

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 2485, AFSCME, AFL-CIO

and

SCHOOL DISTRICT OF WAUKESHA

Case 130

No. 55502

MA-10036

Appearances:

Ms. Christine Bishofberger, Staff Representative, Council 40, on behalf of the Union.

Davis & Kuelthau, S.C., by **Mr. Clifford B. Buelow** and **Timothy L. Stewart**, 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 Waukesha, Wisconsin, on July 1, 1998. The hearing was transcribed and both parties filed briefs that were received by July 30, 1998. Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

Since the parties were unable to jointly agree on the issue, I have framed it as follows:

Did the District violate Article XXII of the contract when it failed to promote grievant John W. Vetta to the Storekeeper position and, if so, what is the appropriate remedy?

BACKGROUND

Grievant Vetta, the Head Custodian at the Lowell School, has been employed by the District for 19 years. The District on March 12, 1997, (unless otherwise stated, all dates hereinafter refer to 1997) posted the following Storekeeper position:

STOREKEEPER – SERVICE BUILDING

- * Primary Duties with multi-craft responsibilities
- * Salary as per the contract – category I
- * Primary Work Day – First Shift

REQUIRED QUALIFICATIONS:

- * A minimum of three years of full time professional experience in general warehousing, including inventory control, fixed assets, bar coding, computer and math skills, as well as fork lift experience
- * Position reports directly to the Manager of Custodial Operations and work closely with Assistant Business Manager

EXPECTATIONS AND RESPONSIBILITIES:

- * Shipping/Receiving and the handling of requisitions and purchase orders
- * Filling orders from warehouse requisitions for custodial supplies art and instructional materials, and health room items
- * Delivery and disbursement of supplies
- * Strong organizational and planning skills
- * Interpersonal relations – the ability to communicate well at all levels
- * Ability to operate independently and as a team member
- * Work in a cooperative and positive manner with the school district administration and staff, as well as the public
- * Knowledge of custodial supplies, especially floor care products desirable
- * Maintain an inventory of supplies
- * Positive attitude and work ethic, accountability and pride in accuracy
- * Take direction and complete tasks in a safe and satisfactory manner
- * Share responsibility for district property security
- * Properly perform primary duties and essential functions including activities that involve irregular, intermittent, and repetitive activities including stairs, ladders, scaffolding, lifting and transporting items of sixty (60) pounds or less
- * Maintain a Wisconsin driver's license
- * Properly complete daily and scheduled records and paper work
- * Complete tasks as assigned by supervisors
- * This position does not comprise the complete listing of essential functions and primary duties of the job description, nor the complete list of requirements and qualifications

Vetta and 17 other applicants bid for said position, including Arturo Rendon who was ultimately awarded the position.

In support of his application, Vetta on March 20 submitted the following memo to Executive Director of Human Resources Paul Roberts:

...

My qualifications for the Storekeeper posting, Service Building position are as follows:

1. Six months U.S. Navy Supply Dept. dealing with inventory, and supply requisitions.
2. Two years R.T.E. Corp. Shipping and Receiving Dept. Loading and unloading trucks with fork lift, and working with bills of lading, and inventory manifests.
3. Two years at A & A Trucking. Driving Semi-Truck, and fork lift in warehouse work loading and unloading trucks, and delivery of certain warehouse items.
4. Eight years at Spring City Trucking. Loading and unloading trucks and various dock work.
5. Six months at Godfrey Corp. Filling all warehouse food items for delivery to local stores.
6. Seventeen years Waukesha School District. Ordering and maintaining Custodial Supplies. Keeping a running inventory of supplies, and knowledge of cleaning supplies. Maintaining a balanced budget.
7. Computer knowledge obtained September 1994 W.C.T.C. Basic computer knowledge in Windows 95, Micro Soft Office, Word, and experience with Internet and World Wide Web.

...

The County appointed a six-member committee to evaluate all of the 18 applicants who bid for said position. The committee consisted of Assistant Business Manager Mark Powell, Maintenance Supervisor Peter Gerber, Custodial Supervisor Don Mertes, Art Department Chair Jeff Schlueter, Comptroller Doug Linsee and Secretary LeeAnn McCartney. The committee determined that 13 of the applicants, including Grievant Vetta, who was the most senior applicant, were unqualified for the position and it therefore only interviewed the five candidates it considered qualified. The County on May 29 subsequently awarded said position to Rendon.

Vetta filed a grievance on June 3 over the District's failure to award him said position, hence leading to the instant proceeding.

