

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**TAYLOR COUNTY**

and

**LOCAL 3679 – TAYLOR COUNTY COURTHOUSE AND  
HUMAN SERVICES EMPLOYEES, AFSCME, AFL-CIO**

Case 104

No. 66801

MA-13642

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**Appearances:**

**John Spiegelhoff**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1105 East 9<sup>th</sup> Street, Merrill, WI 54452, appearing on behalf of Local 3679 – Taylor County Courthouse and Human Services Employees, AFSCME, AFL-CIO.

**John Prentice**, Petrie & Stocking, S.C., Suite 1500, 111 East Wisconsin Avenue, Milwaukee, WI 53202, appearing on behalf Taylor County.

**ARBITRATION AWARD**

Taylor County, hereinafter County or Employer, and Local 3679 – Taylor County Courthouse and Human Services Employees, AFSCME, AFL-CIO, hereinafter Union, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The Union, with the concurrence of the County, requested the Wisconsin Employment Relations Commission to appoint a WERC Commissioner or staff member to serve as the sole arbitrator of the instant dispute. Commissioner Susan J.M. Bauman was so appointed. A hearing was held on May 1, 2007 in Medford, Wisconsin. The hearing was not transcribed. The record was closed the same day, after post-hearing oral arguments. The parties requested an expedited award.

Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the Undersigned makes the following Award.

**ISSUE**

The parties stipulated that the issue to be determined is:

Did the County violate the collective bargaining agreement when it failed to award the Network Administrator position to Cindy Neumann? If not, what is the appropriate remedy?

**BACKGROUND and FACTS**

On December 21, 2006, the County posted an internal job announcement for a Network Administrator position, which in pertinent part reads as follows:

**JOB POSTING**

**NETWORK ADMINISTRATOR  
INFORMATION TECHNOLOGY DEPARTMENT**

**GRADE 15A – NON-PROFESSIONAL CONTRACT**

Taylor County is currently seeking an immediate full-time Network Administrator. Candidate will act as the Administrator of the Local and Wide Area Network. Candidate will have a strong working knowledge of Windows Server 2003, Active Directory, DNS, TCP/IP, PIX Firewall, VPN, HP ProCurve Switches, IBM iSeries, IMS21 and Microsoft Office 2003 Professional. Candidate will also be responsible for writing and updating technical manuals, disaster recovery plans, computer policies and procedures. Strong technical writing and organization skills are a must.

The normal work week is 40 hours. However, evening and weekend work may be required at times. This position also requires the candidate to be on-call and available to come in at any time when problems arise.

Applicants for this position will possess an Associate Degree in Computer Networking or an equivalent combination of experience and education/training that will provide the required knowledge, skills and abilities. Applicant must be in good standing in their current department.

A test will be administered to ensure all applicants have the qualifications required.

Grievant Cindy Neumann timely completed a job posting form indicating her interest in the position, as did two other County employees, one of whom withdrew her application and another, Jennifer Tischendorf, who has less seniority. Ms. Neumann completed a Taylor County Employment application form on which she indicated “MS Word, Excel, Powerpoint, Publisher, and Access. Familiar with copiers, printers, fax, scanner, cameras.” in response to the instruction “If relevant, please describe word processing speed, software knowledge and office equipment experience.” In the application portion dealing with Education, Ms. Neumann indicated that she had graduated from Medford Senior High School and that she

ad completed 15 credits in Computer Science from Harcourt Education Direct/Penn Foster located in Scranton, PA. In response to “List any relevant training programs completed,” Ms. Neumann wrote “See Resume.”

Ms. Neumann’s resume included the following information that was arguably relevant to the Network Administrator position:

“Assist staff in learning and utilizing new computer programs and equipment” and “Develop and utilize systems to track billing, services and program data” during the course of her employment as a bookkeeper in the Taylor County Health Department since January 2001.

“Customer service, data entry, general office duties” during the course of her employment as Safety Director and Dispatcher for J. Bauer Trucking between June 1999 and July 2000.

