

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CENTRAL WISCONSIN REGIONAL AIRPORT

and

TEAMSTERS GENERAL UNION LOCAL 662

Case 2

No. 62129

MA-12171

(Cartwright Grievance)

Appearances:

Attorney Naomi E. Soldon, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, WI 53212, on behalf of the Union.

Attorney S. Bryan Kleinmaier, Ruder Ware, 500 Third Street, Suite 700, P.O. Box 8050, Wausau, WI 54402-8050, on behalf of the Employer.

ARBITRATION AWARD

According to the terms of the 1998-2000 labor agreement between Central Wisconsin Regional Airport (County or CWRA) and Teamsters General Union Local 662 (Union), the parties jointly requested that the Wisconsin Employment Relations Commission appoint Arbitrator Sharon A. Gallagher to hear and resolve the dispute between them regarding the Employer's failure to hire Gerald Cartwright (Cartwright or Grievant) for the full-time maintenance worker position. Hearing on the matter was held at Mosinee, Wisconsin, on August 18, 2003. No stenographic transcript of the proceeding was made. By agreement, the parties submitted their initial brief by November 3, 2003, which were then exchanged by the Arbitrator. On December 9, 2003, the parties advised (by e-mail) that they would waive the right to file reply briefs, whereupon the record herein was closed.

ISSUES

The parties were unable to stipulate to an issue or issues for determination in this case. The Union suggested the following issues for determination:

Did the Employer violate the labor agreement when it denied the Maintenance Worker position to Grievant Gerald Cartwright? If so, what should the remedy be?

The Employer suggested the following issues for determination in this case:

Did the Employer violate Article 6, Section F of the collective bargaining agreement when it hired Lonny Boettcher for the position of Maintenance Worker instead of the Grievant? If so, what is the appropriate remedy?

The parties stipulated that the Arbitrator could determine the issues in this case based upon their suggested issues as well as the relevant evidence and argument. After consideration of the facts and circumstances of this case, as well as the parties' suggested issues, I find that the Union's issues shall be determined herein.

RELEVANT CONTRACT PROVISIONS

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ARTICLE 6 – SENIORITY

A. Probation: Except as provided in subsection (C) herein, new employees hired to work full-time shall be considered probationary employees for the first one hundred and eighty (180) days of their employment; at the discretion of the County said probationary period may be extended by ninety (90) days and by mutual agreement with the Union for an additional term not to exceed ninety (90) additional days. New employees hired to work part-time shall serve a one (1) year probationary period. During said probationary period, a new employee may be terminated at the sole discretion of the County without further recourse. Upon completion of the probationary period described herein the employee shall be placed on the regular seniority list as of his/her original date of hire.

B. Definition: Seniority shall prevail as set forth in the Contract and shall be determined by the length of continuous full-time service plus such time as is required or granted for vacationing, leaves of absence, illness, accidents and

layoffs. The Union shall be advised whenever an individual commences full-time employment. All part-time employees shall be notified in writing (with a copy to the Union) that they are not covered by the collective bargaining agreement.

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F. Posting: All vacancies and positions listed in Appendix "A", excepting the position of CWA Lead Worker, shall be posted on the bulletin board. Said posting shall remain posted at least six (6) working days. Employees desiring such posted jobs shall sign the posted notice. Other qualifications being reasonably equal, employees older in seniority shall have preference on all jobs. Posted positions may be filled on a temporary basis until the posting and evaluation procedures have been completed.

The position of CWA Lead Worker shall be filled by appointment of the Airport Manager. It shall be the policy of the County to select the CWA Lead Worker from among the more senior employees where qualified senior employees are available.

G. Probation: All bid jobs shall be filled and the applicable rate shall apply immediately. Employees who receive a posted job shall be considered on probation for a period of ninety (90) days. In the event an employee does not desire to retain the job in this ninety (90) day period, he/she shall have the right of returning to his/her former job.

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ARTICLE 10 – MANAGEMENT RIGHTS AND SUBCONTRACTING

A. Management Right: The Union acknowledges the sole right of the County to exercise the power and authority necessary to operate and manage its affairs, but such right must be exercised consistent with the other provisions of this Agreement. Such powers and authority include, but are not limited to the following:

1. To direct all operations of County government.
2. To manage and direct the working force, to make assignments of jobs, to determine the size and composition of the work force, to determine the work to be performed by employees, to establish reasonable work rules, and to determine the competence and qualifications of employees.

3. To hire, promote, transfer, demote, suspend, or take disciplinary action against employees.
4. To relieve employees from duties because of lack of work or other legitimate reasons.
5. To maintain efficiency of County government operations entrusted to it.
6. To determine the methods, means and personnel by which such operations are to be conducted.
7. To take whatever action is necessary to comply with State and Federal law.
8. To introduce new or improved methods or facilities, and to change existing methods and facilities.
9. To utilize temporary, part-time or seasonal employees when deemed necessary, provided such employees shall not be utilized for the purpose of eliminating existing full-time positions.
10. To take whatever action which may be necessary in situations of emergency.

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ARTICLE 20 – WORK DAY, WORK WEEK AND PREMIUM PAY

A. Work Day, Work Week: The guaranteed work day shall consist of eight (8) hours per day and the guaranteed work week shall consist of forty (40) hours per week.

B. Overtime: Employees who work an excess of eight (8) hours per day shall receive compensable time off or overtime pay for all such overtime hours on the following basis:

Overtime shall be paid for or given off in the discretion of the County at the rate of time and one-half (1½).

