

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**THE AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, LOCAL 727-C**

and

THE MENOMONIE BOARD OF EDUCATION

Case 55
No. 61866
MA-12087

Appearances:

Mr. Steve Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 318 Hampton Court, Altoona, Wisconsin 54720, appeared on behalf of the Union.

Mr. Stephen L. Weld, Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appeared on behalf of the District.

ARBITRATION AWARD

On December 9, 2002, the American Federation of State, County and Municipal Employees, Local 727-C and the Menomonie School District requested the Wisconsin Employment Relations Commission to appoint an arbitrator from its staff to hear and decide a grievance pending between the parties. The Commission appointed William C. Houlihan. A hearing was conducted on April 8, 2003 in the School District offices, Menomonie, Wisconsin. Post-hearing briefs were submitted and exchanged by May 19, 2003.

This grievance addresses Glen Bowe's unsuccessful attempt to bid into a 12-month Information Systems Assistant position.

BACKGROUND AND FACTS

On September 12, 2002, the District posted an Information Systems Assistant position as a full-time, 12-month position. That position was created when one of two 9-month Information Systems Assistant incumbents quit. The grievant, who is the senior bargaining unit member and Bruce Turner who was the least senior bargaining unit member, but the incumbent in the remaining 9-month Information Systems Assistant position, applied. The 12-month Information Systems Assistant has the same job description and qualifications as did its 9-month predecessor. Vicki Lyons, Menomonie School District's Technical Director, reviewed both sets of credentials. She determined that Glen Bowe was not qualified for the position and that Bruce Turner was. The position was awarded to Turner.

On September 30, 2002, a grievance was filed. That grievance was denied on October 22, 2002.

The job posting contains the following provisions:

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DESCRIPTION: Ability to fulfill requirements of the qualifications as listed in the Job Description #741 – Information Systems Assistant. Candidate must submit detailed proof of qualifications as described on the qualification evaluation form which is supplied in the application materials.

The qualifications and requirements must be understood and demonstrated by the person posting into this position by the end of the 30-day qualification period; the 30-day qualification period will be determined at the time of the posting meeting.

...

This is to inform you of a job posting meeting to be held Thursday, September 26, 2002, at 3:00 p.m. at the Administrative Service Center. If you are interested in this position, or any other positions that might become available because of any transfers that might occur, you should attend this meeting. If you are unable to attend the meeting, but you are interested in this position or any other position(s) that might become available, please submit your letter of interest to Debra Arnold by 8:00 a.m. on September 26, 2002.

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The job posting meeting referred to in the position vacancy is the round table posting meeting found in Article VII, Section 4 of the collective bargaining agreement.

A roundtable meeting is a process historically utilized by the District to fill vacancies. Traditionally, a position was posted. At the conclusion of the posting period, a meeting was scheduled and all employees interested in the vacancy, or any vacancy that might be created as a consequence of transfer or promotion, were welcome to attend. At the roundtable meeting, the vacancy was filled. Subsequent vacancies, created by the promotion or transfer, were also filled. The process was designed to speed the filling of positions.

It was the testimony of Mark Case, Matt Wegner, and Dave Young, all of whom were long-term employees of the District, that the most senior applicant for vacancies was always selected. According to these witnesses, qualifications were never discussed, nor considered. It was the testimony of Shirley Kuhn, support staff administrator, that while qualifications were not typically a part of the process, the District has selected less senior employees for transfer. Kuhn testified to an incident in the food service operation where employees were tested as to the minimum qualifications of a job and a less senior employee awarded a vacancy. Her testimony relates to a single incident which occurred in excess of ten years prior to the hearing date.

At the time of the posting, Glen Bowe had worked for the District for approximately nine years. He began as a custodian and successfully posted into the Electrical Major Maintenance position. When that job was abolished, he bumped into the Library Media Technician position, in July of 1998. However, before he was awarded that position, the employer made him pass a qualifications test. The Library Media position subsequently became the Media Communications Technician in September of 1998. In the spring of 2001, the Media Communications Technician position was abolished. At that time, two 9-month Information Systems Assistant positions were created. Some of the duties of the Media Communications Technician were distributed to the ISA position(s).

Ms. Lyons was new to the District, and somewhat unfamiliar with the roundtable process. She created a detailed and elaborate form to judge the qualifications of applicants for the ISA job. The formality and scrutiny was unprecedented in the District. Mr. Bowe did not attend the roundtable meeting, due to a family commitment. He did send a timely letter of interest, and asked a co-worker to represent him at the meeting. His absence from the meeting is permitted by both the practice of the parties and the terms of the posting. Bowe did not submit evidence to support his application. He had a conversation with John O'Connor, Director of Human Resources, who requested supporting documentation. None was forthcoming. Mr. Turner supplied a wealth of information.

