to present employees within the bargaining unit. Such consideration shall be based upon seniority, prior work performance, and relevant work experience, in that order. In cases where prior work performance and relevant experience are relatively equal, seniority shall prevail. The Board is not limited to considering present employees when filling new or vacant positions.

While the second sentence of this provision suggests that seniority has some sort of priority in promotional decisions, the third sentence makes it clear that prior work performance and relevant experience are in fact the threshold considerations when two bargaining unit employees are competing for a job. It may be that the order of consideration dictated by the second sentence of this provision is intended to indicate the advantage unit employees enjoy over outside applicants. Certainly the structure of the sentence suggests that interpretation. The clarity of the third sentence, however, must control over the general language of the second where, as here, a decision is made among internal applicants.

The contract dictates that senior employee receive the promotion unless his prior work performance and relevant experience are not relatively equal to that of the junior bidder. The District asserts that its judgment in this regard must stand unless it is found to be arbitrary, capricious or discriminatory. Certainly, the determination of management as to these qualities is entitled to deference, since the supervisors and head custodians who made this decision are far more familiar with the demands of the job and the needs of the District than any outside third party can hope to be. However, accepting that an arbitrary, capricious or discriminatory standard of evidence is appropriate to this case would have the practical effect of pushing aside seniority in every instance where any evidence at all supports the decision to select the junior worker. Neither the contract language nor any record evidence of bargaining history or past practice would support this approach to seniority. The arbitrator's task is to evaluate the evidence and determine whether the information available to the District at the time the decision was made showed that the grievant was relatively equal to Underdale in prior work performance and relevant experience. If the preponderance of the evidence establishes that fact, the grievance must be sustained. If, on the other hand, Underdale is shown to have been demonstrably superior to the grievant, the decision of the District should stand.

The Merits of the Selection

The two threshold selection criteria are prior work performance and relevant work experience. Although there appears to have been some confusion among District representatives as to the distinction between these categories, the former speaks to the adequacy of the applicants' records in their previous positions, and the latter looks to the broader question of how their general occupational histories may have prepared them for the position sought.

In the first category, both candidates were judged to have been very good custodians,

including those periods during which each had served as acting head custodians. The sole mark against the grievant in comparison to Underdale was that he averaged approximately 10 days per year of sick leave, while Underdale had less than half that average. The Union brought out the fact that the grievant had never been disciplined for his sick leave usage, but this is not a question of whether there was abuse. The fact that an employee's attendance record does not expose him to discipline does not mean that it stands him in good stead when seeking a promotion. The District has a legitimate interest in the attendance of its personnel generally, and a greater interest in having its head custodians at work on a regular basis, since their absence has the potential to disrupt the work in the building. The grievant's attendance record does nothing to disqualify him from the job of head custodian, but the District is justified in giving credit to Underdale for a better record of reliability over an extended period of time.

It is in the area of relevant experience that the District found the greatest disparity between the two men, pointing to Underdale's greater expertise in maintenance, and more substantial experience as a crew leader in the private sector and acting head custodian within the District.

The head custodian is responsible for routine repairs and troubleshooting. The District employs more skilled maintenance personnel for major repairs. The job posting for this position listed "knowledge of skills pertinent to buildings and grounds maintenance" as a required qualification for the job, and under "Essential Job Functions" included: "Perform a wide variety of maintenance tasks which require considerable skill and ability for major and minor repair, replacement, and new installation" and "Perform preventive maintenance and inspections as required." The Union questions the actual amount of maintenance performed in the job, and it is clear that the District does not really expect the head custodians to be fully versed in all of the mechanical, plumbing, HVAC and electrical systems in the schools. 8/ It

8/ Rosploch, in attempting to define the maintenance duties of the head custodians on cross examination, testified:

Q: Okay. Now, you're the buildings and grounds supervisor, so tell me what you think what types of maintenance work have to be performed by the head custodians?

(Footnote 8 continued on next page)

A: Okay. Since they're responsible for the upkeep and the maintenance of their facility to the extent of their talents, whether it be carpentry, plumbing, electrical, whatever it may be, the types of things it would include, it may be changing pump seals, it may be -- if they have that particular ability.
(Transcript, page 171)

. . .

is also clear, however, that there is an advantage to the District in having a head custodian who has maintenance skills sufficient to handle routine repairs and preventive maintenance, and to identify the cause of problems even where he may not be able to single-handedly effect repairs.

