

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**BAY AREA MEDICAL CENTER EMPLOYEES' UNION,
LOCAL 3305, AFSCME, AFL-CIO**

and

BAY AREA MEDICAL CENTER

Case 19
No. 66488
A-6259

Appearances:

Mr. Dennis O'Brien, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5590 Lassig Road, Rhinelander, Wisconsin 54401, on behalf of the Union.

von Briessen & Roper, S.C., by **Attorney Daniel T. Dennehy**, 411 East Wisconsin Avenue, Suite 700, P.O. Box 3262, Milwaukee, Wisconsin 53201-3262, on behalf of the Employer.

ARBITRATION AWARD

At all times material, Bay Area Medical Center Employees' Union, Local 3305, AFSCME, AFL-CIO (herein the Union) and Bay Area Medical Center (herein the Employer) were parties to a collective bargaining agreement covering the period from October 1, 2004 to September 30, 2007. On November 22, 2006, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the Center's failure to award Roberta Gustafson (herein the Grievant) either of two Clinic LPN positions for which she applied. The undersigned was appointed to hear the dispute and a hearing was conducted on April 18, 2007. The proceedings were not transcribed. The parties filed initial briefs by June 11, 2007, and reply briefs by June 27, 2007, whereupon the record was closed.

ISSUES

The parties did not stipulate to a statement of the issue. The Union would frame the issues as follows:

Did the Center unreasonably deny the Grievant the right to post/bump into one of the Clinic LPN positions?

If so, what is the appropriate remedy?

The Employer would frame the issues as follows:

Should Ms. Gustafson have been awarded one of the LPN Clinic positions for which she posted?

If so, what are the remedies?

I characterize the issues as follows:

Did the Employer violate the contract when it awarded LPN positions in the Cardiology and Urology Clinics to less senior employees than the Grievant?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE 3 DEFINITION OF SENIORITY

3.01 **Definition of Seniority:** Seniority refers to the length of time someone is employed at the Center, calculated from their most recent date of hire. Seniority dates for Center employees who had been employed by Marinette General Hospital or Menominee County Lloyd Hospital/St. Joseph Lloyd Hospital will be calculated from their most recent dates of hire with those organizations, provided there had been no breaks in service from either organization. Seniority dates are adjusted to exclude leaves of absence and other unpaid absences in excess of thirty (30) calendar days.

3.02 **Application of Seniority:** Seniority is applicable in all cases unless clearly and unambiguously specified otherwise in the contract. Seniority is a consideration, in the following situations:

...

b) In transfers and promotions, provided skill and ability are substantially equal;

...

c) In bumping, provided skill and ability are substantially equal;

ARTICLE 4 LAYOFF/UNIT REORGANIZATION

- 4.01 In the event of a layoff, the Center will give at least one week's notice to employees who are to be affected/released, either via hand-delivered letter or certified mail. The following procedures will apply:
- a) Temporary employees will be laid off first.
 - b) The remaining employees affected by the layoff will have the opportunity to choose one of the following options:
 - 1. Apply for a posted position created by the reorganization or layoff plan, provided they are qualified for the position. Rules for job postings apply (See Article 18). If the employee is not awarded a position, or determines during the trial period that they do not want to continue in the position, the employee assumes laid off status.
 - 2. Make one bump selection to displace a less senior employee, provided they have the skills and ability, to assume the position immediately with a minimum of basic job orientation. Minimum of basic job orientation shall be deemed as a minimum of five work days which are provided to the employee for job orientation and not considered a training period. This definition of "minimum basic job orientation" also applies to 4 d). If it is determined the employee does not have the skills and ability to continue in the position during the orientation period the employee assumes laid off status.
 - 3. Accept laid off status. (Laid off employees may be eligible for Unemployment Compensation benefits)
 - c) Employees affected by the layoff must decide within five (5) calendar days from the date they are notified as to which option they will follow. They must inform Management of Human Resources of their decision within this time period. Employees who decide to bump also must make their bump selection within this time period. If a decision is not made within five (5) calendar days, the employee will be laid off.
 - d) The following points apply to the bumping process:

