

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 : Case 16
 NORTHWEST UNITED EDUCATORS : No. 50562
 : MA-8298
 and :
 GRANTSBURG SCHOOL DISTRICT :
 :

Appearances:

Mr. Kenneth J. Berg, Executive Director, Northwest United Educators, on
 Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, by Mr. Stephen L.
Weld, and Ms. Victoria L. Settun, on behalf of the Grantsburg School

behalf
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ARBITRATION AWARD

Northwest United Educators, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant disputes between the Union and the Grantsburg School District, hereinafter the District, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The District subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on May 26, 1994, in Grantsburg, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by August 19, 1994. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated there were no procedural issues, but were unable to agree on a statement of the substantive issue.

The Union would frame the issue as follows:

Was the District in violation of at least Article VIII of the master contract when it denied the grievant's request to transfer from a four-hour position to an eight-hour position and instead went outside the bargaining unit to fill said position, and if so, what shall the remedy be?

The District would state the issues as being:

Did the District violate Article VIII - Vacancies and Transfers, in not awarding the full-time Custodian I vacancy to the Grievant? If so, what is the appropriate remedy?

The Arbitrator concludes that the issues to be decided may properly be stated as follows:

Did the District violate Article VIII, Vacancies and Transfers, of the parties' Collective Bargaining Agreement when it did not award the eight (8) hour Custodian I, second shift, position at the High School, to the Grievant, and instead awarded the vacancy to an outside applicant? If so, what is the appropriate

remedy?

CONTRACT PROVISIONS

The following provisions of the parties' Collective Bargaining Agreement are cited:

ARTICLE I - RECOGNITION

The District recognizes NUE as the exclusive and sole bargaining representative for all regular full-time and regular part-time secretaries, aides, custodians and food service employees of the Grantsburg School District, excluding confidential, seasonal, temporary, casual, professional, supervisory, and managerial employees.

. . .

ARTICLE III - MANAGEMENT RIGHTS

Except as expressly modified by other provisions of the contract, the School Board possesses the sole right to operate the School District and all management rights repose in it. These rights include, but are not limited to, the following:

- A. To direct all operations of the School District;
- B. To hire, promote, transfer, schedule and assign employees in positions within the School District and to create, combine, modify and eliminate positions within the School District;

. . .

- J. To determine the methods, means and personnel by which School District operations are to be conducted;

. . .

ARTICLE VIII - VACANCIES AND TRANSFERS

- A. The District shall post all vacancies (including new positions) at least two (2) weeks in advance of filling the same in all the classifications hereunder. The posting shall consist of a dated, written notice sent to the local unit director of the NUE - Support Staff. The qualifications and ability of the applicants from the classification in which the vacancy exists shall be considered first. Should no applicant from the classification be considered to have the necessary qualifications and/or ability, the District agrees to accept applicants from other classifications before going outside of the bargaining unit. Should no bargaining unit applicant be considered to have qualifications and/or ability, the District shall have the right to fill the position as it may see fit.
- B. During the two-week posting period, the District may make a temporary appointment to the position.
- C. When employees transfer to a new department, their seniority starts with the date of the new position for layoff purposes only. If layoff should occur, they will have first consideration for any openings in the bargaining unit for which they are qualified.

. . .

ARTICLE XX - ENTIRE MEMORANDUM OF AGREEMENT

This Agreement having been reached as a result of collective bargaining, represents the full and complete agreement between the parties and supersedes all previous agreements between the parties. Any supplemental amendments to this Agreement or past practices shall not be binding on either party unless executed in writing by the parties hereto.

BACKGROUND

The District maintains and operates a number of school buildings and employs substitute custodians and part-time and full-time custodians (Custodian I). The Union is the exclusive bargaining representative for the District's regular part-time and full-time non-professional employees, including custodians, and the Union and the District are party to a Collective Bargaining Agreement covering those employees. Custodians report to the Head Custodian of the building to which they are assigned and prior to the fall of 1993, to the Maintenance Supervisor. A custodian is also supervised by the principal of the building in which he/she works.

