

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**NORTHERN EDUCATIONAL SUPPORT TEAM**

and

**JT. SCHOOL DISTRICT NO. 1,  
TOWN OF LAC DU FLAMBEAU**

Case 20  
No. 56119  
MA-10181

*(Grievance of Albany Potts, Jr.)*

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Appearances:

**Mr. Gene Degner**, Director, NTU-Central, on behalf of the Union.

O'Brien, Anderson, Burgy, Garbowicz and Brown, by **Mr. Steven C. Garbowicz**, on behalf of the District.

**ARBITRATION AWARD**

The above-captioned parties, herein "Union" and "District", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Lac du Flambeau, Wisconsin, on March 18, 1998. The hearing was transcribed and both parties filed briefs that were received by May 19, 1998. Based upon the entire record and the arguments of the parties, I issue the following Award.

**ISSUE**

The parties have agreed to the following issue:

Did the District violate the contract when it failed to award the Assistant Maintenance Mechanic position to grievant Albany Potts, Jr., and, if so, what is the appropriate remedy?

### **BACKGROUND**

Grievant Potts, a Custodian, has been employed by the District since August, 1993.

In January, 1997, the District posted for a newly-created Assistant Maintenance Mechanic position (Joint Exhibit 3). Potts and other applicants applied for said position, but the District chose not to fill it at that time because it was concerned about a building referendum that was then pending. The District in October, 1997 subsequently reposted a slightly revised Assistant Maintenance Mechanic position (Joint Exhibit 4). Neither Potts nor anyone else in the bargaining unit applied for said position. The District thereafter advertised for said position externally, at which time Potts and about 10 other applicants expressed interest. After Potts was interviewed on December 13, 1997, (unless otherwise stated, all dates hereinafter refer to 1997), the District passed over him and awarded said position to external applicant John Snow who had been working as a temporary fill-in employe for about ten (10) months.

Potts testified that he did not believe he had to reapply for the internally-posted October, 1997, job posting because his prior application for the earlier January, 1997 posting was still on file; that he immediately told William F. Cross, Director of Buildings and Grounds, that he was interested in said position once Cross told him that he had to reapply anew; and that he in fact is qualified for the Assistant Maintenance Mechanic position. He also said that the District never tested him for any of the qualifications listed for said position; that the interviewers on December 13 never asked him about his qualifications; and that he wants said position – which pays about the same as his current position - because it has better hours than his current job.

Executive Secretary Arlene Caudle testified that the October, 1997 posting was posted throughout the school; that Potts never asked her for an application so that he could formally apply for said position; that she was told by Cross after the posting's closing date that Potts was going to be interviewed for said position; and that all the job applicants were asked the exact same questions on December 13.

District Administrator Richard Vought testified that Potts never submitted a written application for said position; that he and others interviewed Potts for the position on December 13, at which time Potts was asked a number of technical questions relating to his ability and qualifications; that Potts answered some of the questions incorrectly; that Potts did not score among the top three applicants; and that Potts was unqualified for the position. On cross-examination, Vought acknowledged that the District before the instant hearing never claimed that Potts was unqualified.

Director of Buildings and Grounds Cross testified that he told Potts around December 12 he would have to tell the office that he was interested in the disputed position; that he subsequently interviewed Potts and the other applicants on December 13; that Potts during said interview was unable to answer questions relating to ballasts and three phase electrical motors; that Potts then stated he would learn the position; and that Potts is unqualified for said position. Cross added that Snow – who was awarded the position over Potts – is well-versed in working with ballasts.

On cross-examination, Cross said that applicants were not formally tested because he assumes that employees would not lie about their past in their job applications; that as far as he knows, Vought then never claimed that Potts was unqualified; and that he did not know that the contract provides for a 30-day trial period.

Potts on January 5, 1998, filed a grievance over the District's failure to award him said position, hence leading to the instant proceeding.

### **POSITIONS OF THE PARTIES**

The Union argues that Potts' application "satisfied the contractual provisions of the collective bargaining agreement. . ."; that the District thereafter properly interviewed him and considered him to be "a viable candidate"; that Potts is qualified for the Assistant Maintenance Mechanic position; and that the District "did little to determine or challenge those qualifications during the hiring process." As a remedy, the Union asks that Potts be awarded said position.

The District contends that the grievance should be denied because Potts "failed to comply with the posting and make his desires known to the District. . ."; because it is unfair to require the District "to search its files for prior applicants. . ." who do not formally apply for subsequent job postings; because Article 11, (A), of the contract gives it the right to establish job qualifications; and because Potts was not as qualified as Snow.

### **DISCUSSION**

This case largely turns on Article XV, entitled "Vacancies and Reassignments", which states in pertinent part:

- A. All vacant or new positions recognized under Article I – Recognition of this Agreement shall be posted in a conspicuous place internally for three (3) working days prior to being posted externally. The job posting shall set forth the job title, pay range, work location, and the

name of the person to whom the application is to be returned to. During non-school months, a copy of all postings will be sent to the unit director.

B. All present bargaining unit employes shall be given the right to be reassigned to any new or vacant position within their area of assignment as described in Article XIV, Reduction in Force, paragraph A), provided they are qualified. (Emphasis added).

C. An employe who voluntarily seeks reassignment or applies for a new or vacant position within their area of assignment shall be given a training and qualifying period of thirty (30) days for the purpose of determining whether said employe can meet the job requirements. If at any time during this period the employe and employer mutually determine the employe is not qualified to perform the job or the employe does not want the job, such employe may return to his/her former position without loss of seniority or benefits. Upon completion of said qualifying period, the employe shall be paid at the new job rate, taking into consideration district experience, commencing from the first day of reassignment.

Employes may apply and shall be considered for those positions which are outside their area of assignment. If selected by the employer to transfer to an assignment outside of their area of assignment, such employe shall not lose credit for district experience.

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The Union points to the aforementioned underlined language in Section B in support of its claim that Potts should have been awarded the Assistant Maintenance Mechanic position because it is “clearly in the grievants’ area of assignment as described in Article XV.”

However, even if that is true, Potts still must satisfy the second part of this proviso, i.e., that he is “qualified”. The Union asserts that Potts was entitled to a 30-day trial period to determine his ability and qualifications under Section C.

I disagree. The trial period kicks in only if an employe is otherwise “qualified”. To claim otherwise is to in effect totally disregard that part of Section B which contains this requirement. In this connection, I credit Cross’ testimony that Potts during his December 13 interview was unable to correctly answer the questions asked and that he said that he would learn the position. I credit Cross’ additional testimony that it can take up to 6-8 months for someone to be fully trained as the Assistant Maintenance Mechanic;

that it would have taken more than 30 days to properly train Potts; and that Snow in effect had ten months of actual on the job experience in performing some of the Assistant Maintenance Mechanics' position, which is why he selected Snow over Potts.

Given all this, I conclude that the District properly passed over Potts when he failed to score among the top three job applicants.

In light of the above, it is my

**AWARD**

That the District did not violate the contract when it failed to award the Assistant Maintenance Mechanic position to grievant Albany Potts, Jr.; his grievance therefore is denied.

Dated at the City of Madison, Wisconsin this 31<sup>st</sup> day of July, 1998.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

AAG/gjc  
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