POSITIONS OF THE PARTIES

The Union argues that the District violated Article XXII of the contract when it failed to award Vetta the Storekeeper's position because Vetta was entitled under the contract to a sixty (60) day trial period to establish whether he could perform all of the duties of said position and because the contract "provides little latitude to promote a less senior employee." The Union also contends that the "selection process was flawed" because the District failed to ask Vetta for more information that would have proven his qualifications and because Vetta quickly could have learned how to perform bar coding, one of the listed requirements of the Storekeeper position. As a remedy, the Union asks that Vetta be awarded said position and that he be made whole.

The District, in turn, contends that "It is a cardinal principle that arbitrators will defer to management's assessment of whether an employee is qualified for a particular job" and that such deference is warranted here because it used "fair and reasonable criteria for determining the required qualifications"; because it followed proper procedures in determining which candidates were qualified for said position; and because the grievant was not qualified for the Storekeeper position.

DISCUSSION

The resolution of this issue turns on Article XXII of the contract, entitled "Promotions", which states in pertinent part:

ARTICLE XXII - PROMOTIONS

22.01 Job Vacancies. Whenever any vacancy occurs, which the Employer is going to fill, due to retirement or termination of the incumbent employee, the creation of a new position, or for whatever reason, the job vacancy shall be made known to all employees through job posting.

- a. Posting Procedure. A copy of each posting shall be mailed via the school mail to each employee in the bargaining unit. The Head of Building, or Acting Head of Building in his/her absence, shall be responsible for making certain that each employee under his/her direction is provided with a copy of each job posting. The Facilities Manager, or designee, shall be responsible for the distribution of job postings to the Substitute Day Custodians and the Substitute Night Custodians. A copy of each job posting shall be forwarded to the President of Local 2485.

- b. Posted Information Application. The job posting shall set forth the job title, work location, rate of pay, and a brief description of the job requirements and qualifications desired. A minimum of five (5) working days and a maximum of ten (10) working days will be allowed to permit interested employees to sign the job postings. Employees signing the job posting shall return it to the Facilities Manager, or designee.

22.02 Selection. The respondent qualified employee with the most seniority shall be selected to fill any job vacancy. (Emphasis added) If during a sixty (60) calendar day period the selected employee fails to make satisfactory progress in the new job or he/she prefers to return to the position he/she previously held, he/she may do so prior to the expiration of said sixty (60) calendar day period and all other affected employees shall likewise return to positions previously held.

22.03 Qualifications. The determination of qualifications for a position will be established by the Facilities Manager, or designee. Employees responding to but not selected for a job opening shall be so notified in writing. The qualifications of an employee to meet the job requirements are subject to the grievance procedure.

...

The key proviso here is Section 22.02 which states “The respondent qualified employee with the most seniority shall be selected to fill any job vacancy”, and the key word in this proviso is “qualified” because it mandates that employees must be qualified for any posted position before they can exercise their seniority rights. Hence, if an employee is unqualified, he/she is automatically disqualified from any further consideration. Qualifications, in turn, are established by the District pursuant to Section 22.03 which states: “The determination of qualifications for a position will be established by the Facilities Manager, or designee.”

Here, Vetta was unqualified to perform some of the listed job duties, as evidenced by his own testimony when he was asked:

Q: The next qualification was inventory control. Did you have that experience?

A: Not per se because at that time, there were no computers. Everything was done at a keypunch station. So the only thing I did have control in is ordering and – and receiving and delivering the product to the plant or – or warehouse.

...

Q: Next qualification was experience with fixed assets. Do you have that experience?

A: No, ma'am.

Q: Bar-coding?

A: Not per se, no.

...

In addition, Vetta did not have three years of general warehousing experience, another listed qualification for the job.

All this is why the District reasonably concluded Vetta was unqualified for the Storekeeper position. It therefore was not required to award him said position in the hope that Vetta could prove himself in the sixty (60) day trial period provided for in Section 22.02, as any such trial period kicks in only after a “respondent qualified employe” has met the District’s minimum qualifications, which is something that Vetta failed to do.

Moreover, there is no merit to the Union’s claim that the District was at fault in not asking questions about Vetta’s qualifications since: (1), it was Vetta’s obligation to fully spell out his qualifications when he submitted his application to Executive Director of Human Services Roberts; and (2), any more such information cannot overcome the basic fact that Vetta does not have all of the qualifications set forth in the Storekeeper’s posting.

In light of the above, it is my

AWARD

That the District did not violate Article XXII of the contract when it failed to promote grievant John W. Vetta to the Storekeeper position; his grievance is therefore denied.

Dated at Madison, Wisconsin this 9th day of October, 1998.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

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