

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**RICE LAKE AREA SCHOOL DISTRICT EMPLOYEES UNION  
LOCAL 3286, WISCONSIN COUNCIL 40, AFSCME, AFL-CIO**

and

**RICE LAKE AREA SCHOOL DISTRICT**

Case 67  
No. 62184  
MA-12191

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Appearances:

**Mr. Jack Bernfeld**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of Rice Lake Area School District Employees Union Local 3286, Wisconsin Council 40, AFSCME, AFL-CIO, referred to below as 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, appearing on behalf of the Rice Lake Area School District, referred to below as the Board or as the District.

**ARBITRATION AWARD**

The Union and the District are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Association and the Board jointly requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve a grievance captioned as 10-02, filed on behalf of Jeanie Sadowski, who is referred to below as the Grievant. The Commission appointed Richard B. McLaughlin, a member of its staff, to serve as arbitrator. Hearing on the matter was held on November 10, 2003, in Rice Lake, Wisconsin. The hearing was not transcribed. The parties filed briefs by January 2, 2004.

**ISSUES**

The parties did not stipulate the issues for decision. I adopt the Union's statement of the issues as that appropriate to the record:

Did the District violate the Collective Bargaining Agreement when it did not award the Administrative Assistant, Special Services/Title I position to the Grievant?

If so, what is the appropriate remedy?

**RELEVANT CONTRACT PROVISIONS**

**ARTICLE 2 – MANAGEMENT RIGHTS**

Section 2.01: 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 work hours.

Section 2.02: Without limiting the generality of the foregoing . . . it is expressly recognized that the Board's operational and managerial responsibilities include:

. . .

G. The direction and arrangement of all working forces in the system, including the right to hire . . . employees;

. . .

I. The determination of the size of the working force, the allocation of assignments of work to employees, the determination of policies affecting the selection of employees, and the establishment of quality standards and judgment of employee performance . . .

**ARTICLE 7 – JOB POSTINGS AND PROMOTIONS**

. . .

Section 7.02: When the District determines that a vacancy should be filled or a new position created within the bargaining unit, the new . . . position shall be posted . . . for a period of five working days. Such postings shall set forth the job title, minimum qualifications required, work locations scheduled hours and rate of pay.

Section 7.03: An employee interested in such a vacancy must notify the business manager in writing by the end of the posting period. . . .

Section 7.04: The selection of the person to fill the vacancy shall be on the basis of relative skill, ability and seniority. . . .

Section 7.06: A current employee who posts for and is assigned to fill a new or vacant position shall be given a two month trial period during which the Employer is to evaluate whether the transferred/promoted employee is able to satisfactorily perform the work duties of the new position. In the event the Employer determines that the transferred/promoted employee is not, the employee shall be returned to his/her former position . . . The employee may, at any time in the first month of the trial period, opt to return to his/her former position.

### **BACKGROUND**

The grievance form for 10-02, filed on September 3, 2002, states that the Grievant “applied for another position in the school district and was denied job” in violation of “Article 7 Section 7.04”. The reference to “another job” highlights that this grievance has long and tangled roots. Much of that background is noted in RICE LAKE AREA SCHOOL DISTRICT, MA-11629 (McLaughlin, 7/02). The Award in that decision stated that: “The District did not violate the Collective Bargaining Agreement by posting the position of Administrative Assistant Special Services/Title I on April 3, 2001.”

The position of Administrative Assistant, Special Services/Title I is the “another job” referred to in the grievance form. The District posted it on April 3, 2001. The posting included a position description, which states the following “Qualification Requirements”:

- 1. EDUCATION:** High school diploma plus two year degree as an administrative assistant; some general accounting skills required.
- 2. LANGUAGE SKILLS:** Ability to read and interpret documents such as safety rules, operating and maintenance instructions, and procedure manuals. Ability to write routine reports and correspondence. Ability to speak effectively before parents, staff, and students.

