

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 1147

and

CITY OF WISCONSIN RAPIDS
(WATER WORKS AND LIGHTING
COMMISSION)

Case 123
No. 53311
MA-9306

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, by Ms. Renata Krawczyk, appearing on behalf of the Union.

Ruder, Ware and Michler, S.C., 500 Third Street, Suite 600, P.O. Box 8050, Wausau, Wisconsin 54402-8050, by Mr. Jeffrey T. Jones, appearing on behalf of the Utility.

ARBITRATION AWARD

International Brotherhood of Electrical Workers Local 1147, hereafter the Union, with the concurrence of the City of Wisconsin Rapids (Water Works and Lighting Commission), hereafter the Utility or Employer, requested the Wisconsin Employment Relations Commission to appoint a member of its staff as arbitrator to hear and decide the instant grievance. The undersigned was so designated and hearing was held in Wisconsin Rapids, Wisconsin on February 22, 1996. The hearing was not transcribed and the record was closed on April 25, 1996, upon receipt of post-hearing briefs.

ISSUE

The Union frames the issue as follows:

Did the Employer violate the parties' collective bargaining agreement when it awarded Andrew Kaminski, rather than Debra Beadle, the bargaining unit position of Water Meter Tester? If so,

what is the appropriate remedy?

The Utility frames the issue as follows:

Whether the grievance is subject to arbitration? If not, what is the appropriate remedy?

Whether the Utility violated Article VIII of the Labor Agreement by failing to award the Water Meter Tester position to the Grievant?

If so, what is the appropriate remedy?

The undersigned frames the issues as follows:

Is the grievance arbitrable?

Did the Utility violate the collective bargaining agreement when it failed to award the Water Meter Tester position to the Grievant?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

PREAMBLE

This Agreement is entered into this 1st day of January, 1991, between the Utility Commission for the City of Wisconsin Rapids, Wisconsin, and Local 1147 of Wisconsin Rapids, Wisconsin, of the International Brotherhood of Electric Workers, A.F.L.- C.I.O., herein called the "Union".

It is declared that the Water Works and Lighting Commission of Wisconsin Rapids, Wisconsin, in all its actions and the actions of duly appointed representatives of the Commission are acting for and on behalf of the citizens of the City of Wisconsin Rapids, Wisconsin, and that their authority is derived from the State Statutes and the administrative and executive officers of the City of Wisconsin Rapids, Wisconsin, and are subject to the rules and regulations established by them.

That any Labor Policy, including negotiations, contracts and agreements must conform to the Statutes of the State of Wisconsin and within the scope and authority of the City of Wisconsin Rapids

and the Water Works and Lighting Commission, upon the premises that the real party in interest is the citizenry of the city.

...

ARTICLE I - NONDISCRIMINATION

The Utility and Union agree to continue their policy on nondiscrimination in hiring employees, or in their training, upgrading, promotion, transfer, layoff, discipline, discharge, or otherwise because of race, color, creed, sex, national origin, handicap, or age as required by Federal and/or State law. Where the context admits in the contract, words in the masculine gender shall include feminine and neuter gender.

...

ARTICLE IV - MANAGEMENT RIGHTS

The Union recognizes the prerogatives of the Utility to operate and manage its affairs in all respects in accordance with its responsibility and powers or authority which the Utility has not officially abridged, delegated, or modified by this Agreement and such powers or authority which the Utility has not officially abridged, are retained by the Utility. These management rights include, but are not limited to the following: the right to plan, direct and control the operations of the workforce, to hire, to layoff, to discipline or discharge for just cause, to establish and enforce reasonable shop rules, to introduce new or improved methods of operations, all of which shall be in compliance with and subject to the provisions of the Agreement.

...

ARTICLE VI - GRIEVANCE PROCEDURE

- A. Definition of Grievance: For the purpose of this Agreement, the term "grievance" means any dispute between the Utility and the Union, or between the Utility and any employee, concerning the effect, interpretation, application, claim or breach or violation of this Agreement.