The Grievant, Denise Brogren, had been employed by the District as a substitute custodian during the 1991-1992 school year. In that capacity, she had substituted for other custodians in both four hour and eight hour positions

in all of the District's buildings. In November of 1992, the Grievant was awarded the four-hour position at the High School. The Head Custodian at the High School is Tim Morris. There were two vacancies at the High School at the time, one in a four-hour position and one in an eight-hour position. The Grievant applied for both positions, but received the four-hour position and the eight-hour position was awarded to an outside applicant, Richard Dierks.

In August of 1993, the District's Maintenance Supervisor resigned and the position has not been filled. In the fall of 1993, the Grievant's husband, who was the Head Custodian at Nelson Elementary, resigned and the position was posted. Dierks was awarded the position in early December, creating a vacancy in the eight-hour position at the High School. The following is the posting for that position:

Custodian Position Vacant

A position is open for a full-time second-shift custodian at the senior high school. The hours are 3:30 p.m. to 12:00 midnight. Apply to Principal Robert Werner.

NUE members are given first consideration for this position. Because of the limited interest shown in the recent vacancy at Nelson, NUE Local President Renee Weinzierl has agreed to reduce the time of the internal posting of this position. NUE members interested in this position must contact Mr. Werner no later than 4:00 p.m. on Tuesday, December 7 to assure that they will be interviewed before anyone outside of the unit is considered.

Please direct any questions regarding the position to Mr. Werner.

The job description for Custodian I lists the following "Qualifications" and "Duties and Responsibilities":

QUALIFICATIONS:

1. Be cooperative in working with staff, students, and public.
2. Be able to follow written and/or oral direction and maintain good work habits.
3. Must remain flexible to a changing work schedule.

. . .

DUTIES AND RESPONSIBILITIES:

1. Assist in security and aesthetics of buildings and grounds.
2. Assist in upkeep and cleanliness of building.
3. Assist with grocery and mail distribution.
4. Work under a minimum of supervision.
5. Be properly aware of safety procedures and hazardous materials.
6. Help prepare physical plant and grounds for extra-curricular activities.
7. Perform extra duties as assigned.
8. Identify operational needs and respond accordingly.

The above are the same "qualifications" and "duties and responsibilities" as those listed for a part-time custodian.

The Grievant was the only internal applicant for the position and temporarily filled the position until it was permanently filled. The Grievant was originally scheduled to meet with the High School Principal, Robert Werner, and the Head Custodian for an interview on December 8, 1993, but she called Werner and asked to reschedule it to the next day due to having an ill child at home. The Grievant met with Werner on December 9th, but Morris was unable to be present. The interview lasted approximately thirty minutes. There is a dispute about what subjects were discussed during the interview. Werner testified that he asked the Grievant about her experience with boilers, air conditioning and air moving systems and that she responded that she did not understand boilers or air-moving systems, but that she could learn how to work them and that if she had trouble, she could call her husband. The Grievant testified that Werner asked her about her qualifications and experience, about closing the building, and asked if there would be a problem with regard to getting a babysitter. She testified that the only problem she mentioned in the interview was with locking a particular door that others had also had trouble locking. She testified that she did not recall being asked about boilers or air-moving systems during the interview, but could not deny those subjects were discussed.

Werner discussed what he felt were the Grievant's lack of knowledge and experience with heating, air-conditioning and air-moving systems with Morris and they concluded the Grievant was not qualified for the position. Werner then told the District's Administrator, John Sauerberg, what he and Morris had decided as to the Grievant's qualifications. Sauerberg then told Werner he had received a number of applications from the outside, some of which were for previous vacancies, and gave them to Werner. Werner then called a number of the outside applicants either later on December 9th or early on December 10th and scheduled interviews with four of them. Three were interviewed and one decided he was not interested. Of the three outside applicants interviewed, Werner and Morris interviewed two, the other applicant being Morris' sister, and he did not participate in that interview. James Chadwick, an outside applicant who had substituted in the past for the District, was awarded the position. Chadwick had fifteen years of custodial experience in Minnesota and a Class 2 Boiler license from that state. Chadwick's application had been filed for the opening at Nelson Elementary that Dierks had eventually received.