3. **MATHEMATICAL SKILLS:** Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs using computer technology.
4. **REASONING ABILITY:** Ability to apply common sense understanding to carry out detailed but uninvolved written or oral instructions. Ability to deal with problems involving a few concrete variables in standardized situations.
5. **OTHER SKILLS AND ABILITIES:** Ability to provide superior clerical skills. Ability to operate a personal computer as well as competence in use of office machines and procedures. Ability to effectively operate a wide range of computer software programs including but not limited to the Microsoft Office Suite 2000 (Word, PowerPoint, Access, Excel, Publisher, Outlook) and Adobe PageMaker. The position requires an excellent working knowledge of formatting, editing and tool features in the above programs with the ability to engage mail merge functions and simple formulas, create envelopes, labels, forms, distribution lists and templates. Ability to develop effective working relationships with state and federal agencies, staff, and the school community. Ability to communicate clearly and concisely, both orally and in writing. Ability to perform duties with awareness of all district requirements and Board of Education policies. Capable of completing district wide duties without immediate supervision.

The position description states the following “Essential Duties And Responsibilities”:

1. Perform all secretarial duties as requested by the Director, including typing personal correspondence, reports, forms, purchase orders, as well as, sorting and processing incoming mail, routing phone calls for Special Services Department, etc. Attend and prepare minutes of Title I Action Team meetings.
2. Possess and maintain superior skills regarding the district computer platform so as to operate and maintain the system and advise the Director of needed updates and/or modifications.
3. Prepare and submit state and federal reports, projects, and claims for all Special Services and title I programs which are due at various times throughout the year. This includes entitlement and discretionary projects as well as annual reports.
4. Assume responsibility for the development and maintenance of the district computerized I.E.P. forms on the district network. This requires extensive knowledge of MS Word and the ability to “troubleshoot” problems that may arise with the forms.

5. Assist the District Assessment Coordinator in the receipt, organization, distribution, collection, recording, and mailing of all district assessment materials. This includes the ability to access and utilize the data to prepare reports and visual aids that assist ensuring the usability of the test data.
6. Maintain a regular filing system, including confidential student testing and SBS data, keeping the contents of individual student files in order and purging inactive student files according to district and/or departmental policy.
7. Assist the Title I Coordinator in the development and administration of the yearly needs assessment document. Create and maintain Title I student database and Action team database.
8. Assist the Director of Special Services and The Title I Coordinator in the development and publication of their department's newsletters.
9. Share in the scoring of computerized psychological tests or checklists with the other special services administrative assistant.
10. Maintain primary responsibility for the collection of School Based Services data (bubble Sheets) and be responsible for verifying their accuracy/ before transmitting the data to the current vender. Create and maintain student eligibility database.
11. Create and maintain the Special Services and Title I budget format for computer as well as typing purchase orders and preparing accountability reports as requested.
12. Assist the Director and Coordinator in the compilation of data into forms and formats that ensure "user friendly" presentation of that data.
13. Keep all information pertaining to students and staff confidential.
14. Upon request, send appropriate student records/files to requesting agency/school district, keeping a log of such and any request/release form.
15. Share responsibility in the general administrative office when needed.
16. Assist the Director in the inservicing of staff as it relates to SBS billing and/or the use of district IEP software.
17. Perform other secretarial duties as assigned by the Director of Special Services.

Thomas Hall was, at all times relevant to this matter, the District's Director of Special Services. He drafted the position description. The Grievant, Sue Drew and Donna Baird signed the posting. The Grievant and Drew supplied a one-sentence memo of application. Baird submitted a two-page memo stating her interest. She supplemented it with nineteen pages of supportive material, including transcripts, recommendations and other matter. At the time of the posting, Hall was one of Baird's direct supervisors. Hall actively supported her

original request for an upgrade for the positions she occupied prior to the creation of the position of Administrative Assistant, Special Services/Title I.

In letters to Drew and the Grievant dated April 9, 2001, Hall stated:

Thank you for your interest . . . I regret to inform you, however, that you do not meet the requirements of the posting in that your credentials do not include a two-year degree as an administrative assistant.

If I am in error, or your personnel file is not up-to-date, please let me know as soon as possible. If you do possess the two-year degree as an administrative assistant, I will be pleased to schedule you for an interview and skill evaluation based on the posted job requirements in the near future.

In a letter to Baird dated April 12, 2001, Hall noted that the District had selected her for the position. The letter states:

. . . Your level of education and accumulation of technical skills are a perfect fit for the posted job responsibilities. Please be aware that there are pending grievances regarding this position, however, it is clear you are the most qualified applicant for the position . . .