B. Timeliness: It is recognized that it is to the best interest of all parties to settle all grievances as promptly as possible.

C. Procedure: Grievances are to be settled in the following steps:

Step 1: Grievances requiring immediate attention shall be reported by the employee and/or Union representative to the employee's immediate supervisor. The employee must submit the grievance in writing within ten (10) calendar days of the occurrence giving rise to the grievance. If a satisfactory adjustment has not been made by the supervisor,

Step 2: The grievance will then be referred to the Manager of the Utility. If no settlement is reached within ten days,

Step 3: The grievance will be referred to the Water Works & Lighting Commission of Wisconsin Rapids, Wisconsin. If no settlement is reached within thirty (30) days,

Step 4: It shall be referred to the Wisconsin Employment Relations Commission (WERC) to be settled in accord with the general rules and regulations as set down by the WERC.

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ARTICLE VIII - VACANCIES/PROMOTIONS

In filling vacancies or making promotions within the working force, the Utility reserves the right to determine whether the vacancy be filled or promotion made. Preference shall be given to employees on the basis of ability and seniority. Ability being equal, the employee with the most seniority shall be given preference. The determination as to ability shall rest with the Manager subject to review by the Commission in case of dispute. If a job is eliminated

under Exhibit A of the contract, it cannot become a non-union position without mutual consent.

BACKGROUND

In August of 1995, the Utility posted a vacancy in the following position:

POSITION TITLE

WATER METER TESTER

POSITION SUMMARY

ABILITY TO INSTALL, REPAIR AND TEST WATER METERS AND VARIOUS WATER MAINS, SERVICES AND EQUIPMENT. ABILITY TO DEAL WITH THE PUBLIC IN A PLEASING MANNER. WILL PERFORM METER READING AS NECESSARY.

SUPERVISION RECEIVED

WORK PERFORMED UNDER THE SUPERVISION OF THE WATER SUPERINTENDENT.

DUTIES

PERFORMS WATER METER INSTALLATION, REPAIR AND TESTING. PERFORMS WATER MAIN INSTALLATION AND REPAIR. PERFORMS FIRE HYDRANT INSTALLATION AND REPAIR AS NECESSARY. PERFORMS WATER MAIN TAPPING AS NECESSARY. PERFORMS VALVE MAINTENANCE AS NECESSARY. PERFORMS METER READING AS NECESSARY.

WORKING CONDITIONS

WORK WITH CUSTOMERS INSTALLING METERS AND DEALING WITH WATER COMPLAINTS. INSIDE AND OUTSIDE WORK. MUST PRACTICE AND BE KNOWLEDGEABLE OF SAFETY PRECAUTIONS. MUST BE AVAILABLE FOR CALL IN AND BE WILLING TO WORK OVERTIME. MUST HAVE THE ABILITY TO WORK

UNSUPERVISED.

QUALIFICATIONS

THE APPLICANT SHOULD HAVE EXPERIENCE IN WATER DISTRIBUTION SYSTEMS AND METERING. POSSESSION OF A VALID DRIVERS LICENSE, GOOD DRIVING RECORD AND THE ABILITY TO OBTAIN A COMMERCIAL DRIVERS LICENSE, REQUIRED. MUST BE ABLE TO PERFORM HEAVY PHYSICAL LIFTING (RANGE 50100 LBS.) ON A REGULAR BASIS. EXPERIENCE IN OPERATING POWER AND) HAND TOOLS. FAMILIARITY WITH COMPUTERS AND RECORDS KEEPING. THE APPLICANT WILL BE REQUIRED TO OBTAIN WISCONSIN DNR CERTIFICATION IN WATER DISTRIBUTION SYSTEM OPERATION WITHIN 12 MONTHS. APPRENTICESHIP REQUIRED.

On August 21, 1995, the position was awarded to bargaining unit employe Andrew Kaminski.