Education:

2000-02 Harcourt Education Direct; Scranton, PA Applied Computer Science – 15 credits

Certificates:

2006 Skillsoft Courses: Concepts of IT; Word 2003; Access 2003; MS Office 2003, Excel 2003

Ms. Neumann and Ms. Tischendorf both took an Information Technology Networking Test. Ms. Neumann scored 17/30, or 57%. Both candidates were afforded an opportunity for an oral interview by a panel consisting of Melissa Weinke, the Director of Information Technology (IT) for Taylor County; Mary Bix, a County Board member and Chair of the County IT Committee; Carmen Thiede, IT Committee member; and Marie Koerner, Human Resources Manager. At the interview, Ms. Weinke asked all candidates the following questions:

1. What education pertaining to computers & networking have you had in the last year?
2. What is the most important to you in a job?
3. Tell us about a time in which you had to handle an irate customer, co-worker, etc. How did you handle the situation and what were the results?

4. Tell us about a stressful situation in your professional life.
5. Leon is out of the state on vacation. I am out of the office at training. Nancy calls in sick. You receive two calls regarding issues you have not yet had to deal with the department. How would you proceed?
6. What type of supervision do you prefer?
7. Where do you see yourself one year from now?
8. What can you offer this department that someone else can't?

All of the interview panel members<sup>1</sup> had an opportunity to ask follow-up questions of the applicants. Both Ms. Bix<sup>2</sup> and Ms. Thiede<sup>3</sup> asked specific knowledge-based and technical questions of Ms. Neumann including some regarding her experience with Active Directory, Cisco routing, etc. Ms. Neumann brought a portfolio with her, and committee members asked questions of her regarding the contents of that portfolio as well.

Ms. Neumann's portfolio included a transcript of the courses she had taken through Education Direct, including Introduction to Computer Concepts, Introduction to Business, Business Computer Systems and Applications, Technical Writing, and Introduction to Computer Programming, all of which were completed in May 2002. The portfolio also included a number of Certificates of Completion from on-line courses offered by Skillsoft: Concepts of Information Technology – Computers and IT (12/31/06); Using the Computer and Managing Files – Customization (12/31/06); Word Processing – Tables and Graphics in Word 2003 (12/31/06); Spreadsheets – Formulas and Functions in Excel 2003 (12/31/06); Database – Getting Started with Access 2003 (12/31/06); Presentation – Introducing PowerPoint 2003 (12/31/06); Information and Communication – Outlook 2003 E-mail (12/31/06); Getting Started with Word 2003 (9/7/06); Getting Started with Access 2003 (12/31/06); Introduction to Microsoft Office 2003 (9/5/06). Ms. Neumann also had undated certificates of completion from on-line courses offered by the HP Learning Center: Networking 101, Advanced network administration best practices for IT, Wireless networking solutions, Virus protection best practices, Servers 101, Linux 301: introduction to Linux system administration, and Adobe Photoshop CS2: introduction. The portfolio also included a Certificate of Completion from the Taylor County IT Department in MS Basic Access 2003, granted November 30, 2005.

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<sup>1</sup> Ms. Koerner did not testify at the hearing and there is no indication that she asked questions of either of the applicants.

<sup>2</sup> Ms. Bix completed a two year course on computer networking at an area technical college the week following the hearing.

<sup>3</sup> Ms. Thiede is the network administrator for a bank located in Medford.

Ms. Neumann has also utilized tutorial software, available on CDs, on Mastering Windows Servers. At hearing she indicated that she is currently working on the module entitled “Mastering Windows Server 2003”; that she has completed “Mastering Windows XP Pro”, that she has not yet started “Mastering SQL Server 2000”, that she has completed “Mastering Exchange Server 2003”, and that she is currently working on “Mastering Windows Registry.” Ms. Neumann acknowledged that she started Windows Server 2003 and Windows Registry after she had been interviewed for the Network Administrator position. She had completed the Windows XP Pro prior to her application but she did not provide the curriculum for the course during the interview.

Ms. Neumann identified setting up a peer-to-peer network in the Health Department as an example of her actual hands-on network experience.