The District's selection of Baird and rejection of the Grievant and Drew prompted the filing of four grievances. During the processing of the grievances, the District offered to re-evaluate the qualifications of the three applicants. In September of 2001, the Union agreed to hold the processing of two of the grievances while the District completed its re-evaluation. One of the remaining grievances prompted the issuance of MA-11629.

The District contracted with Nancy Vrieze, an instructor at Wisconsin Indianhead Technical College (WITC), to assess the skills the applicants. Vrieze administered a written test to the applicants in February of 2002. The Grievant and Baird passed the test. Vrieze did not supply a score for either applicant to the District. Rather, she advised the District that the two had passed the test. The District then submitted the two applicants to an interview process. The interview panel consisted of three persons: Hall; John Nelson, a District Psychologist; and Deb Olson, an Elementary Principal and Title I Language Arts and Assessment Coordinator for the District.

The interview panel interviewed the applicants on August 13, 2002. They asked each applicant the following questions:

1. Why are you applying for this job?
2. What qualities do you have that make you an effective team player? Do you work better by yourself or as part of a team (examples)?
3. How would the people that you interact with daily in your current job rate your communication and cooperation skills (include co-workers, supervisors, and the public)?
4. What is your typical reaction to competing demands (several people are asking for your services at the same time)? Response-setting priorities-stress management-awareness of hierarchy-flexibility-multitasks-pressure reactions.
5. Please provide us with a summary of your recent experiences and training that prepares you for this job? Specifically detail your skill level in the *Microsoft Office* suite software and rank your level of proficiency from most proficient to least proficient programs.
6. Software-specific questioning:
  - a.) Form-generating software (IEPs) (SASI) (Marsha Brenner)
  - b.) Graphing functions of Excel
  - c.) Accessing Internet to research information generated by boss
7. Describe a situation where you came up with a creative solution to a problem presented to you by your supervisor.
8. What would be your general approach to dealing with a task or problem where you do not immediately know the answer?
9. In your opinion, what qualities do you bring to the job that will contribute to improving the working environment?
10. Do you have any questions of us?
11. If you were offered this job, would you accept?

Each panel member rated the responses of each applicant, then attempted to reach consensus at the completion of the interview process. The results of the evaluation process can be summarized thus:

CANDIDATE:	DONNA BAIRD			THE GRIEVANT		
	DO	JN	TH	DO	JN	TH
1. Academic and/or Technical Preparation	10	8	9	7	6	7
2. Professional Experience and Growth Activities	10	-	9	7	-	6
3. Appearance, Manner, and Judgment	8	8	9	8	8	8
4. Communication Skills	8	8	9	7	6	7

5. Mental Alertness, Originality, Ability to Get Along with Others	10	7-8	10	8	6-7	7
6. Technical Skills	10	8	10	8	5-6	6
7. Creativity and Problem Solving	10	8	10	7	6-7	8
8. Professional Attitude and Ethical Standards	8	7-8	10	8	7-8	4
Overall Rating (overall opinion of candidate's qualifications)	-	8-9	9-10	-	6-7	-

The interview panel agreed that Baird was the superior applicant through the interview procedure and the District declined to offer the position to the Grievant. This prompted the filing of grievance 10-02. Throughout the processing of the grievance, the District took the position that the Grievant, although the senior applicant, was “not the most skilled and able candidate for the position.”

The balance of the background is best set forth as an overview of witness testimony.

### **The Grievant**

The District hired the Grievant in February of 1978. She has worked for the District at the High School, originally as a Guidance Secretary. Her current position is Financial Activities Secretary. It is a Grade 4, ten-month position. Her duties concerning the Athletic Director now constitute roughly one-half of her job responsibilities. Her position demands that she participate in the financial aspects of over forty District organizations. Each activity has a separate account number for bookkeeping purposes, but all of the funds reside in a single District bank account, which contains roughly \$100,000.00. She tracks activity accounts through computer software, and physically handles all of the money that flows to and from the District's bank account.

She participates in the handling of transactions from the creation of a purchase order to the payment of an invoice. She handles money directly, such as the boxes used to collect the \$3,000 to \$4,000 generated by each football game. She handles the money taken through the District's food service program. These duties demand her manipulation of Excel Spreadsheets. Her duties also require her to generate tickets, and to maintain and manipulate a database of referees and umpires. She uses her own database drawn from one maintained by the WIAA. These duties demand her use of Access software. She must also manipulate a database of District athletes. The database must track student performance for the purpose of assuring and maintaining eligibility. When an eligibility issue arises, she must contact the student and the student's parents. She processes student work permits, and is responsible for monthly reports to the State of Wisconsin.