The instant grievance was filed challenging the District's decision not to award the eight-hour Custodian I position to the Grievant. The grievance was processed through the parties' contractual grievance procedure and the parties proceeded to arbitration of their dispute before the undersigned.

POSITIONS OF THE PARTIES

Union

The Union takes the position that the District violated Article VIII, Vacancies and Transfers, of the Agreement in failing to award the Custodian I position to the Grievant, and instead awarding it to a person from outside the bargaining unit. While the Union concedes that the first two sentences of Article VIII, Section A, were waived by its local director, it is the balance of that provision that was not followed. The language of the provision requires the District to deal with internal candidates before it can go to persons outside of the bargaining unit. The District cannot just go through the motions, as it did in this case, before hiring someone from the outside because they feel that person is more qualified. The District attempted to show that they had considered the Grievant first, but it was only a couple of hours after she was interviewed and determined not to be qualified, that management remembered they had the application of several outside persons on

file and within hours hired one of them. The Union concedes that person is qualified for the job, however, the question in this case is whether he should ever have been given the opportunity to apply for it.

The posting for the position was silent on any qualifications required other than that the person must be able to work the second shift (3:30 p.m. to 12:00 Midnight) and said nothing about requiring a boilerman's license. The Grievant testified that in her interview, Werner was alone and did not use any type of form. During that interview, he said nothing about the boiler, rather, the discussion dealt with closing the building and whether she had a ride, and whether she would have any babysitter problems. In discussing what closing the building entailed, the Grievant conceded to Werner that she had trouble with one of the doors, but that everyone had trouble locking that door and she did not indicate that she was not qualified for the job. Werner also did not have her resume or application with him during the interview.

The Grievant testified that she had subbed throughout the District in various custodial positions including the one in question and during those times she was alone and took care of closing the buildings. The Grievant testified she could tell if a boiler was not working, and when that happened, she called the Head Custodian, who in turn called the boiler repair business. That is how it has been handled for other custodians as well. She also informed Werner that she had no problem working until midnight.

A Head Custodian, Richard Dierks, testified that while he is a Head Custodian in another building, he does not have a boilerman's license. When he had trouble with a furnace in his building, he called his principal, who in turn called the repairman. Dierks also testified it would take approximately a half hour to teach someone how to close the building. In his testimony, Werner conceded that the Grievant has performed her four-hour job satisfactorily for the last two years, and that the job descriptions have been in their present form for the past three to five years and are the only ones in existence.

The Union concludes that the Grievant was the only bargaining unit member to apply for the position, that she had successfully served as a substitute and received good evaluations in her four-hour position, that she had substituted numerous times throughout the District in eight-hour positions, including the one in question, and did all of the duties required in closing the buildings. Also, there is no difference between the list of qualifications and duties for the part-time or substitute custodian and those for the Custodian I position. While Morris testified that he agreed with Werner that the Grievant was not qualified, he also conceded that the other custodians were not being retrained to repair boilers when they had a breakdown. Thus, it appears that the District is demanding more from the Grievant than they do from any other employe in that position. Therefore, the Grievant must be considered qualified for the eight-hour Custodian I position, and while the District wanted to hire someone with additional qualifications to fill the position, they were required under Article VIII to award the position to the Grievant.

