

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
NEENAH EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION
and
NEENAH JOINT SCHOOL DISTRICT

Case 11
No. 62523
MA-12318

(Tony Reader Job Posting Grievance)

Appearances:

Tony Renning, Attorney at Law, Davis & Kuelthau, S.C., P.O. Box 1278, Oshkosh, WI 54903-1278, appearing on behalf of the District.

Roger Palek, Executive Director, WEAC – Fox Valley, 921 West Association Drive, Appleton, WI 54912-7520, appearing on behalf of the Association.

ARBITRATION AWARD

Neenah Joint School District (hereinafter referred to as the District or the Employer) and the Neenah Educational Support Personnel Association, (hereinafter referred to as the Association) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen as arbitrator of a grievance filed by Tony Reader over the District's use of an aptitude test in its selection process for a job. The undersigned was so designated. A hearing was held on October 9, 2003, in Neenah, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. A stenographic record was made of the hearing. The parties submitted post-hearing briefs and reply briefs, the last of which were simultaneously exchanged through the undersigned on April 4, 2004, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the relevant provisions of the contract and the record as a whole, the arbitrator makes the following Award.

ISSUE

The parties stipulated that the following issues should be determined herein:

Did the District violate the collective bargaining agreement when it awarded the Mechanical Repairman Maintenance III position to Todd Klundt?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE II - MANAGEMENT RIGHTS

- A. The Board of Education on its own behalf hereby retains and reserves unto itself, all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by applicable law, rules, and regulations to establish the framework of school policies and projects, including (but without limitation because of enumeration) the right:
- 1 . To the executive management and administrative control of the school system and its properties, programs, facilities and employees;
 2. To employ all personnel and, subject to provisions of law, determine their qualifications and conditions of employment, promotion, and work assignment.
- B. The Board's right to operate and manage the school system is recognized as including the determination and direction of the work force. This includes the right to plan, direct and control operations; to carry out the statutory mandate and goals assigned to the school board in the most appropriate and efficient manner possible; to manage the work force and assign work to employees on said jobs; to determine the means, methods, materials, and schedules of operation; to determine the work to be performed to maintain the efficiency of employees; to determine the number of employees on jobs; to create, revise and eliminate jobs; to establish and require the employees to observe reasonable rules and regulations; to hire and layoff; to maintain order; and to transfer, suspend, demote, discipline and discharge employees.
- . . .
- E. The exercise of these powers, rights, authority, duties, and responsibilities by the Board and the adoption of such rules, regulation and policies as it may deem necessary shall be limited only by the specific and express terms of this Agreement. The foregoing enumeration of the functions of the Board shall not be deemed to exclude other functions of the Board not specifically set forth, the Board retaining all functions not otherwise specifically limited by this Agreement.
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ARTICLE IV - GRIEVANCE PROCEDURE

A. Definition

The term grievance as used in this Agreement is limited to a complaint, dispute or controversy in which an employee, a group of employees, or the Association alleges that the Employer has failed to discharge an obligation assumed by it under the terms of this Agreement. Such grievance may be filed by either an employee, a group of employees, or the Association.

C. Procedure

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Step 5 - If the grievance is not satisfactorily resolved at Step 4, the Association may submit the grievance to binding arbitration within twenty (20) working days of the Board's decision. When a request has been made for binding arbitration, the employer and the Association representative shall select an impartial third party to act as arbitrator by requesting the Wisconsin Employment Relations Commission to submit a list of five (5) names for the parties' consideration, each of whom must be a member of the National Academy of Arbitrators and a resident of Wisconsin. A flip of a coin will determine who will strike the first name from the list, and thereafter, each shall alternately strike a name from the list. The fifth and remaining name shall act as arbitrator.

D. Arbitrator's Authority

The decision of the Arbitrator shall be final and binding upon the parties to this Agreement as long as his or her award draws its essence from the Collective Bargaining Agreement. The Arbitrator shall not, however, have the authority to change any of the terms or provisions of this Agreement or to add thereto or subtract therefrom.