She maintains a school calendar and is responsible for scheduling public use of District facilities. She must make sure a room is available, and match available rooms to public requests in a fashion that does not generate multiple claims to the same facility at the same date and time. She does not receive day-to-day assignments, but is expected to know her job well enough to function independently.

She signed the posting for the Administrative Assistant, Special Services/Title I position. Like hers, the position is Grade 4, but does involve more hours and includes a pro-rated vacation benefit she does not enjoy as Financial Activities Secretary. She submitted a one-sentence memo of interest in the position because she thought that was all that was required under the posting. She felt she was qualified for the position. She lacked the specific Associate degree sought in the posting, but does have an Associate Degree in Supervisory Management from WITC. Her current duties require her to edit athletic schedules on the District's website. She has attended all the computer training the District has offered, including conferences on the use of SASI software. She regularly works in several of the programs included in the Microsoft Office Suite. Her current duties and past experience met the "Qualification Requirements" of the Administrative Assistant, Special Services/Title I position description.

The Grievant testified that her current duties met Items 1, 2, 5, 6, 11, 13 and 15 of the "Essential Duties and Responsibilities" section of the Administrative Assistant, Special Services/Title I position description. She felt that even though she did not necessarily perform the remaining items, she could quickly learn to do so. She did not realize she could have, or should have, supplemented her memo indicating interest in the Administrative Assistant, Special Services/Title I position. No administrator asked her to do so.

The Grievant acknowledged that the High School Activity Fund had experienced a series of problems starting with an audit covering the 1997-98 school year. In March of 1999, the District's then-incumbent Business Manager informed the Grievant that auditors had recommended that the High School implement procedures by which the Grievant's presentation of a check for an administrator's signature would include a packet consisting of five documents: a purchase order request; a pre-numbered purchase order; a check request; an original invoice and a copy of the check. The auditors noted that High School Activity Funds manifested duplicate payments where a payment was made from a billing statement and an invoice. The auditors also noted activity accounts showed overdrafts. Auditors noted in February and August of 2000 that procedures to avoid duplicate payments had yet to be fully implemented, and made further recommendations on the point. In February and in August of 2000, auditors again noted problems with overdrafts in activity accounts. In August of 2000, auditors noted a break in the sequence of receipt numbers, and recommended corrective action. In August of 2001, auditors noted that procedures to avoid duplicate payments had been fully implemented, but also noted that three of forty-three activity accounts showed overdrafts. The

Grievant was aware of at least some of these difficulties, and did assist in the process to correct the problems. She did not receive any discipline for her conduct during this period.

She testified that she “probably” stated during the interview that she might not take the position if it was offered, but added that she was really considering taking the position, and thought she could use the trial period to test her desire and competence to continue in the position. She noted that she was Union President when the support staff unit bargained its first labor agreement.

### **John Nelson**

Nelson is one of three District Psychologists. The Administrative Assistant, Special Services/Title I position supports his, and Nelson was familiar with Baird’s work at the time Hall asked him to serve on an interview panel. Nelson did not receive any advance instructions on the process, other than that the panel would ask the same slate of questions to the two applicants. The panel did agree that certain members would be responsible for asking specific questions from the slate. He did not consult the labor agreement prior to the interview, and had the Grievant’s one-sentence memo indicating interest in the position and Baird’s multi-page submission throughout the interview.

Baird offered further documentation on her qualifications during the interview. Nelson’s notes from the interview noted that the Grievant was “not very familiar w/ spec. education procedures.” They also note that her responses were brief, with little elaboration. He concluded that the Grievant “would be easy to work with, but would need a considerable amount of time to learn” special education procedures.

After each interview, each panel member separately rated the applicant. At the end of the interviews, the panel members sought to reach consensus. Nelson stated the effort took little time, for the panel each concluded the choice was “clearly not close.” He did not separately consider seniority in this determination. In his view, seniority would play a determinative role if the determination of skill and ability were close. He based this view on his experience in another hiring situation, and not on specific discussions during the interview/evaluation process at issue here. No panel member and no other District employee attempted to influence his decision.