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E. Part-Time Employees: Part-time employees shall not be used to interfere with the guaranteed work schedule of the full-time employees.

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BACKGROUND

The Central Wisconsin Regional Airport is located in Mosinee, Wisconsin. It is operated by Marathon County. The Airport Manager for the past 21 years has been James Hansford. Tony Yaron, the Director of Operations, reports directly to Hansford at the Airport. Yaron has been Director of Operations at CWA for the past 3 ½ years. Yaron supervises 11 full-time Maintenance Worker as well as 6 part-time Maintenance Workers and 4 full-time Custodians. The Airport operates on a 24-hour per day basis. There are 6 full-time Maintenance Workers and 2 full-time Custodians who work Monday through Friday, 7:30 a.m. to 3:30 p.m.; 2 full-time Maintenance Workers and 2 full-time Custodians work 3:30 p.m. to 11:30 p.m. and 1 full-time Maintenance Worker works 11:30 p.m. to 7:30 a.m. There are 6 part-time Maintenance Workers who work only Friday, Saturday and Sunday to cover the remaining hours at the Airport.

The core duties of the part-time Maintenance Workers are airfield inspection, airfield safety, terminal building maintenance and inspection, parking meter enforcement and aircraft rescue and firefighting. Part-time Maintenance Workers initially receive 40 hours of fire fighter training and then 16 hours of training per year of refresher training. Fire fighting at an airport is different from commercial and residential fire fighting in municipalities. As such, different types of fire retardant agents are used in aircraft situations such as dry chemicals and high expansion foam.

The job description for the part-time Maintenance Workers is the same as the job description for the full-time Maintenance Worker position. It reads in relevant part as follows:

Definition of Class:

This is routine work in the maintenance of Central Wisconsin Airport facilities.

Work involves the performance of such semi-skilled maintenance tasks as limited plumbing repairs, limited carpentry work, and minor electrical maintenance. Work extends to performing custodial related duties. Work is performed in accordance with established maintenance procedures. Immediate supervision is received on new assignments; however, once routine maintenance assignments have been learned, they are performed without direct supervision. Work assignments that vary from normal routine may be received occasionally from a supervisor, accompanied by oral instruction; however, most work originates as a result of the continuing need for the maintenance of the facilities. Work is reviewed by the immediate supervisor by spot-checks of work in progress.

Examples of Work Performed.

Maintenance of airport grounds and pavements.

Performs minor plumbing work including repairing faucets, soldering joints, replacing pipe, and similar work.

Performs carpentry and related work, including partitioning rooms, repairing shelves, and painting.

Performs minor electrical work including installing receptacles, replacing switches, maintaining runway lights, and similar work.

May perform custodial work, including sweeping, shoveling snow, raking, mopping floors, and similar work.

Operates automotive equipment, including snow plow, snow blower, or front-end loader in removing snow from airport area.

Operates mowers, tractors, and other equipment.

Drives airport crash truck and operates fire extinguishment equipment.

Issues parking tickets for overtime parking violations.

Performs related work as required.

Knowledge, Skills and Abilities.

Knowledge of general maintenance practices.

Working knowledge of basic grounds and pavement maintenance techniques.

Some knowledge of the proper and safe use of hand tools.

Skill in the use of hand and power maintenance tools.

Ability to learn to drive emergency crash crew truck.

Ability to obtain a radio telephone operator's permit.

Ability to follow simple oral instruction.

Ability to perform moderately heavy manual work.

Ability to recognize equipment and facilities in need of repair.

Ability to operate automotive equipment and in snow removal.

Qualifications

High school graduation or equivalent preferred. One year responsible maintenance work experience plus experience operating snow and earth moving equipment required.

Necessary Special Qualifications

Possession of or ability to obtain a valid Wisconsin driver's license within a reasonable time after date of hire.

The County also employs one mechanic at CWRA. The Mechanic performs maintenance and repairs on diesel as well as gasoline engines owned and operated at CWRA. Neither Mechanics nor Maintenance Workers overhaul or perform major repairs on diesel or other engines owned by the County. 1/ No diesel engine knowledge is necessary in order to perform welding on diesel engines or bodies. Maintenance Workers must be able to change oil on diesel engines, listen to the engine, trouble-shoot difficulties and try to get diesels running again that have failed. Part-time Maintenance Workers do not change oil on diesel engines at CWRA.

1/ Such work is contracted out by the County.

The Grievant began working for the County at the CWRA as a part-time Maintenance Worker on October 22, 1996. Cartwright remained employed as a part-time Maintenance Worker through February 8, 1999, when he applied for and received a full-time Custodian position at CWRA. Cartwright held his position as a full-time Custodian at CWRA at the time of the instant hearing. Lonny Boettcher has been employed by the County at CWA as a part-time Maintenance Worker since March, 1998. As such, Boettcher worked only weekends (Friday through Sunday) at the airport during his tenure. 2/

2/ There is no evidence in this record to indicate that Boettcher worked more than Fridays through Sundays at CWRA as a part-time Maintenance Worker.

On June 20, 2002, CWRA posted a vacant position "CWA Maintenance Worker" and it attached the above-quoted job description listing duties and qualifications. The Grievant signed this posting along with five other individuals including Lonny Boettcher and Mark Broennimann. As part of his application, Cartwright submitted the following resume:

...