1. The bumping process will begin with the most senior employee affected by the layoff who decides to bump.
2. Employees may bump only into positions that currently are included in the Table of Organization.
3. Employees who bump from one department or unit to another are immediately considered members of the department or unit into which they bumped. They do, however, retain recall rights to their former department or unit should a vacancy occur for which they are qualified. The recall rights will expire one (1) year from the date of the bump into the new department or unit, or a period of time equal to their seniority, whichever is less.
4. The Center has the exclusive right to determine if an employee has the skill and ability required to function immediately in a position with a minimum of basic job orientation. If the Center determines after an orientation that an employee does not have the required skill and ability, the employee will be laid off.
5. Qualifications include physical abilities. The Center has the exclusive right to seek and obtain a medical opinion regarding an employee's physical ability to perform a job, and to perform job placement assessments. The opinion will be obtained before a bump is approved or denied. The physical examination and/or testing required by the Center will be scheduled and paid for by the Center. The physician shall be one approved by both parties. If it is the physician's opinion that the employee cannot, or should not, perform the job due to physical limitations or impairments, or if the employee fails to successfully pass the job placement assessment, then the bump will be denied and the employee will be laid off.
6. If an employee makes an approved bump into another position and then is bumped by another employee, then the bumped employee may make another bump selection or accept layoff status. This decision, as well as another bump selection, must be made within two (2) calendar days from the date the employee was bumped. If a decision is not made within this time period, then the employee will be laid off.

For unit reorganizations the notice will include a listing of all positions available within the reorganized unit. Department employees, exclusive of per diem, temporary and supplemental employees, will be given the first opportunity to fill these positions. After all departmental employees have been given awarded positions the remaining positions (if any) will be advertised Center-wide through [sic] the posting process.

...

ARTICLE 18 NEW JOBS, VACANCIES AND SENIORITY

18.02 Employee Applications: The application process for employees desiring posted jobs shall be as follows:

- a) A description of the vacant position will be posted on the Center's bulletin board for five (5) calendar days. The posting will include:
 - (1) Qualifications for the position;
 - (2) Budgeted percentage of full time to include whether employee will be required to work "or greater hours;"
 - (3) General hours or work, shifts and days;
 - (4) Location of work if outside Marinette/Menominee;
 - (5) Rate of pay if a newly created position;
 - (6) Whether on-call status is required;
 - (7) Whether a forty (40) hour waiver is required for the position
- b) A copy of the posting will be furnished to the Union.
- c) Employees desiring posted jobs will make written application in the Human Resources Office, make verbal application through the voice mail system, or make application through internal e-mail, during the five-day posting period. Employees must list evidence of meeting qualifications for the position as identified on the posting, as awarding of positions will be based on this evidence. If a posting application is received without listed qualifications Human Resources will e-mail the employee and allow five (5) days to provide the information. Human Resources reserves the right to request verification of any and all qualifications listed. Employees must sign a copy of the awarded posting.

- d) Upon request from a designated Union representative, the Center will supply the names of employees who have filed applications for a specific job posting.

18.03 **Awarding Jobs:** At the end of the posting period, the vacancy or job opening will be awarded on the basis of the following provisions:

- a) The department director shall determine qualifications. Job placement assessment may be required for employees who are transferring to another job classification.
- b) Employees from the department or unit in which the vacancy exists have the first opportunity to fill the position, if they are qualified. If two or more employees from the department or unit apply and both meet minimal qualifications, then seniority will be the determining factor in awarding the position. Probationary employees do not have departmental posting rights until they have successfully completed the probation period. Trial period employees also do not have departmental posting rights, but retain departmental posting rights in the department they transferred from until they have completed the trial period, at which time their departmental posting rights pertain to the new position.
- c) If no employee from the department applies or qualifies, then the position shall be open to all remaining departments. If two or more employees from the remaining departments apply and both meet minimal qualifications, then seniority will be the determining factor in awarding the position.
- d) If no applications are received from qualified employees in remaining departments, the Center will give preference to employees who have returned from unpaid leaves.
- e) Employees hired after October 1, 1992, will not be eligible to post for a position in another department until they have one (1) year of seniority, unless mutually agreed to by the union and Management of Human Resources.
- f) Employees which hold a per diem position, in addition to regular full-time or regular part-time position, shall not have departmental seniority rights in the department which they hold a per diem position.

...