### **Pat Blackhaller**

Blackhaller has been the District’s Director of Finance and Operations for roughly four years. He processed Baird’s original request for a reclassification. The request was processed while the District and the Union negotiated a labor agreement. After discussions with the Superintendent, Paul Vine, and with Hall, the District determined to post the Administrative

Assistant, Special Services/Title I position at Grade 4. Hall drafted the position description, which Blackhaller edited and approved. He authored the District denials, in April, June and September of 2001, of the grievances prompted by the posting. However, after meetings with Union representatives, the District offered to test the applicants. In his view, the parties' dispute turned on the District's desire to have an employee in a Grade 4 position hold a degree specific to the position. He viewed the District's desire to test the applicants to be an offer to allow them to establish their minimal qualifications for the position without regard to the degree requirement. The Grievant and Baird passed the test, while Drew either failed or withdrew from the process.

The interview panel created the interview questions, without input from Blackhaller. He noted that he was aware of and involved with the audit problems in High School Activity Funds. Those funds are ultimately the responsibility of the Principal. The Grievant cannot change accounting systems or procedures on her own.

### **Deb Olson**

Olson was not the Title I Coordinator when Baird first sought a reclassification of her position. The Administrative Assistant, Special Services/Title I position supports her role as Title I Coordinator, which occupies roughly sixty percent of her time. She did not know why she was selected to be part of the interview panel, but was familiar with Baird and her work at the time of the interview.

Olson took notes while each applicant answered the slate of questions. The Grievant stated that she was interested in the Administrative Assistant, Special Services/Title I position because it would enhance her ability to vacation with her husband. She was not sure if she would take the job if offered, and would find it a difficult choice to leave her current position. Olson found these answers troubling, because special education is a difficult and challenging field and she was unsure the Grievant was seeking a new challenge. She did not think the Grievant was sufficiently expansive in her answers to indicate she wanted anything more than more information about the Administrative Assistant, Special Services/Title I position.

Olson was aware of the contractual standard and aware that the Grievant was senior to Baird. She thought the interview process was to weigh the three criteria for filling the position with the best applicant. The slate of questions had no answer key. She could not recall why she did not give each applicant an overall score.

### **Thomas Hall**

Hall worked for the District from 1981 through his retirement at the close of the 2002-03 school year.

Hall testified that the Grievant's answers during the interview showed she had little interest in the Administrative Assistant, Special Services/Title I position. He rated the Grievant as a "4" on the "Professional Attitude and Ethical Standards" criterion because he was aware, as a member of the District's Executive Council, of the audit problems that surrounded High School Activity Funds. He did not know the details of the problems, but viewed the Grievant as the only applicant with a smear on her record. He did not, however, discuss this point with the other panel members. The Grievant gave perfunctory answers to interview questions, and showed no genuine interest in the job, beyond the convenience it afforded her vacation plans.

He was aware of the Grievant's seniority, but felt that she was "nowhere close" to Baird regarding skill and ability. There was "such a separation of skills" that he felt no need to give the applicants an overall score. Hall stated that Baird originally came to the District when his secretary resigned, and took vacation for her last nine scheduled days of work. Baird "jumped in and saved our bacon". He viewed Baird as the most professional support staff member he had ever been associated with. He viewed her as an assistant, and he wanted to keep that in the Administrative Assistant, Special Services/Title I position. Hall noted his family has strong union roots and he resented any implication that he did not consider seniority in evaluating the candidates. He testified he "primarily" relied on the interview process, but the curtness of the Grievant's responses forced him to consider non-interview based experience. He did not consult the Grievant's supervisor, and did not view it as his responsibility, since it was the Grievant's responsibility to "sell herself to me."

Further facts will be set forth in the DISCUSSION section below.

## THE PARTIES' POSITIONS

### The Union's Brief

After a review of the evidence, the Union contends that the District violated the agreement by failing to select the Grievant for the Administrative Assistant, Special Services/Title I position. Section 7.04 governs the selection process, and without regard to Baird's ability, the Grievant "should have been chosen for the position" after the application of the three criteria. The Grievant's "skills and abilities are at least equal to" Baird's, and her seniority decisively tips the balance in her favor.