In the initial round of interviews, Underdale indicated that he had strong hands-on maintenance ability from his work as a maintenance crew leader at Schlitz, and the boiler training he had received from another custodian at the Muskego school. He placed great stress on his maintenance skills as a strength in his candidacy. The grievant said he did not have hands-on experience, and identified this as a weakness in his bid for the posting. Both candidates confirmed this information in the second round of interviews, in response to a question by Kuehn. Kuehn testified that he had assumed the grievant had a good deal of maintenance experience, but the responses in the interview completely changed his opinion. On the other hand, the grievant testified without contradiction that he had discussed his skills in maintenance-related areas by bringing in photos of remodeling work he had done on a home rec room -- electrical, carpentry, plumbing, heating vents, etc. -- with an appraiser's statement that it was high quality work.

The District could reasonably have concluded that Underdale had a far stronger background in maintenance. In part, this conclusion may have been driven as much by Underdale's repeated emphasis on the point as by the actual disparity in the candidate's backgrounds. In an interview setting, the interviewers may be expected to be influenced by the applicants' presentations in areas that are not documented in some other way. In contrast to Underdale, the grievant told the panel twice that he had no hands-on maintenance experience. He then provided pictures of a home remodeling project, but even assuming that to be "relevant *work* experience", the panel would have been justified in making a distinction between the ability to undertake a home remodeling project without supervision and at one's own pace and the ability to do the more industrial type of maintenance required in a school building.

Q: Can you give us some examples, Gary, of specific technical skills that are required of a head custodian?

A: Included but not limited to, obviously, electrical work when it comes to switches, three way, four way, ballasts, possibly some wiring if its within the realm of their capability; plumbing, we're talking flush valves, toilets, sinks, faucets; carpentry when it comes to door repair, locks, and hinges, things of that nature as far as maintaining them; obviously, painting skills; understanding of boiler principles and skills would be important, how things work, and of course, the ability to see them work, and if the things don't work, what you're able to recognize as why they don't work.

(Transcript, pages 177-178)

The other primary advantage the District saw in Underdale's work experience was his extended experience as an acting head custodian in 1987. Underdale served as the head custodian during an extended absence by the head custodian at Muskego Elementary School in 1987. He was the acting head custodian for 67 working days, and from the record he performed competently in that job. For his part, the grievant filled in as acting head custodian at his school for 30 working days in the 1981-82 school year, and again for 17 working days in 1984. He also performed competently. However, in contrast to Underdale, the grievant did not stress to the committee that he had served as an acting head custodian for an extended period of time. He simply indicated that he had filled in for the head custodian. All custodians do that, covering for vacations and sick days. The District's belief that a long term substitution is more relevant is reasonable, since a long term substitution will expose the acting head custodian to a wider range of situations and force him to undertake the actual duties of the job.

To some extent in the area of maintenance ability, and to a greater extent in the area of on the job experience as a long term acting head custodian, the grievant's relevant work experience was greater than the interview panel believed it to be when it chose Underdale. The District has some responsibility to confirm the claims made by applicants when it decides to override seniority, but it is not required to make the case for an applicant who understates his qualifications for a job. The grievant explained at the arbitration hearing that he relied to some degree on the panelists being aware of his background and thus did not feel it necessary to discuss all of his experience and abilities, and also that he did not make his best case because he felt that the decision was already made in Underdale's favor. Given that at least two thirds of the interview panel -- Rosploch, Henneberry and Kuehn -- had come to the District after his service as an acting head custodian, and that his longest stint in that job was 11 years before this interview, the grievant made a poor choice in relying on their personal knowledge of his experience. 9/ Moreover, if the grievant believed that some members of the panel were biased against him (a fact not borne out by the interview scores in the cases of Rosploch and Kuehn) it seems that presenting less than the best possible case before the interview panel is a strategy that plays into his antagonists' hands. Rather than making a record for the impartial members of the panel, and for the grievance procedure, the grievant made it easier for the panel to justify its decision.

Whatever the reason for the presentations made to the interviewers, at the end of the process the information before them could reasonably have caused them to conclude that Underdale was slightly superior to the grievant in prior work performance, and good deal stronger than him in relevant work experience. This had the effect, under the terms of the

9/ This is not to suggest that the District can ignore items that could be fairly considered "common knowledge" about an applicant even though the applicant fails to raise them. It does mean, however, that an applicant should carefully consider how common the knowledge is among those making the decision, since there is always the risk that one's accomplishments are not as widely known as one assumes.

contract, of negating his advantage in seniority and justified the District's decision to choose Underdale for the vacant head custodian's position.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The District did not violate Section 10.05 of the contract when it selected Lenny Underdale as head custodian rather than James King. The grievance is denied.

Signed this 22nd day of November, 1993 at Racine, Wisconsin:

By Daniel Nielsen /s/
Daniel Nielsen, Arbitrator