The County normally establishes a 70% passing score on job related tests. This was not done in connection with the Network Administrator test, so both applicants were afforded an opportunity to be interviewed. Ms. Weinke testified that the purpose of the test was to obtain a basic understanding of where the candidates were – their understanding of network terminology and what is done in Taylor County. In giving the test, there was no prior decision that the person with the highest score would get the job.

Both Ms. Bix and Ms. Thiede went into the hiring process with the idea that there were no Taylor County employees who were qualified for the Network Administrator position. The IT Department consists of only four people: the Director Weinke, the Network Administrator, a Programmer/Analyst, and a PC tech. The Programmer/Analyst programs the AS400 and does PC programming in Access with some Visual Basic. All four members of the department pitch in for help desk and trouble shooting functions, answering phone calls, helping with applications, and Word questions. Ms. Weinke and the Network Administrator take care of switches, doing upgrades, server builds, and higher end network functions.

At the end of the interview process, and also after hearing Ms. Neumann testify at the hearing, Ms. Weinke, Ms. Bix and Ms. Thiede all felt that Ms. Neumann was not qualified for the position of Network Administrator in Taylor County. At the end of the interview, contrary to Ms. Bix’ and Ms. Thiede’s expectations, all three of these interviewers felt that Ms. Tischendorf was qualified for the position and it was awarded to her.

## **RELEVANT CONTRACT PROVISIONS**

### **ARTICLE 9 -JOB POSTING**

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**Section 2.** Job vacancies in the bargaining unit due to retirements, quits, new positions, transfers, or whatever reasons shall be posted in each work site for a period of five (5) days. Posting shall not begin on a Monday. The posting shall

provide information concerning the qualifications needed for the position, a brief description of the job duties, the salary range, starting date, and the closing date for applications. A copy of the posting shall be provided to the president of the Union. Postings for Jailer/Dispatcher positions in the Sheriff's Department will be for an eligibility list instead of for a specific vacancy.

**Section 3 – Applicants.** Employees interested in the posting shall make written application to the Human Resources Manager.

**Section 4 – Selection.** The employee applicant possessing the most seniority who can qualify shall be granted the position.

**Section 5 – Trial Period.** If, within the first thirty (30) calendar days of filling a job vacancy [six (6) months if the job vacancy is Jailer/Dispatch], a selected employee fails to make satisfactory progress for the position, he/she shall be returned to his/her former position and selection shall be made among the remaining qualified applicants for the position, if any, according to the criteria set forth in Section 4 above. Any employee may also voluntarily return to his/her former position during the trial period at his/her discretion. Employees serving a trial period shall receive a written evaluation of their progress after fifteen (15) calendar days, or after three (3) calendar months if in a Jailer/Dispatcher position.

## ARTICLE 6 –GRIEVANCE PROCEDURE AND ARBITRATION

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### **Section 3 – Arbitration.**

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B. The arbitrator selected or appointed shall meet with the parties at a mutually agreeable date to review the evidence and hear testimony related to the grievance. Upon completion of this review and hearing, the arbitrator shall render a written decision to both the County and the Union, which shall be final and binding upon both parties.

. . .

D. The decision of the arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to the interpretation of the contract in the area where the alleged breach occurred. The arbitrator shall not modify, add to, or delete from the terms of the Agreement.

## DISCUSSION

At issue herein is the question of whether Cindy Neumann “can qualify” to perform the position of Network Administrator. If she can, Article 9, Section 4 of the collective bargaining agreement requires that she be appointed to the position as she was the more senior of the applicants. If she cannot, there is no violation of the contract. The Union contends that Ms. Neumann is qualified, and that she should be awarded the position or, at least, an opportunity for a trial period in the position. The position of the County is that while Ms. Neumann may have excellent qualifications to staff a help desk, that is not the position that she sought and that she is not qualified for the Network Administrator position.

The crux of the issue to be decided is found in the meaning of Article 9, Section 4:

Section 4 – Selection. The employee applicant possessing the most seniority who can qualify shall be granted the position.

This contract section was the subject of a prior arbitration decision, TAYLOR COUNTY, MA-10217 (Greco, 10/98). In that case, Arbitrator Greco was required to interpret Article 9 to determine whether the County violated the contract between the parties when it failed to award the Computer Operator/PC Specialist position to two individuals. Reading the language of Section 4 “who can qualify” together with the language in Section 5, “. . .employee fails to make satisfactory progress for the position, he/she shall be returned to his/her former position and selection shall be made among the remaining qualified applicants. . .”, Arbitrator Greco determined that individuals selected for any job vacancies must be qualified at the time of the selection process. He then proceeded to determine whether the grievants were qualified for the position when they bid for it.

The language of Article 9, Sections 4 and 5, has not been modified since the Greco decision was issued. In accordance with Article 6, Section 3B, that award was a final and binding award and I find it to be a binding interpretation on the undersigned. Neither party argued otherwise. Accordingly, the question that must be determined is whether Cindy Neumann was qualified to perform the duties of Network Administrator at the time that she applied for the position.

First, we note that the job posting for the position indicates that “Applicants for this position will possess an Associate Degree in Computer Networking or an equivalent combination of experience and education/training that will provide the required knowledge, skills and abilities.” The Grievant does not have an Associate Degree in Computer Networking, thus leaving only the question of whether she has had an equivalent combination of experience, education and training to give her the knowledge, skills and abilities required for the position.

Second, in both the Greco award, and in testimony before this arbitrator, it was made clear that the normal passing score on tests utilized by the County to fill positions is 70%. Cindy Neumann did not achieve a score of 70%. Had the County determined and announced prior to the administration of the test that a score of 70% was required in order to be considered qualified for the position, our inquiry would be complete. Unfortunately, the County failed to pre-determine that a score of 70% was necessary to be considered a qualified applicant and to continue in the application process. Thus, Ms. Neumann was invited to an interview with a panel of individuals, Ms. Weinke, Ms. Bix, Ms. Thiede, and Ms. Koerner.

Three of the four interviewers have hands on experience with network administration: Ms. Thiede serves as the network administrator of a local bank; Ms. Weinke is the Director of the Taylor County Information Technology Department with a staff of four, making it imperative that she understand network administration<sup>4</sup>; Ms. Bix was, at the time of the interview, working on an Associate Degree in Computer Networking. These individuals are competent to determine whether an applicant possesses the knowledge, skills and ability to perform the duties of the position.

Finally, we must address the interview itself. Ms. Neumann's interview took between twenty minutes (Ms. Neumann's recollection) and half an hour (interviewers' recollection). There was no pre-determined time limit set for the interview, and the interview afforded Ms. Neumann an opportunity to showcase her knowledge about computer networks.<sup>5</sup> The educational coursework considered to be relevant to the position in question includes networking, Cisco, and hardware fundamentals. These were not courses that Ms. Neumann had taken. Inasmuch as all of the courses Ms. Neumann took were either on-line or from CDs, it was clear that Ms. Neumann did not have hands on experience with the hardware components of a network. From Ms. Weinke's perspective, for networking and switching, on-line courses are insufficient to qualify one for the position of Network Administrator.

According to Ms. Bix, the educational experience that the Grievant has is primarily in software that has no relevance for the network administrator position. As a member of the County Board and chair of the IT committee, Ms. Bix recognizes a responsibility to protect public information. Accordingly, any hands on testing of applicants, or use of County equipment for applicants to practice on, are impractical. The County does not have extra equipment for practice or testing. If one is qualified for the position, one can answer questions about networking without the need to demonstrate on the equipment.

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<sup>4</sup> Ms. Weinke's testimony supports the contention that she is knowledgeable about network administration and can perform such duties.

<sup>5</sup> Although the Union contends that the onus is on the County to determine what qualifications the applicant possesses, it is imperative on any job applicant to provide any and all educational and training background she might possess as part of establishing that she is a qualified applicant.

Ms. Thiede is, herself, a network administrator, although not for the Taylor County network. She asked Ms. Neumann about her experience with Active Directory and Cisco routing, key elements of a network. The Grievant was unable to demonstrate that she was knowledgeable about these subjects. Ms. Neumann responded in the negative when asked if she had hands on experience with these, or had ever worked with them. Ms. Thiede has no recollection of Ms. Neumann making any reference to working with Windows 2003 or Exchange 2003.

It was the consensus of the committee that although Ms. Neumann knew some of the terminology related to networking, she lacked the in-depth knowledge needed to serve as a network administrator. At hearing, Ms. Neumann testified as to her knowledge of the various technical aspects as they appear on the job description. The members of the interview committee were present for Ms. Neumann's testimony and continued to feel that she is not qualified for the Network Administrator position at issue herein.

When asked by the Union representative whether the interview committee was charged to determine a qualified applicant, Ms. Thiede agreed that it was up to the committee to get the necessary information to make an informed decision. Implicit in the question was an underlying assumption that, somehow, the interview committee had failed in its mission to determine Ms. Neumann's qualifications. I do not find this to be the case. A job applicant must establish that she has the education and/or training that are required to perform the essential duties of the position she seeks. Just as Ms. Neumann brought her portfolio to the interview to demonstrate her credentials, an interview committee can reasonably rely on what the candidate presents to it, be it on a resume, on the job application, or during the interview, to be a complete demonstration of the width and breadth of knowledge and experience the candidate possesses. There is no obligation on the part of the committee to do more than ask questions, and follow-up questions, to ascertain a candidate's qualifications. Ms. Neumann had the opportunity to expound on her knowledge and experience. Certainly, for some positions and under some conditions, an employer might seek to have a candidate demonstrate his or her knowledge. There is not, however, an obligation to include such a demonstration as part of the testing or interviewing for a position.

The Union also appears to question the validity of the eight (8) questions that Ms. Weinke asked of each applicant. Although these questions, with the exception of the first one, are not designed to ascertain the applicant's knowledge of the content of the job, they are legitimate questions to ask of a candidate for a position in which there are only three other persons working in the department. Although these questions were not weighted, there is no indication that they were dispositive as to whether Ms. Neumann was qualified for the position. Rather, it was the lack of knowledge about networking that led to a unanimous determination by the committee members that Ms. Neumann was not qualified for the position.

The contract language provides that the most senior applicant shall receive the position, if she is qualified. Although some testimony appeared to compare the qualifications of the Grievant and the successful applicant, when pressed on the point, all witnesses stated that the

Grievant was not qualified. The fact that Ms. Bix and Ms. Thiede anticipated that no internal candidate was qualified and, as a result of the interview, determined that the more junior candidate, Ms. Tischendorf, was qualified, has no bearing on the objective question to be determined here: was Ms. Neumann qualified for the position.

As the Employer acknowledged in its closing arguments, there were errors made in the hiring process. The most glaring error was the failure to establish a cutoff score prior to the administration of the test. Certainly, it would be advantageous to utilize uniform interview questions that assess knowledge of the job content as well as ability to handle certain work situations. Uniformity in questioning, while allowing for follow up questions, produces more certainty and clarity in the process, and makes it less subjective. Use of a written test to determine minimum qualifications is a well established practice in hiring.

The errors in this hiring process were, however, harmless errors. Ms. Neumann failed to establish that she possesses the knowledge, skills and ability based on her education and experience to perform the essential duties of the Network Administrator for Taylor County. There is no question that whoever the successful applicant might have been, a certain amount of on-the-job training would be required. The undersigned has no expertise in the Info Tech area, but the testimony of the Grievant failed to establish that she had training and experience comparable to an Associate Degree in Computer Networking. The Employer has limited resources, and significant work that must be done by the four (4) persons employed in its IT department. The Grievant's testimony, her educational background, and her limited experience with computers except as an end user, could not overcome the testimony of the Director of IT, the Chair of the IT committee, and another network administrator. Cindy Neumann is not qualified for the position of Network Administrator.

Accordingly, based upon the above and foregoing and the record as a whole, the undersigned issues the following

### AWARD

The County did not violate the collective bargaining agreement by not appointing Cindy Neumann to the position of Network Administrator. The grievance is denied.

Dated at Madison, Wisconsin, this 14<sup>th</sup> day of May, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Susan J.M. Bauman /s/

Susan J.M. Bauman, Chair

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