The evidence establishes that "the employer blatantly ignored the contractual mandates" and "openly manipulated the system to install their preferred candidate." The original attempted reclassification of Baird's position demanded a posting. The District then manipulated the posting by listing a qualification possessed only by Baird as a determining factor. The Union stopped this process with a grievance, and this prompted the District to create a test and interview process. The WITC testing process was fair, yet the District effectively ignored it and chose

Baird again. The key justification was the interview process, and the District controlled that. Each interviewer “had a personal stake in having (Baird) assigned to the position.” One interviewer acknowledged he did not consider seniority, viewing it “as merely a tie breaker.”

Section 7.04 “requires a balancing of three factors – skill, ability and seniority.” Even though given the opportunity to apply them, the District “did not attempt to do this.” Ignoring the WITC test highlights the District’s anxiety to reward Baird. The Grievant, unlike Baird, exposed herself to the “glare (and brutality) of the spotlight” by testifying. This underscores her superiority under a balanced view of the contractual standard.

The Union concludes that the Grievant should receive the Administrative Assistant, Special Services/Title I position and should be made “whole for any and all losses.”

### **The District’s Brief**

After a review of the evidence, the District asserts that “the skills and abilities of Donna Baird are particularly suited to the Administrative Assistant, Special Services/Title I position” and thus “overwhelmed those of the Grievant for this particular posting”. It follows that it committed no contract violation by awarding the position to Baird.

Article 2, Sections G and I specifically reserve to the District the “right to hire, to determine the selection process and to evaluate the candidate.” Section 7.04 specifies three criteria to guide the exercise of these general rights, and does not make seniority the predominate criterion. An examination of the evidence establishes that the District used a “fair, methodical process” to select Baird. The interview team consisted of “three individuals supported by the Administrative Assistant, Special Services/Title I.” The materials submitted by Baird to the interview team were detailed, clear and superior to those provided by other applicants. The interview team used a uniform slate of questions to test eight performance related criteria. In general, the interviewers “rated the Grievant 2-3 points lower” than Baird “in each of the eight categories.” Hall had additional knowledge regarding the Grievant’s past conduct, including a long series of deficiencies in handling money for the District.

Each of the interviewers interpreted the contract to demand that “if skills and abilities were relatively close, the more senior applicant is entitled to the position.” This is consistent with the terms of Section 7.04. Detailed examination of the testimony of the interviewers establishes that they did not view the Grievant and Baird to be “relatively close” in skill and ability. Her curt responses to the questions and her stated desire to accept a lateral transfer to “take vacation with her husband” fall far short of expressing a genuine interest in the position or in the challenges of the special education process. Beyond this, the Grievant lacked experience in key areas of necessary software.

Arbitral precedent establishes that an employer's determination of an employee's ability is entitled to considerable deference. An examination of the evidence establishes that the District did not act in an arbitrary, capricious, discriminatory or bad faith manner in selecting Baird over the Grievant. In fact, the evidence shows that the Grievant "failed to sell herself, failed to demonstrate that she had the skills and abilities required to perform the duties of the position." Since Section 7.06 "does not kick in until an employee is selected for the position", there is no basis to conclude the District violated any part of the labor agreement. The District concludes that the grievance must be denied.

### DISCUSSION

The statement of the issue reflects that the parties' arguments draw on a number of agreement provisions. The interpretive focus is, however, Section 7.04. Section 7.06 begs the issue, and affords no guidance on Section 7.04. Section 7.06 applies where a "current employee . . . posts for and is assigned to fill a new . . . position". The Grievant posted for, but was not assigned the Administrative Assistant, Special Services/Title I position. The issue is whether Section 7.04 demands her assignment to the position.

Section 2.02 establishes that the District has the right to determine policies affecting employee selection. The District exercised this general right when it established that the Administrative Assistant, Special Services/Title I position should have a degree specific requirement, and when it determined to suspend the requirement to permit the consideration of Drew and the Grievant. This change in focus has an impact on the contractual analysis. The record affords little, if any, insight on how Baird's Associate Degree qualified her for the Administrative Assistant, Special Services/Title I position while the Grievant's disqualified her. The interpretive issue posed here is not that broad, since the District suspended the requirement. The issue thus becomes factual, turning on whether the District violated the labor agreement by selecting Baird over the Grievant. Section 7.04 governs this point.

Section 7.04 mandates that filling the Administrative Assistant, Special Services/Title I position must be "on the basis of relative skill, ability and seniority." As the District notes, commentators have labeled clauses like this "hybrid" seniority provisions. It is not, in my view, helpful to the application of the terms to "type" them as part of their application. The parties agreed to specific terms, not broad "types". The terms state three independent criteria to be weighed on a case-by-case basis. The Grievant is substantially senior to Baird. The selection of Baird over the Grievant thus presumes that she demonstrated even more substantially distinguished relative skill and ability.