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ARTICLE VI - SENIORITY

A. Recognition

The Board shall recognize seniority in this Agreement, to be based on the employees' date of hire and service to the District. The employees shall not lose their seniority because of absence due to illness, disability, or temporary lay off, due to lack of work, funds or any other conditions beyond the control of either party to this Agreement.

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ARTICLE VIII - NEW POSITIONS, VACANCIES

A. Definition

A vacancy shall be defined as:

1. A job opening not previously existing in the list of Job Classifications shown in Appendix A.
2. A job opening created by termination, promotion or transfer of existing personnel, when the job continues to exist as a position in the District.

B. Posting Vacancies

A new job or vacancy within the bargaining unit shall be filled as follows:

1. Employees shall be notified via school distribution not less than seven (7) calendar days prior to filling the vacancy. A copy shall be furnished to the President of the Association.
2. All nine (9) and ten (10) month employees shall be notified of job vacancies within their job classification via the U.S. mail during the summer months provided they notify the Personnel Office at the close of the school year that they wish to be notified through the summer months.
3. The job posting will include a brief job description, salary range if different than stated in the contract, and a statement as to hours and shift.
4. Employees desiring vacant jobs shall apply to the Director of Human Resources in writing.

C. Awarding Positions

1. At the end of the posting period, the vacancy or new job will be awarded on the basis of the following provisions:
 - a. Qualifications
 - b. Seniority
2. Seniority shall govern when applicants are equal in qualification. In the event the most senior employee is not awarded the position, the reason(s) shall be given in writing to both the Employee and the Association President.

BACKGROUND

The District provides general educational services to the citizens of Neenah, Wisconsin, and employs, among others, personnel in the Maintenance classifications, including Carpentry/Maintenance Relief Worker and Mechanical Repairman. These positions are included in the bargaining unit represented by the Association. The Grievant, Tony Reader, started with the District in 1988 and at the time of this grievance was employed in the Carpentry/Maintenance Relief Worker position.

In January of 2003, the District posted an opening for a Mechanical Repairman III, which is a more highly rated and highly paid job than the Grievant's Carpentry position. The job posting listed ten qualifications for the job:

1. High school graduate.
2. Knowledge and/or technical training related to the job responsibilities.
3. Proficiency in written and verbal communication.
4. Comprehend and interpret HVAC, electrical, control drawings, schematics and technical specifications.
5. Fourth Class boiler license.
6. Fourteen-hour asbestos training certification or ability to attain.
7. Must be able to legally drive in the State of Wisconsin.
8. Possess physical skills and stamina to perform the responsibilities of the position.
9. Certified pool operators license or ability to attain.
10. Building Operator Certification or ability to attain. 1/

1/ The body of the posting is attached to this Award as Appendix "A"

The Grievant posted for the job, as did Todd Klundt, an assistant to the Head Custodian at one of the District's schools, who had joined the District in 1996 and Bill Koehnke, another unit employee. The men were interviewed by a panel of three interviewers, and given both the Bennett Mechanical Aptitude Test and an interview test devised by Thomas Beck, the District's Director of Operations and Maintenance to measure knowledge of HVAC and electrical work.

Following the tests and the interviews, Beck sent a memo to Human Resources Director Vicki Holt, showing the panel's scoring matrix for the candidates based on various measures:

	Klundt	Reader	Koehnke
Measure			
Bennett Mechanical Aptitude Test Score:	96%	78%	82%
Points:	3	1	2
Interview Test Score:	90%	65%	78%
Points:	3	1	2
Demonstrated Past Initiative	3	1	2
Education Applicable to Position	3	2	1
Ranking From Interview by:			
Beck	3	1	2
Bowser	3	1	2
Bockin	3	1	2
Total Points	21	8	13

Beck stated in his memo that Klundt was the unanimous choice of the interviewers, and cited his demonstrated initiative, significantly better test scores and his enrollment in the Electro-Mechanical Technology Program at Fox Valley Technical College as factors in Klundt's favor.