18.05 Trial Period:

- a) Employees (see 18.05 b] for probationary employees) who have been awarded posted jobs shall demonstrate their ability to perform those jobs within a 160 hour trial period. The trial period pertains only to a position with a new job description and different department, and not to the same job with a different work percentage, shift, or duty assignment, but with the same job description and department as the position previously held. If the Center determines that the employee is qualified to continue in the position, the employee shall be formally assigned the job after completion of the trial period. If the Center determines during the trial period that the employee is unqualified, during the trial period, to return to his/her former job, then the employee shall be reassigned to his/her job without loss of seniority. These employees will be reassigned to their former position and will be given the same general duty assignment that he/she held prior to the transfer, provided the duty assignment still exists. If the employee desired during the first 160 hours of the trial period to exercise his/her option to return to their former position, or if the Center determines during the trial period that the employee is unqualified, the Center may award the opening to the next most senior qualified employee who previously posted to the position.
- b)
- c) Non-probationary employees serving the 160 hours trial period after posting into another position, whose former position in eliminated during that trial period, shall have bumping rights within the classification of the former position if, during the trial period, the Center determines the employee is unqualified or the employee desires to return to his/her former position.

BACKGROUND

Bay Area Medical Center (BAMC), is a health care organization consisting of a hospital and a number of affiliated clinics located in and around Marinette, Wisconsin. In 2006, BAMC went through a major reorganization which resulted in the elimination of a number of staff positions and a reduction of about 10 percent of the workforce in the form of layoffs. In July 2009, BAMC management met with representatives of the Union to discuss the reorganization. As a result of their discussions, the parties agreed to modify the contractual processes for posting for vacant positions. Specifically, due to the scope of the reorganization,

hospital-wide seniority would apply to posting. Also, any employees posting for new positions would need to be qualified and incumbents in positions would be deemed qualified to continue in them unless bumped by a more senior qualified employee. Under Article 18.03 of the contract, job qualifications were to be determined by the individual department heads.

Roberta Gustafson, the Grievant herein, was, at all times material hereto, an 18 year employee of BAMC, having served as a Licensed Practical Nurse on the medical/surgical floor in a .7 FTE position. She had previously also worked as an LPN at Bell and Marquette Memorial hospitals and had a further 9 months of experience working in a podiatry clinic. At the time of the reorganization, Ms. Gustafson was informed that her position was being eliminated and given the opportunity to post for other positions. She posted for fifteen different positions. Her top two choices, respectively, were for 1.0 FTE LPN positions in the Cardiology and Urology Clinics. The job descriptions for both positions list 2 years of clinical LPN experience as prerequisites and Ms. Gustafson was disqualified from consideration for both positions due to the lack of this requirement. Ultimately, she was awarded her sixth choice, a .8 FTE LPN position in the float pool. The Cardiology Clinic LPN position was awarded to Pam Harju-Swaski and the Urology Clinic LPN position was awarded to Amy Heilman. Ms. Gustafson was senior to both Ms. Harju-Swaski and Ms. Heilman, however, Ms. Harju-Swaski had four years of clinical LPN experience and Ms. Heilman had twenty-three months of clinical LPN experience and was the incumbent in the Urology Clinic position, so, under the procedure for reorganization, she was deemed qualified for her position.

Ms. Gustafson grieved BAMC's determination that she was unqualified for the Cardiology and Urology Clinic positions. The Employer denied the grievances and the matter proceeded through the contractual process to arbitration. Additional facts will be referenced, as necessary, in the DISCUSSION section of this award.

POSITIONS OF THE PARTIES

The Union

The Union argues that the Grievant is qualified for either of the Clinic positions she was denied. Management does have the right to establish qualifications for positions and evaluate the candidates, but the process must be reasonable and the qualifications must be legitimate. In this case, BAMC's evaluation of the Grievant was arbitrary, capricious, discriminatory and unreasonable.

In BAY AREA MEDICAL CENTER, CASE 14, No. 50232, A-5158 (Gallagher, 8/94) the arbitrator upheld this employer's right to determine qualifications and evaluate candidates because the process it used was thorough and fair, involving an interview, testing, a review of the applicant's record and discussion with her supervisor. Here, none of those steps were taken, even though management had an obligation to do so, because the scope of the reorganization made such a process cumbersome. All management did was focus on the requirement of 2 years of clinic experience and use that as an excuse to disqualify the Grievant, ignoring all the other criteria.

Management did not inquire as to whether the Grievant had the skill necessary to perform the duties of the positions, but made assumptions based on her resumé. At the hearing, the Grievant testified that she actually had many of the skills required by the positions. Others, with which she was not familiar, could have been acquired easily. Management was required to make that assessment and did not.