On August 22, 1995, bargaining unit employe Debra Beadle, hereafter the Grievant, filed a grievance alleging that the Utility had violated Article VIII and Article I when it did not select the Grievant for the position of Water Meter Tester. The grievance was denied at all steps of the contractual grievance procedure.

Union

The grievance procedure neither states, nor implies, that the grievance is not arbitrable. Nor does Article VIII indicate with "positive assurance" that the grievance is not arbitrable. Any doubt as to arbitrability should be resolved in favor of coverage.

Under Article VIII of the labor contract, ability being equal, the employe with the most seniority must be given preference in filling vacancies or making promotions. Absent express language to the contrary, seniority must be defined as length of service with the Utility. It is generally recognized that "equal" does not mean exact equality, but rather, means substantial equality.

According to the three member panel that selected Kaminski for the position, Kaminski was more able because he possessed a degree in mechanics. This degree, however, is not relevant to the Meter Tester position.

Kaminski received eighteen months credit towards his apprenticeship, as would the Grievant, based upon work experience as a Meter Reader. Since Kaminski's mechanics degree and prior auto mechanic experience did not provide any additional credit toward the apprenticeship, it is evident these factors do not establish that Kaminski has greater ability than the Grievant.

The fact that Kaminski had a temporary CDL at the time he made application for the Water Meter Tester position is not determinative because the posting required only that the applicant be able to obtain a CDL. The Utility did not have any rational basis to conclude that the Grievant would not be able to obtain a CDL.

The Utility argues that Kaminski's familiarization with various tools makes him more qualified for the Water Meter Tester position. This argument, however, is contrary to the testimony of the employe who has performed this work.

The Grievant posted for and obtained the position of Relief Water Plant Operator. The position description for this job, like the position description of the Water Meter Tester position, states that the employe "must have the ability to work unsupervised". Given the General Manager's testimony that there is less supervision in the Relief Water Plant Operator position than there had been in the Water Meter Tester position, the Utility's claim that the Grievant was not offered the Water Meter Tester position because she is unable to work unsupervised is not credible.

The Utility cannot rely upon the Grievant's disciplinary record because this material was not considered when the Utility selected Kaminski. If such material had been considered, it would not be determinative because the disciplines are either stale or occurred after the posting was filled.

A worker's absentee record is not proof of lack of ability to do a job, but rather, is a subject for corrective measure. Management cannot discipline an employe under the guise of disqualifying the employe from a job.

In summary, the Utility's decision was based upon the following three factors: (1) Kaminski had a temporary CDL at the time of the posting; (2) Kaminski's two-year degree as a Diesel and Heavy Equipment Mechanic; and (3) Kaminski's 15 years of auto mechanic experience. None of these factors had any bearing on the Water Meter Tester position. The Union has shown that the Grievant is as qualified, or in fact, more qualified than Kaminski.

The Grievant's seniority, together with her previous experience, should guarantee her the right to the Water Meter Tester position or, at the very least, it should have guaranteed her the right to prove herself in the Water Meter Tester position. The Grievant should be placed in the position of Water Meter Tester and made whole for any losses sustained as a result of the Utility's failure to place her in that position.

Utility

While the dispute would appear to fall "within the scope of the arbitration clause", another provision of the labor agreement excludes this dispute from arbitration. Specifically, under the language of Article VIII, exclusive authority to determine applicant ability is vested in the manager

and the Commission. If the Union disagrees with the manager's determination, the Union may request the Commission to review that determination. Such a review, however, is not subject to grievance arbitration.

If the arbitrator has authority to review the Utility's determination of ability, the applicable standard of review is arbitrary, capricious or discriminatory. The Union bears the burden of proving that the Utility's determination was arbitrary, capricious or discriminatory.

Article VIII contains a "relative ability" clause. The Utility has the right to determine the factors to be assessed in determining ability and the weight to be given these factors. The job posting contains only the basic qualifications of the position and the Utility is not barred from considering other qualifications or abilities of job applicants.