WORK EXPERIENCE

1996-Present

Marathon County
CWA
400 CWA Drive
Mosinee, WI 54455

Part-time 10/22/96-02/08/99
Duties include operation of Oshkosh plow trucks, loaders and R1 & R2, tow motors, and broom, cutting lawn, plowing snow, maintaining runways and parking lot, ticketing automobiles including Bar coding, shift rotation and training new employees

Full-time 02/08/99-Present

Full-time Custodian duties all regular duties as well as planting flowers, snow removal, ticketing of vehicles, having vehicles towed when necessary, cleaning the tower including windows

1986-1996

Wausau Metals Corporation
1415 West Street
Wausau, WI 54401

Fabricator

Build Industrial Aluminum window systems, with the ability to read blue-prints, wire feed, and heliarc weld aluminum, also operated drilling machine

Saw Operator

cut from lineal length into operating window part material, cut special miters and square cuts

Fork Lift Operator

get lineal length materials down from cantilevers, take to specific areas and load machines, move machines from one area to another

Field Service Assistant

Travel to different states and repair windows that belong to WMC when necessary

Other duties included working in the machine, shipping and assembly departments as well as Aluminum anodizing color facility

Wausau Chemical Corporation

Six years experience doing various work with mixing chemicals and delivery of them

OTHER JOB

EXPERIENCE:

City of Mosinee

State Certified underground and above ground storage tank inspector

Mosinee Fire Department

Fire-fighter, CPR certified and fire inspector

SPECIAL

ABILITIES:

Fire-fighter, fork lift operator, conducted CPR training, ability to do some electrical and cement, work [sic] well with others as a team member, capable of making decisions, prompt and dependable, capable of working independently, unsupervised, have worked all shifts

EDUCATION: Mosinee High School – 1975 Graduate
Some college credit while in Military

Northcentral Technical College – 1990

MILITARY: U.S. Army 1975 – 1979
Field artillery, fire direction assistant

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Cartwright also submitted an application for employment for the position which essentially reiterated the items listed on his resume. In addition, on his application, Cartwright went into some detail regarding the duties of his prior positions at Wausau Metals Corporation, a manufacturer of aluminum windows. On his application, Cartwright also listed his duties as a volunteer fire fighter in the Mosinee Fire District, as follows “fire fighting on structures and vehicles, aircraft fire fighting trained, CPR educator, first aid trained, conduct fire inspections throughout fire district, underground/above ground inspector for fire district (certified) respond to any other emergencies that may come up.” Cartwright listed the machines and heavy equipment he could operate which would be pertinent to a full-time maintenance position, as follows “hand-held computer at CWA, Oshkosh plow trucks and brooms, front-end loader at CWA, fire fighter vehicles R1 and R2 at CWA, lawn mower at CWA, tow motor at CWA.”

Boettcher also put in an application for employment as well as a hand-written narrative concerning his work history which read as follows:

Grew up doing logging and farm work. Helped Pops on small sawmill sawing timbers, lumber for houses, barns, machine sheds. Also repairing equipment for people.

Started at Wausau Construction Company as labor on bridges for carpenters, crane operators and ironworkers, advance [sic] into ironworkers.

Joined army to fill obligation. Went into logging owned truck cat and dray skidder. After bad markets sawed on pipeline right away [sic]. Welded on 70’ water storage tank at Elcho WI. Did salvage for John Londerville on Drummond Island MI. A old power plant owned by Bethlehem Steel-Dolomite. Worked for Leo Schuld putting together two extendable low profile five axel trailer to haul there [sic] oversized storage tanks.

During slack periods at Lang-Longyear helped friends do surface mining and limited drifting underground in the Garnet Mts. MT. Sawed on a five mile power line right away [sic] on the Jocko River. And some leach pad work at Round Mt. Mine for Given & Reed out of Salt Lake UT.

In his application, Boettcher stated that from 1970 to 1979 he worked for Quality Machine Sales, Inc. Boettcher described his duties at Quality as follows:

Cleaning, washing, sand blasting, painting industrial machinery. Did welding repairing, rigging, moving and installing machinery to customers in State and out. Hauled heavy machinery tools to and from plant and dealers. Was put in charge of shop as the business grew.

Boettcher also listed Lang-Longyear Exploration Drilling as one of his employers, and his job title as cat skinner-repairman. Boettcher stated that he worked for Lang-Longyear between 1981 and 1986, building roads and drill pads, plowing snow and towing drill rigs as well as recovering rigs and making repairs. After 1986 and before being employed by CWA, Boettcher worked in the logging industry. Finally, between 1996 and 1999, Boettcher indicated he served in the U.S. Army. He described his duties as follows:

Heavy equipment repairman 335 maintenance BN. ASCOM South Korea. Fifteen months Fort Belvor, VA diesel courses three months. Fort Sill, OK 593 RD combat member co. Equipment repairman welding school ran welding section shop and field work.

Finally, on his application, Boettcher indicated that he had worked with the following machinery and equipment, relevant to the job: “cats, crawlers, cranes, trucks and wagons, drag lines, lima playmaster, boom compactor, sheers scrapers.”

CWRA decided to interview three candidates for the full-time Maintenance Worker opening: Cartwright, Boettcher and Broennimann. These interviews occurred July 16-18, 2002. Prior to the interviews, Airport Manager James Hansford designated Leadman Ed Figon and Director of Operations Tony Yaron as the interview team for the open position. Yaron had never before interviewed for openings at CWRA but Figon had done so in the past. Hansford gave Yaron the following factors for Yaron and Figon to use in rating applicants during the July 16-18, 2002, interviews 3/:

FACTORS TO CONSIDER IN RATING APPLICANTS

1. EXPERIENCE/SKILLS

- A. How related is applicant’s experience to the work performed by this position?
- B. How well do the applicant’s skills relate to this position?