Mary Jo Mantei testified as to the importance of clinical experience, but her testimony is incredible. To be sure, the positions are different, but so are different clinic LPN positions, so experience in one clinical setting doesn't necessarily make one competent to perform in another. Also, the contract calls for a 160 training period within which the employee can learn new procedures and demonstrate her competence. The Grievant should have been given that opportunity. Instead, the Employer deliberately attempted to disparage her abilities in order to justify denying her the position. This is a case where the Employer simply found excuses to avoid the requirements of the contract regarding seniority in order to avoid "rocking the boat" by allowing a new employee into a clinic setting it did not want to disturb.

The Employer

The Employer asserts that the Grievant was properly disqualified from the clinic LPN positions because she did not have the required two years of clinical LPN experience. The contract gives management the right to set job qualifications and Arbitrator Gallagher held in a previous arbitration between the parties that management has no duty to train an unqualified employee who posts for a position. BAY AREA MEDICAL CENTER, CASE 14, NO. 50232, A-5158 (Gallagher, 8/94) The Union argues that BAMC should have waived the two year requirement in the Grievant's case, but this contravenes management's right to determine qualifications. This would open the door for challenging all job qualifications and would undermine stability and consistency in the workplace.

BAMC had good reasons for the two-year requirement. The administrative team determined that the skills required of a clinic LPN were different than for a hospital LPN and it adhered to the same job qualifications during the reorganization so that it would not appear that standards were changed to accommodate certain employees it wanted to retain. The two year requirement had existed since the 1990s and other hospital LPNs had been denied clinic positions in the past due to lack of qualifications, but the requirement has never before been challenged by the Union. Further, the evidence shows that two years of clinic experience is a standard of the industry. Also, arbitrators have consistently upheld management's right to determine job qualifications as long as that power is not exercised in an arbitrary, capricious, or unreasonable manner. There was nothing arbitrary, capricious, or unreasonable about BAMC's requirement of two years of clinical LPN experience.

The record also shows that the Grievant admittedly was unable to perform many of the core tasks of the positions she was denied. The clinics are minimally staffed. Thus, unlike a hospital setting, there is often no Registered Nurse to provide supervision and LPNs must be able to operate independently and perform tasks that a hospital LPN would likely not be asked

to do, such as triage, reviewing medical histories, educating patients handling paperwork such as insurance pre-authorizations and disability forms, scheduling appointments and following up with academic hospitals. These qualifications must exist at the outset. The Employer does not have the obligation or capability to provide on-the-job training in these areas. The Union points out that when Amy Heilman was awarded the Urology Clinic position she had no clinic experience, but that was a different situation because there were no other applicants competing for the position and prior to the reorganization there were more employees available to assist with training and orientation.

It is also difficult to fashion a remedy because, although her current position is only .8 FTE, it pays more than either of the clinic positions, so, since she can use her PTO to supplement her hours, she actually makes more in her current position. Further, if the arbitrator does uphold the grievance the Grievant should only be placed in a clinic position when one becomes available and necessary training can occur.

Union Reply

The Union reasserts that the Grievant was qualified for the clinic positions she posted for and should have been awarded one of them. The parties' contract contains a sufficient ability clause that requires that a position be awarded to the senior employee who has sufficient ability to do the job. The Grievant had sufficient ability and should have been awarded a position over the less senior employees.

The Employer makes several misstatements in its brief. First, the Union did agree to a modified posting and filling process due to the scope of the reorganization, but did not agree to allow the Employer to violate employees' contract rights. Also, the Grievant had nine months of experience in a Podiatry Clinic, not eight weeks, as the Employer asserts in an effort to diminish her qualifications. BAMC also argues that she could not learn the duties of the position in the 160 hour orientation period, but offers no evidence that this is so. Further, it claims the Grievant admitted she couldn't do several of the clinic tasks, but actually she only said that she hadn't done them. The Union also observes that Ms. Mantei did not bother to interview the Grievant when filling the clinic positions and that the Employer appears to believe that no witnesses other than its own are competent to speak on the issue of qualifications to serve as a clinic LPN. The Union produced competent witnesses who testified that a hospital LPN could learn the duties of a clinic LPN. The arbitrator should take into account the Grievant's many years of experience, reject the Employer's reliance on rigid objective standards and uphold the grievance.