In its reply brief, the Union notes that the District's brief mentions a discussion in which the District Administrator took part, which conversation resulted in the Grievant being removed from consideration for the position as the Administrator concluded she was not qualified. That assertion is hearsay since the District Administrator did not testify at the hearing. The District also asserts that monitoring the heating and ventilating system is a key duty for the position, and attempts to make significant the fact that the Grievant did not know how many boilers were used in the High School. The Grievant admits she cannot repair boilers, but she does know when the system is not working and when it happened in the past she called the Head Custodian, who in turn called the repairman. Knowing the number of boilers is irrelevant. Further, the assertion that the monitoring and repair program was designed to ensure that the building would be ready for students the next day is not

supported by the record, since there is no evidence of any lost days due to frozen pipes or malfunctioning boilers. The District also states a concern about the Grievant's husband assisting in fixing the boilers, and thereby incurring a risk for the District. The Grievant has never said that her husband, who had previously worked for the District, would be asked to fix anything for her at school. She only mentioned that, given his experience, he would be a good source of information for her. The Union concludes that to allow the District the absolute right to change job requirements, such that current employes would no longer be qualified, would allow the District to circumvent Article VIII whenever it chooses, contrary to the intent of the language. Since the Grievant is qualified to the extent necessary to do the job, she should have been given the position.

District

The District asserts that the Grievant was not hired for the full-time second shift Custodian I position because she lacked the necessary experience and qualifications with regard to the heating and air-moving systems required for the position. In support of its position, the District contends that management has the inherent right to determine qualifications of applicants. While the Custodian I job description does not specifically state that knowledge of heating and air-moving systems are required, testimony established that such knowledge was an important qualification for the position. A key duty of a second shift custodian is to monitor the heating and ventilating systems, a task estimated to take approximately the last hour of the workday. This monitoring was designed to ensure that the building would be ready for students the next day. The need for expertise in these areas was increased due to the resignation of the District's Maintenance Supervisor in September, and that position has not since been filled. As a consequence, Custodian I's have been assigned maintenance work in addition to their normal cleaning duties.

The District has retained the authority and duty to determine whether an employe is, in fact, qualified for a position. Absent specific contractual language limiting discretion in these areas, the method and means of determining qualifications is generally left up to the employer and the criteria deemed relevant to a determination of qualifications for a position is also left up to the employer. So long as the criteria and procedures are basically fair and regular, they will not be second-guessed by an arbitrator. Citing, Hurley School District (Arbitrator Gallagher Dobish). Pursuant to Article III, A, B and J, the District has specifically and expressly retained its right to hire, promote, transfer and assign employes in positions within the District and to determine the methods, means, and personnel by which District operations are to be conducted. The only limitation on that discretion is in Article VIII, which states that, "The qualifications and ability of the applicants from the classification in which the vacancy exists shall be considered first." The provision goes on to state that should no applicant from the classification or from the bargaining unit "be considered to have" the necessary qualifications or ability to fill the position, the District then, "has the right to fill the position as it may see fit." Citing, Article VIII, Section A.

In this case, the Grievant was the only applicant from within the bargaining unit and management determined that she lacked the experience, ability and understanding of heating and air-moving systems necessary for the position, and therefore she was deemed to be ineligible. The District cites arbitral precedent for the proposition that an employer has the management right to establish qualifications for jobs, and that the employer's authority in that regard could only be given up in bargaining. There is nothing in the parties' Agreement that expressly limits that authority. Further, Werner, Morris and Chadwick testified that knowledge of heating and air-moving systems was an important part of the night Custodian I's job responsibilities, especially after the resignation of the Maintenance Supervisor. Both the predecessor in the position and Chadwick have extensive experience and training in heating and ventilating systems. Conversely, the Grievant admittedly lacked any experience and training in that area, or any understanding of heating and ventilating systems, and was unaware that there were two boilers in the building.

In response to the Union's contention that the Grievant is minimally qualified for the job and should therefore be given a trial in the position, the District cites arbitral precedent as establishing that an employe is entitled to a trial period only after he or she is "qualified" for the position, and the Grievant could not meet that standard. The Grievant conceded she did not understand heating and air-moving systems but testified that she

could learn them, and if she had any problems, contact her husband, a former Custodian I with the District. The District should not be expected to incur the risk of liability of having a non-employee injured attempting to fix District property and questions what the Grievant would do if her husband was not available. While the out-dated job description did not specifically state that knowledge of heating and air-moving systems was required for the position, it is obvious from the qualifications of the predecessor in the position, the questions of the interviewer, and the duties of the position, that such knowledge is required.