2. EDUCATION

- A. How closely is the applicant’s education related to this position?
- B. How well did applicant succeed academically?

3. **COMMUNICATION**

- A. To what degree does applicant communicate in a clear, concise, and organized manner?
- B. How well does applicant maintain good eye contact?
- C. To what degree does the applicant have the interpersonal skills needed for the position?

4. **SELF-CONFIDENCE/MATURITY**

- A. How well is the applicant able to recognize personal strengths/weaknesses?
- B. What is the applicant's emotional maturity in relation to required duties?
- C. How well does applicant's problem solving style match the demands of the position?
- D. At what level does the applicant's confidence appear to be?

5. **JOB INTEREST**

- A. How willing/interested is applicant in working required hours?
- B. How well does position match applicant's personal goals?
- C. How well does applicant understand the duties of the position?
- D. To what degree does the applicant appear to be self-motivated?
- E. What is the applicant's general level of personal energy?

6. **APPEARANCE/PERSONAL HYGIENE**

- A. To what degree are applicant's clothes and appearance neat and clean?
- B. How appropriate is the applicant's attire for the position applying for?

3/ Yaron had been employed in the private sector prior being hired by the County. Yaron is the direct supervisor of 18 to 20 employees at the CWRA, including custodians and mechanics as well as maintenance workers.

The "factors to consider in rating applicants" was printed on the back of the "applicant interview evaluation" used for each of the interviewees. The latter document read in relevant part as follows:

APPLICANT INTERVIEW EVALUATION

Applicant's Name	Position Applied For
Interviewer's Name	Date of Interview

This evaluation is used to document relevant factors in the selection process and justify hiring decisions. The criteria used to evaluate should be related to specific requirements of the job for which the applicant is applying.

Guidelines:

1. All interviewers should complete evaluation forms for all applicants interviewed.
2. Weight each criteria below using the following scale:

1	2	3	4	5
Of limited importance to successful job performance		Related to successful job performance		Critically important to successful job performance

Interviewers should agree on the weight assigned to each criteria prior to interviews. (The same weight can be used more than once.) The weights determined for each criteria should be based on an analysis of the job duties and should be identified for all applicants interviewed for the position.

3. Rate the applicant in each category using the following scale:

1	2	3	4	5
Poor	Marginal	Acceptable	Very Good	Excellent

Include comments justifying the rating given. See reverse side of suggested factors to consider in rating criteria.

<u>Criteria</u>	<u>Weight</u> x <u>Rating</u> = <u>Total</u>	<u>Rating Information</u>
1. Experience/skills	_____ x _____ = _____	_____
2. Education	_____ x _____ = _____	_____
3. Communication skills	_____ x _____ = _____	_____
4. Self-confidence/maturity	_____ x _____ = _____	_____
5. Job interest	_____ x _____ = _____	_____
6. Appearance/personal hygiene	_____ x _____ = _____	_____

Overall fitness for position (total pts.)

General comments: _____

Final disposition: Hired _____ Not hired _____

Reason for not hiring: _____

Please submit a copy of the completed evaluation to the Personnel Department.

Yaron stated herein that he and Figon agreed in advance of the interviews to give each of the criteria factors a maximum rating of 5 for all applicant's and that they would give a maximum weight of 4 to "Education" and "Appearance/personal hygiene" and a maximum weight of 5 to all other criteria. Yaron stated and Figon confirmed that Yaron essentially lead each of the interviews, describing the duties of the position, the hours, the pay and directing each applicant's attention to the job description for the positions, asking questions regarding the applicant's experience in each area. Yaron stated that he and Figon took turns asking questions and taking notes and that they filled out the interview forms separately for each applicant, immediately after their interviews and then they discussed each applicant.

Yaron stated that he and Figon did not determine a minimum number of points for each applicant to be considered qualified. Yaron also admitted that he never looked at Cartwright's (or Boettcher's) annual appraisals for the year 1999-2000 prior to interviewing the candidates. Yaron stated herein that in the area of "appearance/personal hygiene" he gave Cartwright a "3" (acceptable) score because the Grievant was not as well dressed and generally well groomed as Boettcher for the interview and that he rated Boettcher a "4" (very good) on "appearance/personnel hygiene." However, Yaron had no memory what Cartwright and Boettcher wore at their interviews.

Regarding item 5 "job interest," Yaron rated both Boettcher and Cartwright a "4." Concerning "self-confidence/maturity," Yaron rated Cartwright a "4" while he rated Boettcher a perfect "5," noting on the interview evaluation form that Boettcher had "practical outlook." Yaron did not put any comments next to the rating that he gave Cartwright on this item. Yaron stated herein that Boettcher had a practical outlook, simple solutions to the questions posed in the interview and that he was thoughtful and took his time in answering. Yaron also recalled that Boettcher smiled and that he (Yaron) liked Boettcher's style. However, Yaron could not recall what the Grievant had said to trigger Yaron's rating of "4" (very good) on this item, rather than a "5."

Regarding item 3 "communication skills," Yaron gave the Grievant initially a "3" rating (acceptable) but changed it to a "2" (marginal). However, Yaron failed to deduct a point from Cartwright on this factor. Yaron had noted under "rating justification" the following: "never cuss in an interview," as Yaron's apparent justification for his rating of the Grievant on this factor. Yaron offered no explanation at hearing regarding this point.