Klundt was awarded the position and the instant grievance was filed, protesting the selection of a significantly junior applicant for the job. It was denied in the lower steps of the grievance procedure and was referred to arbitration.

Additional facts, as necessary, will be set forth below.

POSITIONS OF THE PARTIES

The Position of the Association

The Association takes the position that the District violated the contract. The contract contains a relative ability clause, requiring that a junior bidder be substantially more qualified than a senior bidder in order to receive a promotion. Further it requires that the reasons for preferring the junior bidder be provided in writing to the senior bidder. In justifying its selection of the junior bidder, the District advised the Grievant in writing that its reasons for picking Klundt were:

- He had the highest score on the written test indicating job knowledge.
- He had the highest score on the Bennett Mechanical Aptitude test.
- His enrollment in the Mechanical Technology Program at Fox Valley Technical College relative to position indicating technical ability.
- Positive annual evaluations indicating initiative, organization, ability to direct a crew and evidence of pleasant personality. [*See Association Exhibit 3*]

The Association suggests that the dominant reason for selecting Klundt, based on the testimony of the District's witnesses, was test performance. Relying almost exclusively on test results is an inappropriate means of assessing qualifications. Test results may be one legitimate factor, but interviews with supervisors, attendance and disciplinary records, experience, fitness, education, and personal characteristics are among the other factors traditionally recognized as appropriate measures of qualifications for a promotion. The District chose to ignore these factors, to the point of not even inquiring about some, and Beck actually testified that test results are a better indicator of qualifications than job experience. The District's selection criteria were, in short, arbitrary. While an employer has considerable latitude to make judgments of qualifications, no contract allows for the arbitrary exercise of discretion.

The Association also questions the validity of the test results that drove the District's decision-making here. In order to have validity as a selection tool, a test must be (1) related to the job qualifications listed on the job description; (2) fair and reasonable; (3) administered in good faith and without discrimination; and (4) properly evaluated. Two tests were employed by the District – the job knowledge test devised by Beck and the Bennett Aptitude Test. While the scoring matrix used by the interviewers appears to have given equal weight to the knowledge test, the Bennett test, interviews, past initiative and education it is evident from the testimony that the Bennett test was given little weight in the actual decision, and the arbitrator should not attach any weight to those results. Beck admitted that the Bennett test solely measures aptitude for understanding mechanical situations. Yet these applicants are experienced workers in the mechanical field, and there is no evidence that they have not already proved their aptitude for the

work. Indeed the scoring matrix itself is arbitrary, since no rational person would weigh an aptitude test as being equal to past performance in the same occupational field in assessing qualifications. For these reasons, the arbitrator should treat the results of the Bennett test as irrelevant to the determination of qualifications.

The knowledge test was plainly the deciding factor for Beck and the other interviewers, and that test cannot meet the standards required for a valid test. The test was designed by Beck, who admits having no expertise in test design. The test supposedly measures knowledge of HVAC and electrical systems, but it focuses on boiler systems, and there is no reason to test for much of this, since the job already requires a 4th Class Power Engineer certificate. The District's own expert witness, Michael Sturm, testified that the test had only one question that would not be covered in the study for the Engineer's certificate. Beck conceded that most of the questions were drawn from study materials for the Engineer's certificate. This raises the question of whether it is fair and reasonable to hinge selection for a job on a test, when the candidates already possess a certification that attests to a higher level of expertise than the test does. This question is particularly compelling when one considers that the questions on the test only covered a few of the actual responsibilities of the job. The construction of a test that is narrowly focused on a portion of the job, where certified competence in those functions is already required, strongly suggests that the test is not reasonably related to the actual requirements of the job.