Next, the District contends that its assessment of the Grievant's qualifications was neither arbitrary, capricious or discriminatory. Citing Elkouri and Elkouri, How Arbitration Works (Fourth Edition, 1985), and arbitral precedent, the District asserts that the exercise of management's discretion can only be overturned by an arbitrator if it is unreasonable, arbitrary, capricious, in bad faith, or if its implementation is contrary to another provision of the agreement. It is not the role of the arbitrator to substitute his judgment for that of the employer's merely because he does not agree with the underlying policy considerations of its decision. Something is arbitrary and capricious only if it is void of rational consideration or basis. Citing, Boyceville Community School District (Arbitrator Vernon). Arbitral precedent also supports the view that experience relevant to job requirements and the opinions of supervisors regarding the ability of employees are important, and are entitled to consideration by an arbitrator. Deference is especially due a supervisor's opinion where it is substantiated by subjective, tangible evidence. Here, Werner, Morris and the District Administrator all concluded that the Grievant was not qualified for the position due to her lack of knowledge or experience with heating and ventilating systems. Only after the Grievant's application was rejected did the District interview outside applicants. All applicants, including the Grievant, were asked to tell the interviewer about themselves, their janitorial experience, and their experience with boilers.

While the job descriptions do not specifically state that knowledge of boilers is required, those descriptions are approximately three to five years old and have not been updated. As jobs change, so too, should the job descriptions. Further, the same is also true of the job descriptions for the Head Custodian and the Maintenance Supervisor, who have been responsible for the District's heating and air-moving systems. The fact that the duty is not spelled out in their job descriptions does not mean it is not part of their duties. The District retains the right to assign job duties and tasks and to determine the methods, means and personnel by which District operations are to be conducted. In this case, the District has not yet decided whether to fill the Maintenance Supervisor position. Morris testified that this has resulted in him taking on additional responsibilities in the area of building maintenance. Morris also took over the Maintenance Supervisor's boiler duties and supply ordering responsibilities, in addition to his general cleaning duties compelling him to disperse some of those duties among the Custodian I's.

In light of the additional maintenance duties, the District felt that it must fill the Custodian I position with an individual experienced and knowledgeable in heating and ventilating systems. While a boiler's license was not "necessary", knowledge and experience in heating and air moving systems clearly was necessary in order to efficiently fill the position. The Grievant lacked that experience and knowledge.

Under the Management Rights provision in the Agreement, the District retained the ability to determine the criteria for the position. The District cites a number of awards where the employer was found not to have acted in an arbitrary or capricious fashion when it passed over applicants who lacked what the employer had determined to be the necessary qualifications for the position. Article VIII grants the District the right to hire an outside applicant if "in its sole discretion, it determines that no bargaining unit

member possessed the qualifications and/or ability to fill the position." Once that is determined, the District may then fill the position "as it may see fit". In this case, the District made the decision that the Grievant did not have the requisite experience and knowledge to fill the position, as was its right under the Agreement.

In its reply brief, the District contends that the Union has made a number of erroneous factual assertions in its initial brief. First, the District denies that Chadwick was hired "within hours" of the Grievant's interview, as the Union suggests; rather, he was hired four days later. Secondly, the Grievant's statement that Werner did not use a form for her interview was refuted by Werner in his testimony. Werner testified that Employer Exhibit No. 1 was the list of questions he used during his interviews of the applicants. Chadwick testified that he was asked those questions during his interview. The Grievant also testified that nothing was said about the boilers during her interview; however, that contention is also not supported by the evidence. The Grievant would not have stated that she knew nothing about heating and air-moving systems, but could learn to operate them or contact her husband if she had problems, had she not been asked about those matters. Further, the Grievant's response on cross-examination was that she "didn't remember talking about it", not that she had not talked about it. Werner testified that it was his experience with problems with boilers in the past, especially in the middle of winter, that motivated him to hire someone with the ability to keep the boilers running and was his basis for asking the Grievant if she had any experience in that area. Third, with regard to the assertion that Werner did not have the Grievant's resume or application during the interview, the Grievant testified that Werner had her prior year's application and that Werner knew her background and did not need to look at an application.