In regard to the criteria “experience/skills,” Yaron rated Cartwright a “3” (acceptable) while he gave Boettcher a “5” (excellent). In the rating justification note on Boettcher’s interview evaluation form, Yaron noted “extensive heavy equipment experience.” On Cartwright’s rating justification, Yaron wrote “fire, some heavy equipment.” In his testimony herein, Yaron stated that the difference in his rating of Boettcher and Cartwright was that Boettcher had had caterpillar, bulldozer and crane experience as well as oil field and exploration experience while the Grievant had City and Army experience with heavy equipment. Yaron also stated that Boettcher’s experience in the logging industry and the Army as well as his heavy equipment operation in the mining and oil fields alone put him ahead of Cartwright.

Yaron stated that he had supervised Boettcher after he was hired as a part-time Maintenance Worker four and one-half years ago; that he (Yaron) was familiar with Boettcher’s ability, that Boettcher was always available to work, that he was inventive and good at equipment operations. Yaron stated that Boettcher had built a jig to drill out sheered bolts on a drive train and that he had done extra work supervising an independent subcontractor’s work building boarding bridges for the airport. Yaron stated that as a part-time Maintenance Worker, Boettcher had twice the experience that the Grievant had had in that position.

In regard to Cartwright’s experience with heavy equipment, Yaron characterized same as “minimal” but he admitted that he was unaware whether the Grievant’s experience with the City of Mosinee and “Gammagoat” equipment in the U.S. Army constituted heavy equipment operating experience. Furthermore, Yaron admitted that although it is not a requirement for the open position, Boettcher’s mechanic experience with heavy equipment, snow removal equipment and end loaders was significant to Yaron; Yaron stated he would rather have an applicant with mechanic experience over one that does not have it because the employee with mechanic experience can more easily troubleshoot machinery. Yaron also stated that as the bargaining unit has only one mechanic, an employee with mechanic experience can help the Airport out in the clutches.

Yaron stated that he and Figon found Cartwright minimally qualified. Following the interviews of Cartwright, Boettcher and Broennimann, the overall scores for these three employees were:

	<u>Cartwright</u>	<u>Boettcher</u>	<u>Broennimann</u>
<u>Yaron:</u>	94	117	75
<u>Figon:</u>	99	103	94

Yaron admitted that when the Grievant was a part-time Maintenance Worker, he (Yaron) had no personal experience with Cartwright's work. Yaron also admitted that there is nothing in the job description for the position of full-time Maintenance Worker which requires the successful applicant to be able to maintain heavy equipment, just that the successful applicant must be able to recognize the need for repairs and have a knowledge of general maintenance practices. In addition, Yaron admitted that he never saw the Grievant operate CWRA equipment.

Airport Manager Hansford stated that he made the decision to hire Boettcher for the open position based on the recommendation he received from Figon and Yaron. Hansford stated that both Boettcher and Cartwright had performed the core duties of a part-time Maintenance Worker at CWRA prior to the interviews. Hansford admitted that he could not recall if Cartwright was ever assigned additional duties as a part-time Maintenance Worker but he recalled that Boettcher had performed additional duties in working on oversight of the boarding bridges project at CWRA, which was completed by a private contractor in 1998.

Hansford stated that it has been his policy to try to fill full-time Maintenance Worker positions with part-time Maintenance Workers employed at the Airport, rather than hiring individuals off the street. Hansford stated that he was not surprised when his interview team recommended Boettcher as the most qualified; that he had seen both Boettcher and Cartwright in their careers at CWRA and that he had suspected that there were some jobs that Cartwright could not do, although Hansford did not state what those jobs might be. Hansford stated that Boettcher's "work ethic" was better than Cartwright's; and that he did not recall Boettcher's diesel mechanic/experience coming up in conversations with the Union regarding the grievance in this case. 4/ Rather, Hansford stated that although he did not recall specifically what was said, he believed that the reason given by management to the Union for selecting Boettcher was that he had more heavy equipment experience. Hansford admitted on cross examination that a trial period of 90-days could have been given to Cartwright in which he could have proven whether he was able to operate the Airport equipment. In addition, Hansford admitted that he did not review Cartwright's 1999-2000 performance evaluation/annual appraisal prior to making the decision to hire Boettcher for the open position. 5/ CWRA did not submit Boettcher's most recent evaluation.

4/ Yaron specifically stated that Boettcher's diesel work had come up during conversations with the Union and that Boettcher's heavy equipment operation and fabrication also came up during these discussions.

5/ The Union submitted Cartwright's most recent evaluation. On a performance scale of 1 to 5, Cartwright had received above average ratings in 9 of the 12 categories listed; Cartwright received a 1, the highest rating, in the category of "dependability, reliability and punctuality;" and Cartwright received two average ratings in the area of "gathers and uses information" and "safety." The above average ratings that Cartwright received were in the following categories "job knowledge and technical competence; accomplishment of job requirements; makes decisions and/or recommendations within the

scope of the position; work relationships with coworkers, other departments, divisions, clients, and the public; meets work deadlines; communication (oral-written); imagination and initiative in performance of job; self-development; personal appearance.”

Figon stated herein that he recalled the time when he worked with both Boettcher and Cartwright and noted that Boettcher could solve problems alone on the weekends while Cartwright would call Figon at home concerning problems. Figon admitted he was not involved in leading or evaluating Cartwright as a custodial employee of CWRA. Figon stated that he gave Boettcher a “4” in education while he gave Cartwright a “3” because Boettcher had one year of college. Figon admitted Boettcher’s time in College had influenced him in favor of Boettcher but Figon also admitted that college education was not a requirement for a full-time Maintenance Worker position. In addition, Boettcher’s diesel welding and hydraulics courses at the Technical College also influenced Figon in Boettcher’s favor. Again, Figon admitted that such course work was not a requirement for the position. Figon also admitted that he had never seen Cartwright weld. Figon stated that full-time Maintenance Workers need to be able to change oil on diesel engines, listen to the engines and look for malfunctions as well as to try to get the motors running again. Figon stated that part-time Maintenance Workers do not change oil on diesel engines so that neither Cartwright nor Boettcher had oil changing experience on diesels as a part-time Maintenance Worker.