The overlap between the Engineer certification and the written test always draws into question whether the test was fair and reasonable. The certification attests to qualification in the area of boilers and is a stated requirement of the job. Performance on the test, which supposedly measures the same knowledge, is not listed as a job requirement. The Association asks whether the test questions can be considered fair and reasonable when a person receiving no points on the test is still qualified for the job by reason of his certification, and when a person receiving 100% on the test is unqualified if he does not have the certification. The Association points out again that the test only asks about a small portion of the job duties, and suggests that this means it cannot be a fair measure of overall qualifications. Another defect with the test is the inclusion of abstract math questions. These may have theoretical relevance to the position, but in practical terms the hands-on ability to perform the job trumps knowledge of algebra.

The greatest defect with the knowledge test, the Association argues, is with the fairness of its creation and administration. No test had ever before been required for this job. No requirement of testing was listed on the job description. The Grievant had a few hours' notice of the test, while Klundt had at least a day or two of advance knowledge. In creating the test, Beck chose to include theoretical math questions, knowing that Klundt was currently enrolled in a math class and the Grievant was years removed from the classroom. Along these same lines, but of greater significance, the test was designed to ape the Engineer's test, which Beck knew Klundt had taken only two years before, while the Grievant had taken that test twelve years earlier. Thus Klundt was pre-positioned to do well on this exam.

There were also significant problems with the evaluation of the test. Beck scored the test. He did so without first creating an answer key or a means of weighting the answers. He explained that he did this because he was principally interested in the thought processes of the applicants, and because the test was too complex to create an answer key. Neither did he establish a passing grade before administering the test. These defects are all reflected in the Beck's testimony about scoring the test. On one question, both men missed a gas element, albeit different elements. While there was only one "right" answer, Beck judged the Grievant's answer "more wrong" than Klundt's. In other instances, Beck judged the Grievant's right answers less logical than Klundt's right answers. At the same time, he attached no significance to the Grievant correctly answering questions about boiler safety – obviously a critically important concern – while Klundt got that question wrong. On another question, Beck said either "zero" or "infinity" was correct, but gave both the Grievant and Klundt credit for answers that bore no relationship to those answers. Overall, the scoring of the test was at best haphazard and at worst, slanted to Beck's favored candidate.

Beyond the test results, the other factors weighed in Klundt's favor were inconsistent with the requirements of the contract. He was given credit for being enrolled in a degree program at the Technical College, notwithstanding the fact that his enrollment was recent, and aside from being admitted to school, he had accomplished nothing in the program. Some grades were cited, but they were Beck's recollection of what he was told, not an official transcript. If coursework was going to be a criterion for selection, it should have been listed on the posting. Moreover, the Grievant should presumably have been given substantial credit for receiving a 4.0 GPA in his coursework for the Power Engineer's certificate, where Klundt achieved only a 3.33 GPA.

The District also relies on an assessment prepared by Richard Sturm, an outside expert. Sturm said that Klundt was clearly the better candidate. However, Sturm admitted that his assessment was based solely on the results of Beck's written test, not on any knowledge of the candidates' work or background. The Association notes that, notwithstanding his assessment, Sturm was the one who gave the Grievant a 4.0 in his Engineer certification classes, and the one who signed his certification as a Power Engineer.

The Association asserts that Beck simply had no idea what the real qualifications of these candidates were when he made this decision, and that he conceded as much in the grievance procedure, when he could not give more than vague generalities about their backgrounds and skills. Likewise his citation of a "personnel file review" as the basis of his decision that Klundt had supervisory ability is nothing more than another vague assertion, unsupported by any personnel file material or any testimony by Klundt's actual supervisor. In the same vein, there was no testimony by the Grievant's supervisor about his abilities. The District's entire case is based on the judgments of a manager who is two steps removed from actual knowledge of either employee.

The bases on which this decision was made – a flawed test and the unsupported generalizations of a manager with no real knowledge of the candidates – cannot overcome the clear evidence that the Grievant was qualified for the job and had the greater seniority. Accordingly, the grievance must be granted and the Grievant made whole.