Each member of the interview panel testified that Baird's interview established this distinction. On the evidence posed here, this conclusion is troublesome. It is evident that filling the Administrative Assistant, Special Services/Title I position has been divisive and personal. The Union originally opposed the upgrade in the position and it is evident that Hall sponsored Baird's original request for an upgrade and her interest in the Administrative Assistant, Special Services/Title I position. The issue, however, is not whether Hall as an individual or the District as an institution "wired" the position for Baird. It is neither unheard of nor improper for a supervisor to support an employee's reclassification. Nor is "wiring" a position inherently improper. If the contract specified that seniority was the sole criterion, then the position would have been "wired" for the Grievant. The issue is whether the District's actions violated the terms of Section 7.04. To the extent possible, the personal concerns surrounding the dispute must be ignored.

With this as background, the application of Section 7.04 to the evidence is an uncomfortably close determination. The Union highlights a series of persuasive concerns. Hall's opinion of the Grievant was colored by considerations outside of the interview process. His specific concern with the Grievant's ethics lacks proof. He was not directly involved with the audit process and had limited secondhand knowledge of the Grievant's role. Audit concerns spanned a series of school years and can provide a basis to assess the Grievant's work ethic. However, the record fails to substantiate them in any detail, or to connect them to the Grievant's qualifications for the Administrative Assistant, Special Services/Title I position. It is evident that a pattern of overdrafts cannot be considered helpful to her resumé. Less than evident is the degree to which her conduct gave rise to this or other concerns raised by the auditors. The High School Activity Funds are ultimately the responsibility of the Principal, and how, if at all, the Grievant was brought into the corrective process is unclear. She received no discipline, yet Hall's testimony questions her ethics. The assertion that the audit concerns could not warrant any level of discipline but could make her an unfit candidate for a lateral transfer is unpersuasive. No more persuasive is that unsubstantiated considerations outside of an interview/testing process can provide a reliable basis to evaluate skill or ability.

It is evident that Hall was not a dispassionate evaluator of the applicants' skill and ability. In a March 12, 2001 letter advising Baird that the Board was creating the Administrative Assistant, Special Services/Title I position, and that she was to be laid off from her position, he stated that the new position "requires substantially higher skill levels than the current split position" that she occupied. The letter encourages her to apply for the new position, which was to become available two days prior to her layoff. The quoted reference was gratuitous, since he and Baird knew her qualifications. A similar reference appears in the April 12, 2001 letter awarding the position to Baird on the date of her layoff from the

predecessor positions. After noting the grievances regarding the position, Hall notes Baird's skills are "a perfect fit for the posted job". The letters were written less to Baird than to others who might later read them. None of this is inherently improper, but does indicate that Hall took a personal interest in Baird's advancement.

The Union forcefully argues that the procedures for filling the position show something less than a neutral perspective on evaluating the applicants. The interview panel consisted of people the Administrative Assistant, Special Services/Title I position reports to. Each had personal experience with Baird's work. It is unclear how the panel reviewed the contractual standard as a part of the interview or evaluation process. The WITC administered test was the sole part of the application process not controlled by District personnel interested in the position. That test served, however, to establish no more than minimal qualifications for the job. As the Union points out, this left no "down-side" for the District. The test could eliminate the Grievant, but if she passed, she had to face a District controlled interview panel.

On balance, however, these considerations fail to establish that the interviews violated Section 7.04. That Baird reports to the members of the interview panel does not, standing alone, invalidate the panel's work. Such a conclusion ignores the significance of allowing those who must work together as a team to play a role in the determination of its members. This conclusion would, for example, invalidate the inclusion of employees on interview panels for co-workers. Whether or not this is a good idea, there is no basis in Section 7.04 to conclude it cannot be a viable option. That the panel did not evaluate the labor agreement as a formal part of the interview/evaluation process is a valid concern, but the testimony of each panel member establishes that each was aware that seniority was a governing and independent consideration.

