

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**VILAS COUNTY**

and

**LOCAL 474-A OF THE AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO**

Case 85  
No. 66244  
MA-13466

*(Denial of Posting Rights)*

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**Appearances:**

**John Prentice**, Petrie & Stocking, S.C., Attorneys at Law, Suite 1500, 111 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, appeared on behalf of the County.

**Dennis O'Brien**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5590 Lassig Road, Rhineland, Wisconsin 54501, appeared on behalf of the Union.

**ARBITRATION AWARD**

On August 31, 2006, Vilas County and Local 474-A of the American Federation of State, County and Municipal Employees, AFL-CIO filed a request with the Wisconsin Employment Relations Commission seeking to have William C. Houlihan, a member of the Commission's staff, assigned to hear and decide a dispute pending between the parties. An evidentiary hearing was conducted in Eagle River, Wisconsin on December 20, 2006.

At the outset of the hearing, the parties stipulated to the following issue:

Did the County's method of selecting the Information Technology Specialist violate the collective bargaining agreement?

**BACKGROUND AND FACTS**

Christine Kamps is the current Information Technology Director. There are three people in the IT office, including the Director, responsible for County-wide IT service,

including the maintenance of five networks and 200 computers. Prior to being named the IT Director, Ms. Kamps worked as an IT Specialist for 12 years in the Department. Upon her promotion, the IT Specialist position became vacant and on or about May 1, 2006 was posted internally to bargaining unit members. The job description that accompanied the posting was the job description previously in effect for Ms. Kamps.

Four internal applicants, including the Grievant, Ginger Hipke-McCabe, submitted formal applications for the vacancy. Each was required to take a written test which included a hands-on identification of parts of a displayed computer, a series of problem-solving questions, a series of questions specific to internally-used operating systems and equipment, a self-identification of familiarity with various operating systems, and a hands-on directive to create a new folder.

The test was designed by Ms. Kamps in consultation with a co-worker. It was her intent to design a test that tested threshold competence specific to service delivery in the Vilas County IT Department. The test was seven pages long and applicants were allowed 45 minutes to complete the exam. Point totals were assigned to each question, with a total of 330 points. No specific passing score was identified, though Ms. Kamps expressed the hope that successful candidates would score 80%.

Internal candidates scored 44%, 48%, 24%, and 35%, respectively. None were deemed to have successfully passed the test. The job was posted to outside applicants, who were given the same test. Eleven external applicants came forward, six of whom appear to have completed the test with some level of success. The three high scorers were invited to interview with the County Personnel Committee. The high scoring individual (score of 71.43) was not selected due to his interview. The second high scorer, Michael Dunning (score of 68.25) was selected.

The Union filed a grievance on or about May 17, 2006 complaining that the County had set an unreasonable standard of performance in assessing the skills of internal applicants and further contending that the internal applicants were qualified to fill the Information Technology Specialist position.

During the course of the evidentiary hearing, the Union indicated that it would not be seeking to have Mr. Dunning removed from the position in favor of a re-test or placement of the grievant in the position. Rather, the Union was seeking an analysis of the posting process for future vacancies.

At the conclusion of the hearing, I offered to provide an expedited Award focusing exclusively on the test and its application to the screening process. Both parties agreed to the narrowed scope of the Award. The Award was presented to the parties on December 21, 2006.

**RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT**

**ARTICLE II – MANAGEMENT RIGHTS**

The County possesses the sole right to operate County government and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to the following:

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- J. To determine the kinds and amount of services to be performed as pertains to County government operations, and the number and kinds of classifications to perform such services;

...

- L. To determine the methods, means and personnel by which county operations are to be conducted;

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The County agrees that it will not use these management rights to interfere with the employees' rights established under this Agreement or for the purpose of undermining the Union or discriminating against its members. Any dispute with respect to reasonableness of the application of said management rights which are mandatorily bargainable with employees covered by this Agreement may be processed through the grievance and arbitration procedure herein.

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**ARTICLE V – JOB POSTING**

A. Notice: In the event a job vacancy or new position occurs in the Courthouse Employees Bargaining Unit, if the County decides to fill the position, a notice of said vacancy shall be posted in the Courthouse so that all interested employees may apply. The notice shall contain the prerequisites required to qualify for the position, a description of the duties of the position, and shall be consistent with the requirements of the job classification. The notice shall remain posted for a period of one week and at the end of that period, if a qualified employee has applied, the Employer will then fill the vacancy within ten (10) working days. Employees on vacation and sick leave and temporary employees shall be notified of such job opportunities so that they will have a chance to apply.

B. Promotion Procedure and Trial Period: In making promotions, filling vacancies for new jobs, the policy of seniority shall prevail, provided the senior employee considered for the job is qualified to perform the essential duties for the job. All employees in the bargaining unit will be considered first. The senior qualified employee shall be given a thirty (30) calendar day trial period during which time the employee may return to his/her former position. In the event the senior qualified employee returns to his/her former position, the next senior qualified employee will be given an opportunity, and this process shall prevail until the position is filled. If there is any difference of opinion as to the qualifications of an employee, the Union Bargaining Committee may take the matter up for adjustment under the Grievance Procedure. The immediate supervisor may make temporary adjustments to any position in any emergency while the job posting procedures are carried out.