Ms. Lyons concluded that Bove was not qualified. Her evaluation form has ten specific and detailed categories with a ranking of one through ten. The category of seniority is unranked. Other than that, Bove received six “one”’s, the lowest possible rank; one “two” in the category “possesses training and experience with computers and related” and two “three”’s, in the categories “possess excellent communication skills, both verbally and written”, and “ability to work well with staff at all levels to support system needs.” His point total was 14 of a possible 90. Mr. Turner, graded on the same evaluation form, netted 81 of 90 possible points.

ISSUE

The parties were unable to stipulate to the issue. The Union frames the issue as follows:

Did the Employer violate the contract by failing to award the posted position of Information Systems Assistant to the grievant? If so, what is the appropriate remedy?

The District frames the issue as:

Did the District violate Article VII of the 2001-03 collective bargaining agreement when it determined that the grievant did not meet the minimum qualifications for the Information Systems Assistant position? If so, what is the appropriate remedy?

This Award will address both issues posed.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE I – RECOGNITION

SECTION 1:

The Board recognizes the Union as the exclusive bargaining representative on wages, hours and conditions of employment for all regular full-time and regular part-time clerical, custodial and maintenance employees, and food service, excluding supervisors, managers.

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ARTICLE II – MANAGEMENT RIGHTS

SECTION 1:

It is recognized that the Board has and will continue to retain the rights and responsibilities to operate and manage the school system of the District and its programs, facilities and properties; and the activities of its employees during working hours.

SECTION 2:

Without limiting the generality of the foregoing Section 1, it is expressly recognized that the Board’s operational and managerial responsibilities include:

. . .

8. The creation, combination or elimination of any employee position deemed advisable by the Board. Combination shall mean the Board’s right to combine part-time positions within the District into full-time positions and the right to combine full-time positions due to diminished workload.
9. The determination of the size of the working force, the allocation of assignment of work to employees, the determination of policies affecting the selection of the employees and the establishment of quality standards and judgment of employee performance.

. . .

SECTION VII – SENIORITY

SECTION 1 - Seniority Defined:

. . .The employer recognizes the principle of seniority and such principle shall predominate where applicable, provided that qualifications of employees involved in any decision to which the principle of seniority is applicable, meet any necessary qualifications. The provisions contained in this article are only applicable within each of the restrictive work groups set forth in Article I, Section 1. Seniority rights may only be exercised and recognized intra the respective recognized work groups by mutual agreement of the Board and the Union.

. . .

SECTION 4 – Postings:

All new and vacated positions shall be posted at each school for a period of ten (10) working days. Such postings shall state the name and location of the job to be filled, the date the job is to be filled, hours of the job, qualifications of the job, and the rate of pay. The qualifications set forth therein shall be consistent with the job requirements of the position to be filled. The process for filling above positions shall be conducted per established round table Posting Meeting Procedure.

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SECTION 5 – Transfer – Layoff – Recall – Bumping:

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4. Transfer:

- a. Filling of Postings: Vacancies shall be awarded to the most senior employee qualified to perform the work available. The qualifications of employees are matters of fact and include knowledge, skill and efficiency.
- b. Qualification Period: Employees who are not able to satisfactorily perform the work required by any position awarded pursuant to Section 5. of the Article, shall be returned to the former position held by such employee within a thirty (30) working-day qualification period.

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DISCUSSION

The parties dispute the existence of a practice of transferring the senior applicant, irrespective of qualifications. It appears that that norm is to fill postings with the senior applicant. It further appears that there has been little to no discussion over the qualifications of applicants in the roundtable process. However, I am not prepared to construe the parties' practice to include senior transfers of unqualified candidates. Article VII – Seniority, expressly governs this circumstance. Section 1 contains the definition of seniority, and also contains the employer's commitment to honor seniority. That commitment is as follows:

. . .The employer recognizes the principle of seniority and such principle shall predominate where applicable, provided that qualifications of employees involved in any decision to which the principle of seniority is applicable, meet any necessary qualifications.

Thus, the commitment to seniority is subject to the proviso that the employees involved meet the necessary qualifications. Section 5 – Transfer – Layoff – Recall – Bumping, is more specific. Under Section 5, “Vacancies shall be awarded to the most senior employee qualified to perform the work available.” Under the terms of the collective bargaining agreement, an employee must be qualified in order to claim contractual seniority rights. The language is clear and unambiguous, and not subject to repeal by a contrary practice. As a matter of contract construction and practicality, I do not believe there to be a binding practice of promoting unqualified, but senior, applicants.

The collective bargaining agreement goes on to define qualifications to include knowledge, skill, and efficiency. The employer is entitled to measure knowledge, skill and efficiency in assessing whether or not applicants for positions satisfy minimum qualifications. The Union objects to the process used. This formal form and process were never previously used. It is true both Ms. Lyons and the evaluation process were new to the District. There is nothing inherently unfair or biased about the evaluation form used by the District. The form lists 10 qualifications, including seniority. The Union is critical of the use of seniority as a qualification given the contractual standard. However, that criteria is not graded on either form. It does not appear that the District treated seniority as one of many criteria to be considered. The other qualification criteria parallel the qualifications set forth in the job description of the Information Systems Assistant. Each of the qualifications takes a sentence from the job description qualifications and describes and develops that qualification. As such, the criteria evaluated are derived from the qualifications demanded of the position. I believe the employer has the discretion to utilize a formal evaluation mechanism, so long as that mechanism fairly gauges the qualifications of applicants.