Finally, the District disputes the Grievant's testimony that the way boiler trouble has been handled in the past for other custodians was to call the repairman. While the Grievant had subbed at times in eight-hour shift Custodian I positions, she never held such a position for an extended period of time so as to experience how such matters were handled, especially after the Maintenance Supervisor's resignation. Dierks, Morris and Chadwick all testified as to past instances of problems with the boilers where they took steps to attempt to fix it. Dierks testified as to his extensive experience and training in heating and ventilation systems. Morris testified on one of the times he was able to fix the boiler and the other time he had to call the repairman. Chadwick, the individual who was awarded the position, testified that he has had to restart the boilers three times since December of 1993. It is reasonable for the District to expect its eight-hour custodians to have sufficient knowledge of the heating and ventilating systems to at least attempt to repair them if there is a problem or determine if there is a problem. Those individuals that have the knowledge currently cannot be expected to be "on call" to help out those that do not. The District also asserts that the Union has taken Dierks' testimony out of context regarding the time it takes to teach someone to close the building. The Union failed to note his testimony regarding the occasional problems with the boilers, and failed to mention that maintaining the boilers is one of the additional duties custodians have other than closing the building. Last, with regard to the outside applications, Werner did not even know of their existence at the time he interviewed the Grievant. Further, it being a small town, the people were aware of the vacancies in the Maintenance Supervisor position and this position and had independently submitted their applications for consideration.

DISCUSSION

Article VIII, Section A, of the parties' Agreement provides, in relevant part, that:

"The qualifications and ability of the applicants from the classification in which the vacancy exists shall be

considered first. Should no applicant from the classification be considered to have the necessary qualifications and/or ability, the District agrees to accept applicants from other classifications before going outside of the bargaining unit. Should no bargaining unit applicant be considered to have qualifications and/or ability, the District shall have the right to fill the position as it may see fit."

The Grievant was the only internal applicant for the position of Custodian I, second shift, at the High School. Therefore, pursuant to the above language, whether the Grievant, as a part-time custodian, was considered as an applicant from within the classification or only from within the bargaining unit, it was only necessary that she have the necessary qualifications and/or ability to perform the duties and responsibilities of the position. If the Grievant possessed the necessary qualifications and/or ability, that is the end of the inquiry, regardless of the level of qualifications or ability an outside applicant might have.

The above-cited language of Article VIII, Section A, leaves it to management to determine whether an applicant is "considered to have the necessary qualifications and/or ability" in the first instance. In this case, Werner and the Head Custodian at the High School concluded that the Grievant lacked sufficient knowledge or training with regard to boilers, air-conditioning and air-moving systems. The Union challenges that determination on the basis that knowledge and training in those areas have not been required of a Custodian I in the past and the District should not be permitted to unilaterally add that qualification now so as to deny the Grievant the position. The Union notes that neither the posting for the position, nor the job description for a Custodian I mentions any requirements or duties in those areas.