The Utility properly relied upon supervisory opinion, education, training, prior work experience and past work productivity in determining the Grievant's and Kaminski's abilities to perform the duties of the Water Meter Tester position. The Utility's conclusion that Kaminski has greater ability to perform the work in dispute is supported by the record evidence.

Article VIII does not define "seniority" for purposes of awarding a posted position. Accordingly, there is no basis to the Union's claim of "county-wide" seniority. However, the use of "department seniority" in other provisions of the contract indicates that the parties' intended that department seniority be utilized when giving effect to the provisions of the labor agreement. For the purposes of Article VIII, the Grievant is not more senior than Kaminski.

The grievance is not arbitrable. If the grievance is arbitrable, then the Union has not established that the Utility's determination of relative ability is unreasonable, arbitrary, capricious or discriminatory. Accordingly, the grievance should be dismissed.

DISCUSSION

Arbitrability

The Union and the Utility agree that Step 4 of the grievance procedure provides for the arbitration of grievances. The Utility, however, denies that the instant dispute is substantively arbitrable. Specifically, the Utility argues that the review procedure set forth in Article VIII is the exclusive remedy for disputes concerning management's determination of ability.

As the Utility recognizes, the Wisconsin Supreme Court, in Jt. School District No. 10, City of Jefferson et. al., 78 Wis.2d 94 (1977), set forth the framework governing the determination of substantive arbitrability. The Jefferson court noted that the peaceful resolution of labor disputes is enhanced by deferring disputes, to the broadest extent possible, to the arbitration process, but that "a party cannot be required to submit to arbitration any dispute which the party has not so agreed to

submit." 1/ The Jefferson court balanced these considerations thus:

An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage. 2/

More specifically, the Jefferson court stated that:

The court's function is limited to a determination whether there is a construction of the arbitration clause that would cover the grievance on its face and whether any other provision of the contract specifically excludes it. 3/

Article VI, Grievance Procedure, states that 'For the purpose of this Agreement, the term "grievance" means any dispute between the Utility and the Union, or between the Utility and any employee, concerning the effect, interpretation, application, claim or breach or violation of this Agreement.' Since the instant dispute involves a dispute between the Utility and the Union concerning the application of the Agreement, it is a grievance within the meaning of Article VI.

Article VI, Section C, states that "Grievances are to be settled in the following steps: . . ." and, further, provides that grievances not settled at Step 3 of the grievance procedure may be processed to Step 4 of the grievance procedure. While Step 4 of the grievance procedure does not expressly reference grievance arbitration, the parties are in agreement that Step 4 is a grievance arbitration clause. The undersigned is satisfied that there is a construction of the arbitration clause that would cover the grievance on its face.

Article VIII provides that "The determination as to ability shall rest with the Manager subject to review by the Commission in case of dispute." Neither the language of Article VIII, nor any other contract provision, expressly states that the "review" of the Water Works and Lighting Commission is final and binding, or that a dispute concerning management's determination of employe ability is not subject to the grievance procedure. Contrary to the argument of the Utility, there is no other contract provision which specifically excludes the grievance from arbitration.

In summary, it may not be said with positive assurance that the arbitration clause is not

1/ Ibid., at 101, citing United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960).

2/ Ibid., at 112, citing United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582, 583 (1960).

3/ Ibid., at 111.

susceptible of an interpretation that covers the asserted dispute. Accordingly, the undersigned concludes that the grievance is arbitrable.

Merits

Article VIII, Vacancies/Promotions, provides that "Ability being equal, the employee with the most seniority shall be given preference". The Utility, contrary to the Union, argues that the Grievant is not more senior than Kaminski because the seniority referred to in Article VIII is "department" seniority. 4/

Article VII, Layoffs, contains the following language: "If work is not available or a reduction in force is required, department seniority and ability shall govern layoff and recall". Article XIV, Vacation, C(2), contains the following language: "Choice of vacations will be given in accordance with the seniority rights of the employees by Department as follows..." Given these provisions, it is evident that, if the parties had intended Article VIII rights to be determined on the basis of "departmental" seniority, then the parties would have so stated. Since the parties did not so state, the undersigned concludes that Article VIII seniority is not departmental seniority.