The Grievant stated herein that he felt he had had a good interview for the position with Yaron and Figon, that they went through the job description with him and he told them about his fabrication experience and welding experience at Wausau Metals as well as his experience at CWRA. Cartwright stated that Yaron and Figon told him that he was qualified, but that he just needed to brush up on the snowplow and other vehicles at the Airport because he had not used these since he took his full-time custodial job.

Cartwright stated that during the first-step grievance meeting with his Union representative and Yaron, Yaron stated that Boettcher was “more diesel mechanic inclined and had school behind it” and that was why the employer had selected Boettcher as the successful applicant. Union Representative David Reardon corroborated the Grievant regarding the fact that CWRA representatives at the two grievance meetings held regarding the instant grievance stated that Boettcher’s diesel training made him more valuable to CWRA, as the reason why Boettcher was selected. However, both Cartwright and Reardon stated that it was possible that other reasons were also stated by CWRA in these meetings, although they only recalled the diesel training reason.

The Grievant was not selected for the open position. Boettcher was selected for the position. On July 24, 2002, Cartwright filed the instant grievance, stating that as he was the most senior person and as his qualifications were reasonably equal to those of Boettcher, he should have received a preference in consideration for the open position. On July 29, 2002,

Yaron denied the grievance stating that “there is no violation of the contract. The person hired for the position had more job related experience and training.” Cartwright then appealed the grievance on August 2, 2002, and stated the nature of the appeal as follows:

. . .

Stated in Article 6, Section F in Posting of Job’s: the most senior person with other qualifications being reasonable [sic] equal shall have preference on all jobs.

I am a full time employee (custodian) at CWA and have had three years experience at CWA as a part- time in maintenance. Dave Eden, my Union Steward, Tony Yaron, director of Operations and I sat down on July 27, 2002 for an explanation on why I was not selected for the full time position Dave asked Tony if there was any problem or discrepancy with my application. Tony stated “no”, he felt the person chosen had more experience and more of a diesel mechanic background than I did. The position I applied for is not a skilled job and no place in the job description did it require or even suggest a background of diesel mechanic is needed to fill the position.

Also in the past when a job position was posted the chosen hired person was approached and told they got the position for the job because of seniority, hence, no interview. I had to go though an interview which shouldn’t have been necessary due to my background and seniority.

. . .

The grievance was thereafter appealed to arbitration.

POSITIONS OF THE PARTIES

The County

The County urged that it did not violate the collective bargaining agreement when it determined that the qualifications of Lonnie Boettcher and the Grievant were not reasonably equal and offered the full-time Maintenance Worker position to Boettcher. Here, the County noted that the contract expressly retained to the County the right to determine employee qualifications. As a general rule, an employer’s decision regarding qualifications should not be disturbed unless the employer exercised its authority in an arbitrary, capricious, discriminatory or unreasonable manner. As the Union in this case failed to prove that the County was in any way arbitrary, capricious, discriminatory or unreasonable, the Arbitrator should find that the County properly determined the qualifications of Boettcher and the Grievant, found that the Boettcher was more qualified than the Grievant and that, therefore, the Grievant’s seniority never came into play and should not be recognized in this case.

The County cited and discussed several cases which it claims were similar to the instant one. The County then analyzed the decision of Yaron and Figon in determining that Boettcher was more qualified for the full-time Maintenance position than the Grievant. In this regard, the County noted that Yaron found that Boettcher was clearly more qualified than the Grievant in operating heavy equipment in the oil drilling field as well as with the United States Army; that Boettcher had four and one-half years experience as a part-time Maintenance Worker at CWRA and possessed repair skills and diesel mechanic skills, as well as fabrication and maintenance skills which the Grievant did not possess.

The County noted that the job description for the full-time Maintenance Worker requires “automotive equipment experience including snow plows, snow blowers, front-end loaders, mowers, trackers and other equipment;” that the job description also requires an employee to recognize equipment and facilities in need of repair and to have a knowledge of general maintenance practices. Although Yaron stated that the Grievant had some snow plow operation experience as a part-time Maintenance Worker for two and one-half years and had had some heavy equipment operation as a City of Mosinee employee, Yaron judged that Boettcher’s experience was greater than the Grievant. Although Yaron never observed the Grievant working as a part-time Maintenance Worker, the County noted that Figon had supervised both Boettcher and the Grievant as part-time Maintenance Workers in his (Figon’s) position as Lead Maintenance Worker. The County noted that Figon stated that the Grievant would call Figon if there was something that went wrong and needed to be fixed, whereas Boettcher would simply fix or solve the problem without calling Figon. As the County has only one mechanic on staff, it is necessary for Maintenance Workers to do as much equipment repair and troubleshooting as possible. Both Yaron and Figon noted that Boettcher had been assigned extra duties to supervise a private contractor’s work on boarding bridges and that Boettcher had made a bolt removal devise which had assisted the County.