The real question in this proceeding is whether Bowe was fairly evaluated with respect to his knowledge, skill and efficiency. Part of the roundtable process is the physical attendance at the meeting. Mr. Bowe was not present. Because he had another commitment, he sent a co-worker in his stead. This practice has occurred in the past without negative consequences to the individual. Mr. Bowe’s non-attendance at the meeting cannot be the basis for his non-selection. The record establishes that he was asked for supporting documentation and that he did not provide the additional supporting documentation. The record is silent as to whether there exists documentation beyond that in his file. What the employer was left with was the contents of Mr. Bowe’s file. Thus, the fact that the employer used the contents of Bowe’s file as the basis for its decision is no cause for alarm.

I believe that Ms. Lyons attempted to quantify what ultimately proved to be a subjective decision. It was her testimony that a score of between 60 and 70 was necessary to attribute basic proficiency to an applicant. There is no record support for that declaration. She thereafter awarded Mr. Bowe a very low composite score and Mr. Turner a very high score. Mr. Bowe was given the minimum score possible in criteria after criteria, by construing his credentials in the least favorable light. Mr. Turner was afforded a more generous standard of review. For example, the second qualification required: "One year of post-high school training in an IT or an IS program or one year of work experience in an IT or IS setting required." On a scale of 1 to 10, Mr. Bowe was given a 1 and Mr. Turner was given a 10. Bowe's score came in spite of the fact that his diploma and transcript from Chippewa Valley Technical College were a part of his file. That transcript showed a computer component. Ms. Lyons entered the word "none" in explaining the score. If the criteria is to be evaluated on a 1 to 10 scale, it is difficult to understand how Bowe is awarded a 1. Mr. Bowe was given a 3 on criteria 9; "Possess excellent communication skills, both verbally and written" and on criteria 10: "Ability to work well with the staff at all levels to support system needs." This was evidently drawn from Mr. Bowe's evaluations, the most recent of which described his interpersonal skills and work behavior as "superior". Ms. Lyons note on criteria 9 indicates "Communications skills evident – not related to IT issue." I believe this comment evidences a willful effort to minimize Bowe's score. I do not believe the evaluation fairly analyzed Mr. Bowe's skill, knowledge and efficiency.

Mr. Bowe's credentials are a part of this record. Mr. Bowe's resume and supporting academic credentials indicate that he had some computer application coursework in 1992. However, as the employer points out, much of his coursework has subsequently become dated. Bowe worked as a Library/Media Technician. The job description shows a relatively modest computer technology component. The position appears to focus on audio-visual equipment. In September of 1998, the reporting responsibility of the Library/Media Technician was altered, two minor duties were added, and the position was retitled Media/Communications Technician. There appears to be very little revision to the job description. The most significant change is that instead of reporting to the District Library Media Coordinator, the revised position reports to the Computer Network Services Executive Assistant.

The justification for the elimination of the Media/Communications Technician and the creation of Information Systems Assistant positions was to add expertise in the computer area. The Information Systems Assistant position is a position dedicated to the implementation and maintenance of the District's system-wide computer operation. It calls for skills not previously found in the Media/Communication Technician position. The purpose of the position was to create internal expertise in the computer field. When the Media/Communication Technician position was abolished, some of those duties were assigned to the ISA position. However, a great number of those duties were sent back to the schools to be handled by other school staff.

In his October 27, 1999 evaluation, Mr. Bowe was rated an above-average employee, and was designated as “very dependable”. His availability was designated “superior” and it was noted that he was “always on time, very good about being flexible on break time if problems arise.” His dependability was designated as “excellent”. His productivity and the quality of his work were both deemed above average. His interpersonal skills and the behavior and judgment demonstrated on the job were both deemed “superior”. However, this generally positive evaluation is critical of Bowe’s computer skills. The one area which is designated as “needs improvement” is, “computer troubleshooting skills, i.e. Internet knowledge, Win 95, Mac 03.” Mr. Bowe was given an “average” score on initiative, with the following comments: “Would like to see Glen search out the opportunity to buddy up with another tech and expand skills in troubleshooting and repair of computers.” The evaluator goes on to note “Computer repair and maintenance needs more practice.”

The evaluation has a “knowledge of job” category. Mr. Bowe is rated “average” with respect to AV skills, but “below average” relative to computer skills.

A relatively minor component of the Media/Communications Technician position consisted of computer application skills. However, that aspect of the position was Mr. Bowe’s weakness. The employer abolished the position for the purpose of recreating a position that would bring technical computer expertise into the District. Nothing in the record supports Mr. Bowe’s claim that he has the knowledge, skill and efficiency to qualify for the ISA job.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 18th day of September, 2003.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

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