Article II, Scope, B(2), states that "Upon completion of the 91 day probationary period, probationary employees shall be placed on the seniority list and shall be entitled to all rights and privileges of this Agreement". Given this language, and the absence of any language in Article VIII indicating otherwise, the undersigned is persuaded that the "seniority" referenced in Article VIII is bargaining unit seniority.

At the time of the posting, the Grievant had more bargaining unit seniority than Kaminski. Thus, for the purposes of Article VIII, the Grievant was the more senior employe. Accordingly, the Grievant is entitled to the position unless Kaminski, the junior employe, has greater ability for the position of Water Meter Tester. 5/

As stated supra, Article VIII provides that "The determination as to ability shall rest with the Manager subject to review by the Commission in case of dispute." By adopting this language, the parties have recognized that the determination of ability is an act of management discretion.

4/ Kaminski was hired on 12/21/92 and the Grievant was hired on 1/5/87. Neither the Grievant, nor Kaminski, had seniority in the Electric Meter Department, which is the Department of the Meter Tester.

5/ The Utility does not argue, and the record does not demonstrate, that the Grievant is not qualified for the position of Water Meter Tester. Being qualified, however, does not provide the Grievant with a contractual right to the position.

Accordingly, the undersigned must uphold the Utility's determination of ability unless the record demonstrates that the Utility has acted in an arbitrary, capricious, discriminatory or bad faith manner.

The determination that Kaminski had greater ability than the Grievant was a unanimous decision of the three member interview panel, consisting of William Stacy, the Utility's General Manager; David Eserkaln, the Utility's Electrical Engineer; and Jim Reinholt, the Water Superintendent. Each of these individuals testified at hearing.

As the Union argues, the record fails to establish that the Utility relied upon the Grievant's disciplinary record when the Utility determined that Kaminski had greater ability than Kaminski. Accordingly, the Utility may not now rely upon such evidence.

A review of Stacy's testimony demonstrates that he considered the following factors when determining Kaminski's ability for the position of Water Meter Tester: Kaminski's temporary CDL; Kaminski's two year degree in Diesel & Heavy Truck Mechanics; Kaminski's fifteen years experience as an automotive mechanic; Kaminski's ability to deal with the public; Kaminski's computer experience; and Kaminski's good work record. A review of Eserkaln's testimony demonstrates that he considered the following factors in determining Kaminski's ability for the position of Water Meter Tester: Kaminski's prior experience as a Meter Reader; Kaminski's previous work with the Water Meter Tester; Kaminski's work with the water crews; Kaminski's good work record; Kaminski's two year technical degree in mechanics; Kaminski's temporary CDL; and Kaminski's experience as a mechanic. A review of Reinholt's testimony demonstrates that he considered the following factors when determining Kaminski's ability for the position of Water Meter Tester: Kaminski's two year degree in mechanics; Kaminski's temporary CDL; and Kaminski's experience as an automotive mechanic. The undersigned is persuaded, however, that the determinative factors were Kaminski's temporary CDL; Kaminski's two year degree; and Kaminski's fifteen years experience as an auto mechanic.