Employer Reply

The Employer reasserts that its two year clinical experience requirement was reasonable and argues that it was under no obligation to specially interview and evaluate the Grievant. It also notes that the Union's request in this regard was not made until after the fact. Furthermore, the two-year experience requirement had never previously been challenged. It

should be noted that in this reorganization 312 employees applied for 296 positions, making individual interviews and evaluations of each applicant impractical. Employees were asked to provide the Employer with any additional information about their qualifications they wished to have considered; many did, but the Grievant did not. Further, even had the Grievant been interviewed, she admitted she did not have all the knowledge and skills required by the position, so she would have been disqualified on that basis.

Management had determined that the two year requirement was reasonable, which it had the right to do. Also, it was agreed that no job descriptions would be changed during the reorganization to avoid the appearance of favoritism. The process for conducting the reorganization was discussed with the Union beforehand and at no time did it indicate that the process should involve personal interviews with applicants. Further, no other applicant either requested an interview or complained at not receiving one. BAMC made its decisions as it has in the past under the contract, looking at job qualifications and seniority. BAMC's decision making was based on fair and objective considerations.

The Union cites several awards in support of its position, but these are largely not on point. Some deal with disparate treatment or discrimination, which are not in issue here. Others actually support the position of the Employer because they support awarding a position to a more qualified junior employee over a less qualified senior employee. BAMC did not violate the contract here and the grievance should be denied.

DISCUSSION

The Union's basic contentions in this case are that BAMC's position selection process during the reorganization, at least as regards the Grievant, was arbitrary, capricious and unreasonable and that, given her other qualifications, she should have been offered a 1.0 FTE position as an LPN either in the Cardiology Clinic or the Urology Clinic. It should be noted that Article 18.03 of the contract provides that in posting for positions seniority will prevail among minimally qualified applicants. Thus, the Grievant need not have been the most qualified applicant for the position, or even as qualified as other less senior applicants, as long as she was minimally qualified for the position.

Logically, the analysis must proceed through the first question to the second, for, if BAMC's selection process withstands scrutiny, which is to say if its decision to deny the Grievant the two positions based on her lack of the required two years of clinical experience was reasonable, then the issue of whether she was otherwise qualified becomes moot. The parties agree that Article 18.03(a) gives management the right to determine the qualifications for positions. Typically, management is granted broad discretion in such matters and its determinations are likely to be upheld unless they are arbitrary, capricious, or unreasonable. This is a very high standard to overcome, essentially requiring a finding that there was virtually no rational basis for management's determination, or that management's decision was based on improper considerations. When applying this standard, therefore, arbitrators will not

merely substitute their judgment for that of management, but will uphold the action where there is a reasonable basis for doing so, even if the arbitrator might have made a different determination.

Here, management determined that a requirement for clinical LPN positions was a minimum of two years of LPN experience in a clinic setting. The record indicates that this requirement has existed within the job descriptions for clinic LPNs for many years and has never been challenged previously. The record also indicates that in the past, on rare occasions, exceptions have been made, but only in circumstances where there were no internal or external candidates who had the two years' previous experience. The Union emphasizes that Article 18.05 of the contract also provides for a 160 hour trial period within which the Grievant could have been trained in any duties and procedures with which she was unfamiliar and argues that management should have exercised this option before rejecting a senior employee out of hand based on a lack of an objective criterion. BAMC stresses, however, that in the past there was more staff available to train employees in new positions for which they were marginally qualified and that the reorganization here resulted in a significant reduction in staff available to train new employees. Further, in *BAY AREA MEDICAL CENTER, CASE 14, NO. 50232, A-5158 (Gallagher, 8/94)*, the arbitrator held that the Employer is not required to give a trial period under Article 18.05 to an employee who does not initially meet the threshold qualifications for the job.

The job posting for the Cardiology Clinic position, as well as the job description, lists the qualifications for the position, as follows:

Wisconsin LPN license. At least two years LPN experience in a clinic setting, preferably in Internal Medicine, Family Practice or cardiology clinic. Must be adept at obtaining patient history and in handling telephone triage. Experience with word processing and/or computer system operations necessary. Excellent customer relation skills essential. BCLS certified.

The job posting and position description for the Urology Clinic LPN position list the following qualifications:

Current Wisconsin LPN license. At least 2 years experience in a LPN surgery clinic position, preferably in a urology office. Must be adept at obtaining patient history and in handling clinic telephone triage. Need basic computer skills. Excellent customer relation skills essential. BCLS Certified.