That the District used a WITC test to establish minimal qualifications then subjected the successful candidates to an interview is not, in itself, a violation of Section 7.04. It is speculative whether the scores from the test might have yielded a different result than the interview process. More to the point, there is no evidence that the testing process had any basis in the application of Section 7.04. The case-by-case application of the three criteria would be difficult to standardize, and there is no evidence that the WITC consultant was instructed to do so. The testing process, standing alone, cannot be considered improper. Nor can panel consideration of Baird's experience in the Administrative Assistant, Special Services/Title I position or its predecessors. Seniority is itself a form of recognition of the significance of past work. Contract provisions that favor "in-house" over outside applicants similarly highlight that experience in a position is not, standing alone, an improper consideration in the assessment of skill or ability. Thus, Baird's experience in the position cannot be considered an improper element of the criteria of Section 7.04.



Thus, the interpretive issue focuses on the actual conduct of the interview panel under the provisions of Section 7.04. Hall's role in the panel, and more specifically his consideration of unsubstantiated personal concerns is the most troublesome point. If the evidence established that Hall dominated the panel, the grievance would have sound footing. However, the evidence establishes that the panel acted as individuals. Hall did not prompt the panel before the interviews and did not seek to direct their considerations through the evaluation process. Significantly, he testified that he did not let the panel know the basis of his concerns with the Grievant's ethics. Panel scores bear this out. Nelson's and Olson's scores for Baird and the Grievant do not vary on Item 8 and bear little relation to Hall's. Nor is it tenable to conclude that the scores were "wired." Hall's and Olson's failure to rate the candidates overall does little to build the case for Baird over the Grievant and affords no basis to believe the panel members deliberately coordinated their actions. Rather, the evidence is that Hall was convinced that Baird's skill and ability would speak for itself, and that the panel would be drawn to the same conclusion by the force of the interview process itself. The evidence establishes he was right.

More significantly, the panel voiced common concerns, with solid evidentiary roots. Baird, by force of her experience, had greater familiarity with special education procedures and the software programs that the District uses to implement them. The Grievant's testimony highlights that she understood she had a considerable amount to learn about the job. This highlights the panel's concerns with the depth and quality of her desire to undertake the necessary learning process.

Testimony at hearing substantiates these concerns. The Grievant candidly acknowledged ambivalence about the position. Each panel member noted the ambivalence. Her interest in improving her ability to vacation with her husband is not improper. However, it is not necessary to overplay the desirability of an applicant "selling herself" to conclude that motivation to take on a challenge can reasonably be considered a significant part of the ability to perform work. The Grievant's testimony affirms the doubts that the panel members perceived. Beyond this, the panel's failure to seek supplementary materials from each applicant cannot obscure that Baird, unlike the Grievant, aggressively sought to document her interest in the position. The evidence underscores the panel members' assessment of the two applicants during the interview. At hearing, the Grievant's answers were short. It took effort from the advocates to get her to expand on answers. The panel members noted similar behavior during the interview.

The Union forcefully argues that the Grievant, unlike Baird, exposed herself to the rigors of the hearing process. This point has force. The hearing was long, and at times, uncomfortably personal in tone. The interpretive issue, however, focuses on the reasonableness of the panel's conclusion that Baird's skill and ability so significantly

outweighed the Grievant's seniority that Baird deserved the position. Baird knew the position, had demonstrated her competence in it, and aggressively sought it. The Grievant would have to learn the position, and her willingness to shorten the learning curve was dubious. Thus, her ambivalence in seeking the position is a valid panel consideration. The force of the Union's arguments must be noted, but their factual basis belies that force. At the close of a long and contentious hearing, during which her desire to take the position was repeatedly questioned, the Grievant was asked, by her advocate: "Do you want this job?" She responded: "I would like to try it." The ambivalence of this response is noteworthy, and underscores what convinced Olson and Nelson that only one of the applicants was truly interested in the position.

The panel's conclusion that the Grievant did not regard the Administrative Assistant, Special Services/Title I position as a challenge she had a demonstrable interest in undertaking cannot be dismissed as unreasonable. Against this background, and in spite of considerable reasons to doubt the posting/interview process, the evidence does not support a conclusion that the District violated Section 7.04 by selecting Baird over the Grievant.

#### AWARD

The District did not violate the Collective Bargaining Agreement when it did not award the Administrative Assistant, Special Services/Title I position to the Grievant.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 12th day of March, 2004.

Richard B. McLaughlin /s/

Richard B. McLaughlin, Arbitrator