The Position of the District

The District takes the position that it has fully complied with the contract, and the grievance should therefore be denied. The Management Rights provision reserves to the District the right to determine the qualifications of employees. The selection decision of the District was accomplished through a system which is properly established, attempts to reasonably measure relevant factors, and is neither arbitrary, discriminatory nor capricious. Given that, the arbitrator must defer to that decision, even if he personally would have made a different decision.

The Seniority provision allows the senior employee an advantage only if his qualifications are at least equal to the other candidate's qualifications. Again, that decision is reserved to management and must be accepted unless it can be shown to have been in some way irrational. Quite to the contrary, the decision to promote Klundt over Reader was based on the senior employee's demonstrated lack of qualifications for the job and the junior employee's possession of the needed qualifications.

Given the nature of the job, knowledge of HVAC is a critical element. The District fairly measured the knowledge of these two employees in this critical area, through the use of objective tests, discussions with their direct supervisors, review of their personnel files, and consideration of their prior work histories and experience. The results of those measures showed conclusively that Reader was not qualified to work in the job.

The Union contests the reasonableness of the Interview Test used to measure knowledge of HVAC, but its arguments are misplaced. The only limitation on the right to use tests are the familiar requirements that the test be (1) specifically related to the requirements of the job; (2) fair and reasonable; (3) administered in good faith and without discrimination; and (4) properly evaluated. The test here was devised by Beck, who is intimately familiar with the requirements of the Repairman position. It was administered to supervisor Dave Bowser to confirm that it was a reasonable test. It was reviewed and validated by Richard Sturm, a commissioned instructor and examiner in the field. Sturm confirmed that the test was a reasonable and fair measure of knowledge in HVAC. The test was administered to both candidates under the same conditions, and the results were evaluated using reasonable criteria and a pre-determined passing score of 70%. Again, Sturm reviewed the scoring on the test and concurred with the judgment of management that Reader's scores showed a lack of qualifications for the job. The test meets every one of the criteria for a valid test of qualifications, and the District was therefore entitled to rely on the results in reaching its decision that Reader was not eligible for the promotion.

The District again stresses that the Grievant's seniority only comes into play as a tiebreaker, where he and Klundt are equal in qualifications. Even if he had possessed the minimum qualifications for the job, there can be no serious argument that he was equal to

Klundt. The interview test, the aptitude test, the judgment of supervisors, a review of performance evaluations – all gave Klundt a significant advantage, leading to the unanimous decision of the interview panel that he was far more qualified for the opening. For all of these reasons, the Arbitrator must conclude that the District’s decision to bypass Reader was rational, and was not tainted by bad faith or discrimination. Accordingly, the grievance should be denied.

DISCUSSION

Article VIII, §C of the collective bargaining agreement establishes the criteria for filling job postings:

C. Awarding Positions

1. At the end of the posting period, the vacancy or new job will be awarded on the basis of the following provisions:
 - a. Qualifications
 - b. Seniority
2. Seniority shall govern when applicants are equal in qualification. In the event the most senior employee is not awarded the position, the reason(s) shall be given in writing to both the Employee and the Association President.

This grievance challenges the District’s assessment of the qualifications of the candidates for the Repairman position. The Management Rights clause reserves to the District the right to make such assessments, subject to the usual limitation that the assessment cannot be arbitrary [“The Board of Education on its own behalf hereby retains and reserves unto itself ... the right ... to employ all personnel and, subject to provisions of law, determine their qualifications. . .”]. The focus of most of the parties’ arguments is the knowledge test constructed by Beck, although there are several other disputed items. Each is addressed in turn.

A. The Validity of the Knowledge Test – Content and Administration

The use of objective tests to measure qualifications is within the discretion of management, and is generally favored over reliance on subjective judgments. Such tests are given deference by arbitrators where they meet generally accepted minimum standards for relevance, fairness and accuracy. Those standards have been articulated as requiring that the test be (1) related to the job qualifications listed on the job description; (2) fair and reasonable; (3) administered in good faith and without discrimination; and (4) properly evaluated.