There is no dispute that the Grievant did not have the two years of prior clinical LPN experience listed as a qualification for either position. Thus, at the time of her application she did not have a necessary qualification for either position and was, therefore, not minimally qualified for the positions under BAMC's standards. The employees who were awarded those positions were qualified, however, one having been a clinic LPN for 4 years and the other having been a clinic LPN for 23 months, but was deemed qualified for the position under the

agreed process for reorganization in that she was the incumbent in the position. The question to be addressed, therefore, is whether relying on the lack of the required 2 years of clinical LPN experience as a basis for disqualifying the Grievant was unreasonable.

The record reveals that, unlike the hospital, BAMC's clinics are staffed primarily with physicians and LPN's, often without registered nurses available to provide supervision and oversight. Thus, clinic LPNs are required to work more independently and to be more directly involved with different facets of patient care than hospital LPNs. The requirement of 2 years prior clinical experience to qualify for a clinic LPN position was adopted in 2002 according to Mary Mantei, Assistant Administrator of Physician Services, after consultation with physicians, other hospital administrators and state health care organizations. This was done largely because the clinic LPNs must be able to function independently and BAMC could not afford the risk of having unqualified LPNs working in its clinics without RN supervision.

At the time of the reorganization, the reduction in staff made it more necessary that LPNs posting for clinic positions be qualified because staff reductions meant there would be fewer experienced employees to provide on-the-job training. Thus, LPNs posting into clinic positions would need to be able to handle the core competencies of the position virtually from the outset.

Due to the scope of the reorganization, BAMC decided it would not be possible to personally interview and evaluate all 312 employees who had applied for new positions. Thus, the basic process for filling positions involved a review of the applicant's personnel file to determine minimal qualifications and then an awarding of positions to the most senior minimally qualified applicants. Applicants were also permitted to supplement their personnel records with any additional information they wanted the employer to consider in determining positions. The Grievant testified that she was aware of this, and also was aware of the 2 year experience requirement, but elected not to supply additional information regarding her qualifications. The Grievant testified that she was given the impression by Kristy Brockman, the former Human Resources Supervisor during the reorganization, that the 2 year experience requirement was not mandatory, but both Curt Oberholtzer, Vice President of Human Resources, and Ms. Brockman were adamant that the requirement was necessary, both to make sure the employees were competent for their jobs and to allay any concerns about favoritism in the reorganization process. There is no evidence of an exception to the stated qualifications being made for any other employee during the reorganization, so I conclude that the Grievant was mistaken in her impression that the requirement would be waived for her.

I cannot on this record say that the Employer's methodology for handling a reorganization of this scope was inherently unreasonable. The number of positions being filled and the limited number of management personnel available to make the decisions made use of personnel records and supplementary material from the applicants the most efficient and practical method, although it did preclude the kind of in depth review of qualifications and experience that one might ordinarily prefer. The record indicates, however, that this process was discussed with the Union beforehand and that no objections were raised to the process

itself. Further, the job descriptions for the positions did not change for the reorganization, for the reasons previously stated. These descriptions, along with the necessary qualifications had existed for several years and had not been objected to in the past. BAMC explained its rationale for the required 2 years of clinical experience and its basis for this requirement is reasonable. Here, again, the standard is not whether the arbitrator would have applied a different standard, but whether the standard used has a rational basis. I find that it does. There is no evidence that the qualification process or standards were not applied even-handedly or that the Grievant was singled out for disparate treatment. On those occasions in the past where LPNs have been hired for clinic positions without 2 years' prior experience, there were no other qualified applicants and there was more experienced staff available for training, neither of which was the case here. The successful applicants for the Cardiology and Urology Clinic LPN positions, although less senior than the Grievant, both met the minimum qualifications for the positions. Therefore, I find on this record that the Employer's method for posting and filling positions during the reorganization and its requirement of 2 years' experience for clinic LPN positions were not arbitrary, discriminatory, or unreasonable. Having determined that the Employer's process of determining qualifications was reasonable, I do not reach the question of whether the Grievant was otherwise qualified for the positions she was denied.

For the reasons set forth above, and based upon the record as a whole, I hereby enter the following

AWARD

The Employer did not violate the contract when it awarded LPN positions in the Cardiology and Urology Clinics to less senior employees than the Grievant. The grievance is dismissed.

Dated at Fond du Lac, Wisconsin, this 22nd day of January, 2008.

John R. Emery /s/

John R. Emery, Arbitrator

JRE/gjc
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