The County observed that Yaron, Figon and Hansford were all supervisors of the Grievant and Boettcher. The County urged, that their judgment regarding the qualifications of Cartwright and Boettcher employees should be given great weight. As Hansford met with Yaron and Figon and got their recommendation, but also applied his experience as an upper-level supervisor of the Grievant and Boettcher and found that Boettcher was head and shoulders above the Grievant, the County urged that the Union failed to prove the County’s conclusion false that the Grievant’s qualifications were not relatively equal to Boettcher’s. 6/

6/ Yaron stated that he believed that fabrication meant that an employee could fix equipment without a blue print based on previous work experience.

The Union

The Union argued that the County's Maintenance Worker job description demonstrated that the County considered factors not pertinent to a Maintenance Worker's job duties when it selected Boettcher. The Union noted in this regard that the job description lists as "preferred" a high school diploma and that the only other required qualification for the Maintenance Worker position is one year of experience performing maintenance work and some experience operating snow and earth moving equipment. Thus, the Union urged that there was no justification contained in the job description for the County's ratings of "critical" for "communication skills," "self-confidence/maturity" and "job interest" contained on the County's interview document. Furthermore, a rating of "4" for "education" and "appearance/personal hygiene" was also not justified in any way by any connection to the requirements of the job description. Thus, the factors used by Yaron and Figon to determine qualifications were fatally flawed.

The Union observed that all of the County's witnesses stated that the Grievant was qualified to perform all Maintenance Worker tasks and that Union Representative Reardon confirmed the Grievant's substantial experience in each area with CWRA managers in a grievance meeting. The Union contended that the County's reasons for granting the Maintenance Worker job to Boettcher really had to do with Boettcher's interview ratings. The Union urged that Yaron and Figon's admissions at hearing that they wanted the "best candidate" for the job overlooked the contractual requirements that seniority come into play. In this regard, the Union noted that Figon admitted having considered education in selecting Boettcher as a better qualified candidate because he believed Boettcher had one year of college, a requirement not required by the job description. In addition, Figon down-graded the Grievant for wearing his uniform to the interview, yet, the Grievant was required to wear said uniform because he was working. The fact that Boettcher had greater diesel mechanic experience was again not required by the job description and oil field work was not connected to full-time Maintenance Worker job duties nor was it required by the job description.

The Union argued that the County has the burden to show that the junior employee had greater skill and ability by specific and understandable evidence that relates to the capacity for the job in question, not based upon personal opinions unsupported by substantial proof. Indeed, exact equality is not necessary, only approximate equality between candidates is necessary before seniority should come into play under the language of the labor agreement. The Union urged that the County completely failed to consider the performance evaluation of the Grievant, which was excellent in all areas and that the County erroneously used only interview ratings as the acid test for selection of the successful applicant.

Thus, at the very least, the Arbitrator should promote the Grievant on a probationary basis to the full-time Maintenance Worker position, honoring his seniority, and allowing the County to realistically determine the Grievant's competence for the full-time Maintenance Worker job. On this point, the Union noted that the contract provides for a probationary

period in such a new position. If the County had considered all relevant factors including job experience, performance evaluations and the fact that the Grievant had filled in for full-time Maintenance Workers at the Airport, the Grievant should have been found relatively equal to Boettcher and the Grievant's seniority should have applied. Thus, the Union urged the Arbitrator to grant the Grievant the position and make him whole.

DISCUSSION

Article 6, Section F, states that if "other qualifications are reasonably equal, employees older in seniority shall have preference on all jobs." This language constitutes a modified seniority clause: if a junior employee has greater ability than a senior employee as proven by explicit and convincing evidence showing a rational and objective basis for the comparison of qualifications for the job in question, the junior employee can be reasonably selected over the senior employee. Such explicit and convincing evidence should give due consideration to available and pertinent data from candidates' work records including consideration of *bona fide*, fair appraisals of candidates by their direct supervisors based upon factual evidence. The employer's judgment of qualifications will not generally be disturbed unless it lacked a rational, objective basis or resulted from an unconsidered, willful, or irrational choice or conduct demonstrating that the employer's selection of a junior employee over the senior employee was arbitrary, capricious, or discriminatory. Absolute equality between candidates is not necessary to prove relative equality.

Article 6 requires CWRA to prove by specific evidence that the junior employee, Boettcher, had greater relevant skills and abilities for the full-time Maintenance Worker (FTMW) position than the Grievant in order to prevail herein. The job description for the FTMW requires incumbents to perform ". . . semi-skilled maintenance tasks . . . custodial related duties . . . most work originates as a result of the continuing need for the maintenance of facilities." The specific qualifications required for the FTMW position include:

High school graduation or equivalent preferred.

One year responsible maintenance work experience operating snow and earth moving equipment required.

The FTMW job description does not require knowledge of or experience with heavy equipment. Rather, the job description requires incumbents to be able to "operate automotive equipment including snow plow, snow blower or front-end loader in removing snow . . ." and to "operate mowers, tractors and other equipment" and to drive/operate "airport crash truck and fire extinguishment equipment." Notably, the FTMW job description does not require diesel mechanic knowledge or experience nor does it require incumbents to actually make automotive repairs. The FTMW job description does require incumbents to have the "ability to recognize equipment and facilities in need of repair." Although the job description does not specifically require incumbents to make routine oil changes on diesel or other engines, the

evidence showed that FTMW's are expected to make such oil changes. However, part-time Maintenance Workers are not required to change the oil on diesel engines. Therefore, neither the Grievant nor Boettcher had had any experience at CWRA in that area.