C. Positions Subject to Statutory Appointment: Positions for which elected officials have the statutory right of appointment need not be subject to posting to the bargaining unit as provided for in Paragraphs A and B of this Article. Employees accepting an appointed position shall serve a thirty (30) calendar day trial period during which time the employee may return, or be returned, to their former position. Employees accepting an appointed position shall retain bargaining unit seniority earned prior to the first day of work in the appointed position, but shall not accrue any additional bargaining unit seniority while in the appointed position.

Employees holding an appointed position shall not be subject to bumping by other bargaining unit employees whose positions have been eliminated, or who are otherwise laid-off. Employees in an appointed position may be removed from the position by order of the elected official with statutory authority to appoint pursuant to appropriate statutory procedures without recourse to the Grievance Procedure of this Agreement. Employees in an appointed position who are removed from the position by the elected official with statutory authority to appoint shall not have the right to bump into a bargaining position. Employees in an appointed position shall have the right to post for bargaining positions based on the bargaining unit seniority they had earned prior to their first day of work in the appointed position. Employees in an appointed position who are removed from the position by the elected official shall retain such posting rights for one year from the date of their removal from the appointed position. All other provisions of this Agreement shall be applicable to appointed positions and the employees who hold such positions.

An elected official with statutory right to appoint an employee to a position may elect to follow the job posting procedure described in paragraphs A & B of this Article. An employee who obtains an appointed position through the job posting procedure shall continue to accrue bargaining

unit seniority while in the position and shall have the bumping rights if removed from the position. Such employees may be removed from the appointed position by order of the elected official with statutory authority to appoint pursuant to appropriate statutory procedures without recourse to the Grievance Procedure of this Agreement.

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## **ARTICLE VII – GRIEVANCE PROCEDURE**

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H. Decision of the Arbitrator: The arbitrator shall not modify, add to or delete from the express terms of this Agreement.

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## **DISCUSSION**

I believe the County can test for minimum qualifications. Article V, Paragraph B, provides for promotion by seniority provided the senior employee is qualified to perform the essential duties for the job. The senior qualified employee is given a trial. A valid test is a legitimate way to assess qualifications.

The test standard is whether or not the employee is qualified to perform the essential duties for the job. The contract previously required that the senior employee “can qualify to perform the work”. The plain meaning of the language and its evolution make clear that the senior employee must be prepared to take on the essential duties of the job at appointment. Some training is always required, but not in the core elements of the work.

### **The Test**

The same test was given to both internal and external applicants. The Union called David Campshure as an expert witness on test design and scoring. While I do not believe Mr. Campshure qualified as an expert in the technical sense, I do believe he offered insight and useful analysis relative to the content and administration of the test.

Mr. Campshure had no objections to the hands on portion of the test. By extension, I took his testimony in this respect to extend to the problem-solving questions.

His biggest concern was related to Question 8. That question awarded a lot of points to individuals who indicated, without proof or demonstration, familiarity with various systems or software packages. As designed, the question does not test the familiarity of a candidate or any system or software.

Campshure noted the wording of Question 8:

“Which of the following operating systems are you most familiar with?”

I agree with his assertion that the wording of the question could lead a candidate to check just one system. That is not what was being sought. As a practical matter, no internal candidate appeared confused.

Campshure was critical of Question 9, a short essay with no point value. While I agree with his contention that it could be time-consuming in a timed exam, the question was common to all test takers. It shortened the test period for all test takers relative to questions with points attached.

Mr. Campshure testified that a review of the exam should be available with those who developed and scored the test. I agree. The grievant claimed that her test was misgraded in one section. There was no meaningful system to review and examine that claim. The purpose of the test is to provide an objective measurement. Grading errors compromise that goal.

I agree with Campshure’s contention that a cutoff score should be established before the test is scored. Article V, Paragraph B, provides that the senior qualified employee be given a 30-day trial period. Here, a test was devised to determine minimum qualifications, but no minimum satisfactory score was established. When no one could achieve the hoped-for 80%, the threshold was seemingly lowered to fit the test scores of the external candidates. Internal candidates subjected to a minimum qualifications test should have the passing threshold identified before the test is administered and scored. To wait until the scores are in to draw a line invites subjectivity, suspicion and controversy. It undermines the test as an objective measurement device.

I agree that a blind grading system should be used.

The test was a good test, with flaws. However, the grievant did not perform well on Questions 1 and 2, which Campshure acknowledged to be legitimate test questions and indicated were good predictors as to qualifications. The test had questions biased in favor of internal applicants. The record supports a finding that the questions were specifically job-related. There is no support in the record that the composition or administration of the test favored external candidates.

### AWARD

The grievance is sustained, consistent with the discussion above.

**REMEDY**

No other remedy is sought.

Dated at Madison, Wisconsin, this 5th day of January, 2007.

William C. Houlihan /s/

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William C. Houlihan, Arbitrator