The Association's principal challenges to this test are that:

- No test requirement is listed on the job qualifications in the posting
- The test was compiled by an amateur
- The test focuses on knowledge of boiler operations, which is already covered by the requirement of a Fourth Class Power Engineer Certificate
- The test includes math questions not heavily related to the actual demands of the job
- The Grievant had short notice of the test, while Klundt had several days' warning
- Beck graded the test in an irrational way, without any answer key or predetermined passing grade

Several of these objections lack great substance. The lack of a stated requirement in the posting that candidates pass a written knowledge test is not a fatal defect. Indeed, it is not a defect at all. The test is not a qualification for the job – it is a means of measuring the extent to which the candidates possess the stated qualifications for the job. The fact that Klundt might have an advantage in a written test because his schooling and study for certification is more recent is a fair point, but the evidence suggests that written tests are being used for all of the more responsible jobs in the Maintenance Department, and I cannot conclude that this format was used simply to disadvantage the Grievant. Neither is the fact that Beck has no background in testing inherently a problem. The validity of the test rises or falls on how well it meets the standards for relevance, fairness and accuracy, not on the credentials of the person who wrote it. Finally, the Association does not identify what advantage Klundt may have had from knowing several days in advance that a test would be administered. There is nothing in the record to suggest that the content of the test was known to Klundt, so that he could have studied for it. Moreover it appears that the delay in the Grievant's knowledge that a test was scheduled was due to the fact that he was on vacation until the day before his interview, not because the District somehow hid it from him.

The more substantial objections relate to the validity of including pure math questions, the fact that the content of the test is weighted to boiler operations, and the scoring of the test. As to the first of these, the Association complains that math may be relevant to some of the duties of the job, but should not be given equal weight to more practical questions. A number of the questions require math skills, but only one of the 32 test questions, Question #20, is an abstract math question. All of the others are word problems, testing the applicant's ability to perform calculations that would be required to make on the job decisions. Both candidates answered Question #20 correctly, allowing for rounding. Thus the impact of this question is, itself, purely an abstract question. It had no effect on the selection.

Addressing the emphasis on boiler related questions, the Association argues that competence in boiler operations is already insured by the requirement of a 4th Class Power Engineer's certification, and that boiler operations are but one aspect of the job. These objections do not go to whether the test is a fair and reasonable instrument for measuring qualifications for the job. It is true that the bulk of the test – 23 of 32 questions – relates to boilers, though it also covers some electrical issues and some procedural issues. All of these are relevant to the actual job. The real question is whether the weight given the test in the overall assessment of candidates can be justified – that is, whether knowledge of boiler operations is given disproportionate significance in comparing these candidates.

B. The Validity of the Knowledge Test – Assessment

The scoring of the test is challenged on the grounds that Beck had no predetermined answer key, and no predetermined passing grade. The lack of an answer key opens the assessment of the test to attack, but it is not in and of itself an indication that the test or its scoring are flawed, so long as Beck can identify the basis on which he gave credit for the answers. That said, there are certain questions on which Beck's scoring is difficult to understand. The Association correctly notes that he gave both candidates credit for one question (question 26) where their answers bear little or no relationship to what he says the correct answer is. On other questions, Beck testified that he felt Reader's answers were not as logical as Klundt's, or that Reader's wrong answer implicated his ability to make judgments about equipment purchases and the like. The Association assails Beck's characterizations of the conclusions he drew from these answers. This confuses the actual test with Beck's testimony about the test. Beck did not separately weight which answers he felt were logical or illogical and did not give Klundt more credit for logic. He marked the answer right or wrong and calculated a raw score. The test score was then used in the selection process as one of the components in making the selection decision. The one question on which the grading is markedly peculiar (Question 26) was counted as correct for both Reader and Klundt. While the Association does a very good job of raising questions about Beck's testimony regarding his interpretation of the test questions and answers, the fact is that, with the exception of Question 26, the actual scoring of the test is correct.