It is significant that the Grievant submitted an application and a resume describing his past work experience which he felt was relevant to the FTMW opening. Boettcher's application and narrative describing his experience contained references to work, education and experience operating equipment not relevant to the FTMW job description discussed above. In addition, CWRA decided not to test either the Grievant or Boettcher for the opening and did not consider their personnel files or their prior CWRA evaluations or annual reviews in deciding whom to hire for the FTMW opening. Rather, CWRA decided to rely solely on an interview to determine candidate qualifications. Airport Manager Hansford delegated the authority to interview candidates to Leadman Ed Figon (a bargaining unit employee) and Director of Operations Tony Yaron.

Significantly, Yaron had never worked with or evaluated the Grievant and Yaron had never interviewed or selected any other CWRA employees for openings prior to July, 2002. Yaron also admitted that he had never seen the Grievant operate equipment at CWRA. Yet, Yaron had supervised Boettcher in his PTMW position at CWRA and was fully familiar with Boettcher's work.

Leadman Figon admitted that he had not worked with or evaluated the Grievant after the Grievant became a full-time custodial employee at CWRA in February, 1999. Figon stated that he never saw the Grievant weld when the Grievant was a part-time Maintenance Worker at CWRA. Figon's sole comment about the Grievant's work herein was that when the Grievant was a PTMW, the Grievant would call him at home to confer about how to handle problems at the Airport which arose on weekends, while Boettcher did not call Figon at home but (apparently) handled weekend problems on his own.

Hansford gave Yaron and Figon a form to use in their interviews of the Grievant and Boettcher, which contained six factors to consider in rating applicants. Two of these factors — Education and Appearance/Personal Hygiene — bore no relationship whatever to the FTMW job description or the duties required of the position. In this regard, I note that both the Grievant and Boettcher had the "preferred" high school graduation qualification and that no college or technical school course work was even mentioned in the job description qualification section. In addition, there is absolutely no reference in the FTMW job description to "appropriate" attire for the position or any requirement concerning an incumbent's clothes or appearance. Therefore, CWRA failed to show how these factors were relevant to the FTMW qualifications or job duties and they should not have been considered in determining who was more or less qualified for the position.

Beyond this, I note that Yaron and Figon did not set a minimum number of points for candidates to be considered qualified. Had they done so, this would have set a floor for qualifications which the Airport could have used to demonstrate minimal qualifications for the

position. Both Yaron and Figon admitted herein that they were moved to select Boettcher due to Boettcher's smiling demeanor, his diesel mechanic experience, his college and technical school courses and/or his heavy equipment operation in the mining industry and the Army, none of which is required or even preferred for the FTMW position. As Boettcher did not testify herein, his skills, abilities and experience could not be tested under oath. Specifically, Boettcher's communication skills and self-confidence/maturity could not be assessed.

It is in this context that CWRA's decision to pass over the more senior Grievant for the FTMW position must be judged. All of the County's witnesses confirmed and the documentary evidence showed that the Grievant was qualified to perform all Maintenance Worker tasks and that the Grievant had experience in each required area for at least the one-year required period listed on the job description. Therefore, the Grievant was at least minimally qualified for the FTMW opening based on the job description therefor.

The next question is whether Boettcher's relevant qualifications were greater than the Grievant's for the job in question. According to the documentary and testimonial evidence herein, they were not. Here, CWRA chose to use the highly subjective method of interviewing applicants to determine qualifications without any consideration of evaluations or annual appraisals at CWRA. I note that the Grievant's most recent evaluation showed that he was above average in 9 of 12 categories, average in 2 categories and outstanding in 1 category. As CWRA failed to submit any of Boettcher's evaluations or annual appraisals herein, no comparison to the Grievant's evaluation can be made. 7/

7/ Indeed, CWRA's failure to call Boettcher as a witness and its failure to submit any evaluation of his work could support a conclusion that the evidence, had these items been offered, would not have supported CWRA's case.

The simple fact is that neither Figon nor Hansford could recall the Grievant's work as a part-time Maintenance Worker prior to February, 1999, and that Yaron had had no contact of any kind with the Grievant at CWRA. It is not surprising that Boettcher, whom Hansford, Yaron and Figon knew and whose performance was fresh in their minds, was selected over the Grievant in these circumstances. The fact that Yaron and Figon considered numerous factors/work experience which were not relevant in any way to the FTMW position and which were not listed in the FTMW job description as qualifications or as part of the work to be performed or as among the knowledge, skills and abilities necessary for a full-time Maintenance Worker, support a conclusion that CWRA's selection of Boettcher was arbitrary and capricious. Furthermore, after disregarding the interview factors of education and appearance/personal hygiene, I note that Leadman Figon, the only person involved in the hiring process who had actually worked with and overseen the work of both Boettcher and the Grievant as part-time Maintenance Workers, gave Boettcher and the Grievant the same number of points (15) on their interviews. In these circumstances and given the specific requirements of the FTMW position, I issue the following

AWARD

The Employer violated the labor agreement when it denied the full-time Maintenance Worker position to Grievant Gerald Cartwright. The Employer shall, therefore, immediately offer Gerald Cartwright the position of full-time Maintenance Worker and place him therein at full-time Maintenance Worker pay on a 90-day trial period as required by the labor agreement. If Cartwright successfully completes said probationary period, he shall receive back pay to the date of his placement in the position on probation (the difference, if any, between his full-time custodial wages and the full-time Maintenance Worker wages). 8/

8/ I shall retain jurisdiction of the remedy only for sixty days after the date of this Award.

Dated in Oshkosh, Wisconsin, this 2nd day of February, 2004.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator