

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 2414, AFSCME, AFL-CIO**

and

**MUSKEGO-NORWAY SCHOOL DISTRICT**

Case 78  
No. 66735  
MA-13615

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**Appearances:**

**John Maglio**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

**Michael Aldana**, Attorney at Law, Quarles & Brady, appearing on behalf of the District.

**EXPEDITED ARBITRATION AWARD**

The Union and Employer named above are parties to a 2006-2009 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties asked the Wisconsin Employment Relations Commission to appoint the undersigned to hear and resolve the grievance of Cheryl Polinski. The parties filed pre-hearing briefs and agreed to an expedited award, and they agreed that the award would be non-precedential. A hearing was held on July 24, 2007, in Muskego, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The record was closed at the conclusion of the hearing.

**ISSUE**

The parties ask:

Did the Employer violate the collective bargaining agreement when it failed to award the Administrative Assistant I position at Tess Corners School in August of 2006 to the Grievant? If so, what is the appropriate remedy?

### **BACKGROUND**

The Grievant is Cheryl Polinski, who is an Administrative Assistant II at the Lake Denoon School. She has been with the District for 21 years.

On August 15, 2006, the District posted a job vacancy for an Administrative Assistant I position at the Tess Corners Elementary School. Polinski applied for the position – which would have given her more hours and a higher pay rate. The District hired Sandra Watson, who had not worked for the District before. The Union filed a grievance which was denied.

The collective bargaining agreement allows the District to consider outsiders at the same time with current employees in filling a vacant position. Section 10.05 of the agreement states:

When vacant or newly created positions become available, first consideration shall be given to present employees from within the bargaining unit (as defined in Article I herein) in which the vacancy occurs. Such consideration shall be based upon seniority, prior work performance, and relevant experience in that order. In cases where prior work performance and relevant experience are substantially equal, seniority shall prevail. The Board is not limited to considering present employees when filling new or vacant positions.

The job posting called for several qualifications. Critical to this case were two of those qualifications – 1, ability to type 60 net words a minute, and 2, being computer literate on PC systems and related software including Microsoft Word and Excel. The applicants included the Grievant, a couple of employees from another bargaining unit, and five applicants who did not work for the District previously, including Watson who was awarded the position at issue. These people were sent to Manpower, Inc., a company that provides employment services, for tests on several elements related to the job posting.

The primary factor in this case comes down to the fact that the Grievant typed 48 words per minute, not 60 as required by the position. Also, she was rated as a beginner in the Word and Excel tests. Watson typed 68 words per minute and was rated as master on Word and proficient on Excel. The Grievant was not invited to an interview as the next part of the application, because the District had determined that she did not meet the minimum qualifications for the position.

The requirement of 60 words per minute for the Administrative Assistant II position has been in prior postings for many years. This was the most important factor to the District.

When the Grievant posted for her current position as Administrative Assistant II, that position required typing ability of 60 words per minute. The Grievant has not tested that high in the past but got that position anyway. Catherine Bowmil was hired by the District as an Administrative Assistant I in the 1999-2000 school year, and she could not type 60 words per minute.

The Grievant has a very pleasant personality and is well liked by staff, parents and students. There is no dispute that the Grievant has most of the qualifications listed by the posting for the position. She did not take issue with the test results from Manpower.

The Assistant Superintendent, Robert Rammer, testified that the District interviewed only the applicants who met the 60 word per minute qualification. That was the first threshold to meet. Two outside candidates who scored the highest marks on all the tests were not interviewed because they did not meet the 60 word per minute qualification. Rammer found this qualification to be important in this position because the volume of work has increased, and in fact, the work product of this bargaining unit has increased disproportionately with other kinds of positions in the last few years. The decision to not select the Grievant was based on the fact that she did not meet the minimum qualifications.

### DISCUSSION

The District is correct when it states that seniority does not come in to play unless the applicants are substantially equal in qualifications. Section 10.05 of the bargaining agreement states that: "In cases where prior work performance and relevant experience are substantially equal, seniority shall prevail." Bargaining unit members would always have seniority over applicants from the outside, and Section 10.05 gives the District the right to consider outside applicants when filling vacancies, as it states: "The Board is not limited to considering present employees when filling new or vacant positions." If a present employee could exercise seniority to get a new or vacant position, no outsider would be considered, and the last sentence of Section 10.05 would have no meaning. All the words should be given some meaning and read together to make sense.

While the Grievant appears to have done a very good job in her present position, she still had to meet the qualifications for the position she was seeking. Because she did not meet the typing qualification, there was no need to determine whether her prior work performance and relevant experience were substantially equal to another applicant. Although it appears that the District has waived the typing score of 60 in the past in a couple of instances (the Grievant and Bowmil), that happened several years ago and not under Rammer's administration. The District needs to be careful in this respect to avoid the appearance of being arbitrary and capricious. However, there is not much on the record about how this came about, what the

typing score of Bowmil actually was, why it was waived, etc. There is no reason on this record to demand that the District waive the typing requirement in all future cases. The posting also stated that applicants need to be computer literate in Microsoft Word and Excel programs. The Grievant was rated as a beginner by Manpower. "Literate" means something more than being a beginner. To be "literate" is to be knowledgeable. The Grievant did not meet that qualification. The term "literate" is more in line with Manpower's determination of being "proficient" than "beginner."

The District's qualifications were reasonably related to the position. The qualifications have been in place for several years. The District's testing procedures were not biased. There is really nothing that the District did that would violate the collective bargaining agreement. The District gave some consideration to the Grievant, but when she did not meet the minimum qualification or threshold for the job, the District was not obligated to give her further consideration for the position. Thus, there is no contract violation.

#### **AWARD**

The grievance is denied and dismissed.

Dated at Elkhorn, Wisconsin the 2<sup>nd</sup> day of August, 2007.

Karen J. Mawhinney /s/  
Karen J. Mawhinney, Arbitrator