The Association also questions Beck's failure to establish a passing grade beforehand. The District, for its part, suggests at several points in its argument that 70% was a passing grade and that Reader failed the test by scoring 65%, thus disqualifying himself from consideration. It is not the case that Beck established 70% as a passing grade. It was the District's expert witness, Sturm, who testified that 70% would normally be considered passing on a test. Sturm became involved after the selection process was completed and his after-the-fact suggestion of 70% as a cutoff does not decide the question. It may well be that Beck considered Reader's performance on the test proof that he was not qualified in boiler operations, but that is not because he "failed" the test in some formal sense.

The test instrument used by Beck was imperfect in several respects, most notably in the lack of any pre-determined criteria for grading. Perfection is not the standard for giving weight to a test. On balance, the knowledge test used in this selection process can fairly be said to be related to the job qualifications, fair and reasonable in its content, administered in good faith and properly evaluated. The remaining issue is whether the outcome of the test was given proper weight in the selection process.

C. The Validity of the Knowledge Test As Proof That Reader Was Not Equal to Klundt

Each candidate was required to possess a Power Engineer's license, and the Association argues that the knowledge test seeks to establish expertise that is already demonstrated by possessing the license. The answer to this is that, as a practical matter, possessing the certification is not proof of relative knowledge or ability. It is evidence of minimum qualifications, and the Grievant's possession of the certification effectively rebuts Beck's conclusion that he is not qualified in boiler operation. However, just as all candidates for a driving job may possess drivers licenses without being equally skilled drivers, the District cannot be required to presume that all of these candidates are equally knowledgeable about boiler operations, electrical and HVAC simply because they all have a Power Engineer's certification. Performance on the test provides a basis for comparing the job related knowledge of minimally qualified candidates, in order to determine which of them is more knowledgeable. The contract here does not guarantee a job to the senior applicant if he or she is minimally qualified. It requires a general equality of qualifications before seniority controls, and the District is entitled to take reasonable steps to measure those qualifications. The knowledge test is among the steps it has available.

The District viewed Klundt's 90% score on the knowledge test as conclusive evidence that he is qualified, and the Grievant's 65% as conclusive proof that he is unqualified. As discussed above, I cannot conclude that the Grievant is unqualified on the basis of the knowledge test. He possesses the required minimum certification. Given the very wide disparity in scores, however, the District could fairly conclude that Klundt is materially more knowledgeable than the Grievant.

D. The Validity of the Other Criteria for Favoring Klundt

The decision to favor Klundt was heavily influenced by the knowledge test, but the interviewers also favored him on a variety of other bases. As described in the notice given to the Grievant by the Human Resources Department, Klundt was preferred based on knowledge test scores, his performance on the Bennett Aptitude test, his enrollment in the Mechanical Technology Program at Fox Valley Technical College, and his annual performance evaluations. I agree with the Association that two of these bases are not entitled to much weight in comparing these candidates.

The District administers the Bennett Mechanical Aptitude test to all applicants for maintenance positions and has for some time. The parties do not devote much attention to the aptitude test in their arguments and I cannot say that any particular weight can be assigned to the results of an aptitude test administered years ago where the applicants have all satisfactorily performed maintenance jobs for quite some time since taking the test. An aptitude test may have relevance where an employee moves into a different functional area, but administering a mechanical aptitude test to experienced maintenance employees provides little useful insight to their actual abilities. As to the citation of Klundt's enrollment at Fox Valley, while he can be given credit for initiative for having enrolled in the technical college program, the Association is correct that merely enrolling, without having actually done any relevant coursework, is scant evidence of qualifications.