As the Union argues, the posting does not require a CDL, but rather, requires the ability to obtain a CDL. According to Stacy, the importance of the temporary CDL was that it demonstrated initiative. The conclusion that Kaminski demonstrated initiative when he obtained his temporary CDL is reasonable. 6/

As the Union argues, the posting does not require a degree in Diesel & Heavy Truck Mechanics, or any other degree. As the Union further argues, it is not evident that the specific knowledge acquired by Kaminski in his two year degree program is knowledge which is required of

6/ At the time of the posting, Kaminski, as did the Grievant, submitted a letter of application. In this letter, Kaminski indicated that he had a temporary CDL and was scheduled to take the road test on August 22, 1995.

the Water Meter Tester. However, a review of the testimony of Stacy, Eserkahn, and Reinholt establishes that it was not the course content, per se, which was determinative. Rather, the two year degree was deemed important because it demonstrated that Kaminski had initiative, was able to study, and was able to learn. The conclusion that, by earning a two year degree in Diesel & Heavy Truck Mechanics, Kaminski demonstrated initiative, an ability to study, and an ability to learn is reasonable.

As the Union argues, the posting does not require prior experience as an automotive mechanic. A review of the testimony of Stacy, Eserkahn, and Reinholt establishes that Kaminski's prior experience as an automotive mechanic was deemed relevant because it demonstrated an ability to work with a variety of tools, an ability to make mechanical repairs, an ability to "trouble shoot" problems, and, given the changes in automotive mechanics in the years since Kaminski first obtained his degree, an ability to adapt to changing technology. The conclusion that Kaminski's fifteen years of automotive repair experience demonstrated an ability to work with a variety of tools, an ability to make mechanical repairs, an ability to "trouble shoot" problems, and an ability to adapt to changing technology is reasonable.

At the time that the Water Meter Tester position was posted and filled, the Union understood that this was a position in transition, i.e., that initially the position would involve two-thirds meter reading and one-third meter testing, but that over time, Meter Tester duties would increase, possibly to the point that meters would be read only when the Meter Reader was on vacation. 7/

As Joe Hoffmann, the senior Water Meter Tester, testified at hearing, the posting accurately reflects the current duties of a Water Meter Tester. Given these duties, it is reasonable for the Utility to give consideration to an applicant's ability to work with a variety of tools 8/, an applicant's ability to make mechanical repairs, and an applicant's ability to "trouble shoot" problems.

The position in dispute involves a four year apprenticeship. Moreover, the successful applicant is required to obtain Wisconsin DNR certification in water distribution systems. Accordingly, it is reasonable for the Utility to give consideration to an applicant's initiative, ability to study, and ability to learn.

Stacy's testimony demonstrates that the Water Meter Tester position was also in transition because of changing technology. Given the evidence that the Utility will be converting to a new technology, i.e., electronic meters, it is reasonable for the Utility to give consideration to an applicant's ability to "trouble shoot" problems and adapt to changing technology.

7/ See Jt. Exhibit #2.

8/ Hoffmann's testimony demonstrates that, currently, the Water Meter Tester uses a variety of wrenches, a screwdriver, a hacksaw, and occasionally operates a drill press.

Joe Hoffmann has been the Water Meter Tester for at least six years. As Meter Readers, the Grievant and Kaminski each assisted Hoffmann with his duties. According to Hoffmann, at the time of the posting and based upon his experience with Kaminski and the Grievant, the two were equally competent with respect to their ability to install, repair, and test meters. 9/

Given Hoffmann's testimony that the Grievant assisted Hoffmann more frequently and over a longer period of time than Kaminski, Hoffmann's testimony supports management's determination that Kaminski has greater ability to perform the work of the Water Meter Tester. The reason being that Kaminski achieved the same level of competence as the Grievant, but with less experience than the Grievant. 10/

In summary, the undersigned is persuaded that the "determinative" factors relied upon by the Utility are reasonably related to the Water Meter Tester position. Since the Grievant did not have a temporary CDL; a two year degree; and fifteen years experience as an auto mechanic, consideration of these three factors would provide the Utility with a reasonable basis to conclude that the Grievant has less ability than Kaminski. The undersigned turns to the issue of whether or not the Utility failed to give appropriate consideration to other factors which demonstrate that the Grievant had equal, or greater ability, than Kaminski at the time of the posting.

As the Union argues, the Grievant has had more meter reading experience than Kaminski. Based upon the record evidence, the primary value of meter reading experience is that the employe learns the location of the meters and experiences working with the water crews.

The record fails to establish that the Grievant's eight years of experience as a Meter Reader provided more familiarity with meter locations than Kaminski's two and one-half years of meter reading experience. However, the record does establish that Kaminski had more experience working with the water crews than the Grievant. Since working with the water crews is normally a secondary duty of the Water Meter Tester, the Utility's conclusion that the Grievant's meter reading experience and Kaminski's meter reading experience were "a wash", is reasonable.

9/ Hoffmann acknowledges that each needed more experience and training before he/she would be able to perform the work of the Water Meter Tester.

10/ The record demonstrates that Kaminski provided assistance to Hoffmann on two or three occasions, while the Grievant assisted Hoffmann "off and on" over a period of two to three years.

When applying for the position of Water Meter Tester, the Grievant submitted a letter indicating that her "computer experience is limited". The Grievant's testimony as hearing confirmed that her computer experience was limited. Kaminski's testimony at hearing confirmed that he had limited computer experience. Each has had experience in keeping records.

The undersigned is satisfied that the Grievant's "familiarity with computers" and "records keeping" are at least equal to that of Kaminski. While each of these two factors are "qualifications" for the position, they relate to secondary, rather than primary, duties. Accordingly, it is reasonable for the Utility to give these factors less weight than the three factors which were considered to be determinative.

At the time of the posting, the Grievant had worked as a Meter Reader and as the Relief Water Plant Operator, while Kaminski's only experience with the Utility was in the Meter Reader position. Thus, the record supports the Grievant's claim that, at the time of the posting, she had greater knowledge of the Utility's water distribution system than Kaminski.

According to Reinholt, the Grievant's work as a Relief Water Plant Operator was not compelling because it involved a phase of the water distribution system which was not particularly related to the work of the Water Meter Tester and neither the Grievant's experience with the water distribution system, nor Kaminski's experience with the water distribution system, was significant because it did not enable either to meet the DNR requirements for water distribution system operation. The record does not demonstrate otherwise. Accordingly, it is reasonable for the Utility to give the Grievant's greater knowledge of the Utility's water distribution system less weight than the three factors which were considered to be determinative.

Given Kaminski's fifteen year's experience as an automotive mechanic, it was reasonable for the Utility to conclude that Kaminski had experience in using a variety of hand tools. However, the record supports the Union's argument that the Utility failed to give appropriate consideration to the fact that the Grievant's work for the utility also involved the use of hand tools. While this failure is troubling, the record as a whole, persuades the undersigned that the Utility's initial conclusion was sound, i.e., that Kaminski's work as an auto mechanic provided Kaminski with more experience in using hand tools.

As the Grievant argues, she has had a good relationship with utility customers. The record, however, demonstrates that Kaminski has also had a good relationship with utility customers.

In conclusion, under the terms of the contract, the Utility may select the applicant with the greater ability. The undersigned is satisfied that, in determining ability, the Utility considered criteria that were reasonably related to the Water Meter Tester position and that, upon the basis of these criteria, determined that Kaminski had greater ability to perform the work of the Water Meter Tester than the Grievant. The undersigned is not persuaded that the Utility overlooked any factor which demonstrated that the Grievant's ability was equal to, or greater, than that of Kaminski.

Having no reasonable basis to conclude that the Utility acted in an arbitrary, capricious, discriminatory 11/ or bad faith manner when it determined that Kaminski had greater ability than the Grievant for the position of Water Meter Tester, the undersigned has denied the grievance.

Based upon the above and the record as a whole, the undersigned issues the following:

AWARD

1. The grievance is arbitrable.
2. The Utility did not violate the collective bargaining agreement when it failed to award the Water Meter Tester position to the Grievant.
3. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 24th day of October, 1996.

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator

11/ In her grievance, the Grievant alleged a violation of Article I, claiming that she was denied the position of Water Meter Tester because of her gender. This claim is not supported by the record evidence.