The Union's noting that the District appears to be adding a new qualification for Custodian I is appropriate. Ordinarily, an employer may not unilaterally alter qualifications customarily required for a job "if the change would impair the right of senior employees to be promoted in accordance with the contract's promotion clause." 1/ However, in this case, the District has been able to establish that circumstances changed when the District's Maintenance Supervisor resigned in the Fall of 1993 and it decided that it would not fill the position for the time being. The Head Custodians took on some of the duties of that position, including some of the responsibilities with regard to the buildings' heating, air-conditioning and ventilation systems. At the High School the Head Custodian, Tim Morris, works days and would not be present in the evening hours if there were a problem with the boiler. The position in question is Custodian I on the second shift at the High School, the work hours being 3:30 p.m. to 12:00 a.m. The person who had held the position, and then posted into the Head Custodian vacancy at Nelson Elementary, Dierks, had a background in heating, air conditioning and ventilation systems. Morris testified that he had experienced problems with the boilers since he had been at the High School and Werner also testified that the boilers have at times been a problem there. Also, Article III, Section B, of the Agreement authorizes the District to "create, combine, modify and eliminate positions. . .", however, its actions in that regard must be reasonable.

The changed circumstances due to the resignation of the Maintenance Supervisor, with the resultant dispersion of his duties, along with problems that had been experienced with the High School's boilers, provide a reasonable

1/ Elkouri and Elkouri, How Arbitration Works, Fourth Edition, at page 564.

basis for the District's requirement that the person in the second shift Custodian I position at the High School have some degree of familiarity with heating systems, etc. 2/ Further, it does not appear that the District is requiring its Custodian I's to be boiler repairmen, however, it expects them to have a sufficient degree of knowledge in that area as to be able to recognize problems or know how to handle minor problems.

The Union also contends that the Grievant possesses sufficient knowledge of the boilers, or can easily and quickly be trained in that area to a sufficient degree, so as to be able to satisfactorily perform the job. As noted previously, Article VIII, Section A, leaves it to the District to make the initial determination as to an employe's qualifications and/or ability. That determination, however, must have a reasonable basis. 3/

From Werner's testimony, it appears his decision as to the Grievant's qualifications was based on her responses to his questions in the interview and his personal knowledge of her custodian experience. Werner testified that the Grievant answered that she did not understand boilers or air-moving systems, but that she could learn how to work them, and that if she had trouble, she could call her husband. The Grievant testified that she did not recall any discussion during the interview of boilers, air-conditioning, or air-moving systems, but she could not affirmatively state it did not take place. Werner testified he was sure he asked the Grievant about her knowledge of boilers and thought he asked her about air-moving systems as well. Werner also supplied the list of questions he used in the interview with the Grievant and the outside applicants, which included a question regarding the person's experience with boilers. Werner's recollection of what was discussed in the interview is credited over the Grievant's on the basis of his being more certain as to what was said and the corroborating notes of his interview questions. The fact that Werner did not have the Grievant's resume in front of him at the interview is offset by the Grievant's acknowledgement that Werner was familiar with her prior custodian experience and that he asked her about it during the interview.

It is also noted that the Grievant testified that while she could tell when a boiler was not working, she had no experience working with boilers, air-conditioning or air-moving systems and would call the Head Custodian if there were a problem with the boilers since there is no longer a Maintenance Supervisor. While the District did not indicate that it expected an employe in the position to be a boiler repairman, it does want someone who has some idea what the problem might be and who has some familiarity with heating and ventilation systems. It does not appear that the Grievant possesses that ability or knowledge.

The record does not support the allegation that the District's intent from the start was to hire an outside applicant and only went through the motions of considering the Grievant. Werner's un rebutted testimony was that at the time he interviewed the Grievant and considered her qualifications, he was not aware that the District had applications on file from outside applicants. The speed with which the District moved to interview the outside applicants was adequately explained by its felt need to move quickly to fill the position. The District apparently moved with the same speed to interview the Grievant for the position.

2/ See, Equitable Bag Company, Inc., 83 LA 317 (Arbitrator Modjeska, 1984).

3/ See, Barbers Point Federal Credit Union, 84 LA 959 (Arbitrator Brown, 1984).

For the foregoing reasons, it is concluded that the District did not violate Article VIII of the parties' Agreement when it did not award the eight-hour Custodian I position at the High School to the Grievant and instead filled the position with an outside applicant.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 23rd day of December, 1994.

By David E. Shaw /s/
David E. Shaw, Arbitrator