The assessment of the candidates' performance over the years is clearly relevant in assessing qualifications. The Association attacks the District's reliance on past job performance, suggesting that the preference for Klundt was based only on Beck's subjective impression, and that the Grievant's direct supervisor and Klundt's direct supervisor, who would have had actual knowledge of the candidates' capabilities, were not shown to have had input to the decision. This is an overstatement. It is true that neither man testified in the arbitration hearing, but both sat on the interview panel with Beck, both evaluated the candidates, both ranked Klundt the best qualified candidate, and both ranked the Grievant as the least qualified candidate. Thus the process used for making the decision included input from those most familiar with the work of the two candidates.

The Association has done a very good job of raising questions about the adequacy of the evidence concerning past job performance. While I have no doubt that Beck testified honestly about his subjective impressions of the work records of the candidates, he was not personally familiar with them, and could speak only in the most general terms about their prior performance and how it related to the ultimate judgment of qualifications. That said, the question is whether, taken as a whole, the record of the arbitration proceeding supports the District's decision that the Grievant was not equal to Klundt. Even discounting Beck's subjective assessment of prior performance, the result of the aptitude test, and the credit given Klundt for enrolling in the technical school program, it remains the case that the striking disparity in the outcome of the knowledge test provides a substantial basis on which the District could have concluded that the Grievant was not the equal of Klundt. The test is flawed, but valid, and comparing the Grievant's very poor performance with Klundt's very good performance allows for a good faith conclusion that Klundt was the superior candidate for the Mechanical Repairman position.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The Employer did not violate the collective bargaining agreement when it awarded the Mechanical Repairman Maintenance III position to Todd Klundt. The grievance is denied.

Dated at Racine, Wisconsin, this 10th day of December, 2004.

Daniel Nielsen /s/

Daniel Nielsen, Arbitrator

APPENDIX “A” – Job Posting

Job Title: Mechanical Repairman

Repair, operate and provide preventative maintenance for the district buildings, including HVAC, plumbing, electrical and communication under the direction of the Director of Operations and Maintenance. Assist the Director in the energy management of the district by operating the systems in an efficient manner. Provide instruction to building level personnel in preventative maintenance and safe operation of the HVAC systems.

Performance Responsibilities

1. Repair, operate and provide preventative maintenance for the district buildings including HVAC, plumbing, electrical and communications.
2. Maintain accurate records on preventative maintenance and repairs.
3. Repairs boilers, plumbing and heating equipment, pneumatics and electrical controls using appropriate tools and methods.
4. Ability to weld and fabricate metal components.
5. Assists in the supervision of contracted services, i.e. HVAC, plumbing, electrical and communication contractors.
6. Required to make emergency after-hour repairs in a timely manner.
7. Required to work in confined spaces using approved methods, procedures and equipment.
8. Informs Director or designee on work activities and future maintenance needs.
9. Assist with snow removal operations.
10. Required to perform other operations and maintenance duties as assigned by the Director or designee.

Personal Requirements

1. Initiative in all areas of performance responsibilities.
2. Works independently under general direction of the Director or designee.
3. Ability to organize and prioritize work.

4. Ability to work from scaffolds, ladders and personal lifts.
5. Capable of directing a maintenance crew on special projects.
6. Pleasant personality and cooperative attitude.
7. Participates in educational opportunities, provided by the district, to enhance job related skills and knowledge.
8. The use of a respirator in the performance of duties, which will require that the person not have a full beard.

Qualifications

1. High school graduate.
2. Knowledge and/or technical training related to the job responsibilities.
3. Proficiency in written and verbal communication.
4. Comprehend and interpret HVAC, electrical, control drawings, schematics and technical specifications.
5. Fourth Class boiler license.
6. Fourteen-hour asbestos training certification or ability to attain.
7. Must be able to legally drive in the State of Wisconsin.
8. Possess physical skills and stamina to perform the responsibilities of the position.
9. Certified pool operators license or ability to attain.
10. Building Operator Certification or ability to attain.