

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 SUN PRAIRIE AREA SCHOOL DISTRICT : Case 81  
 : No. 46649  
 and : MA-7036  
 :  
 DANE COUNTY, WISCONSIN MUNICIPAL :  
 EMPLOYEES, LOCAL 60, AFSCME, AFL-CIO :  
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Appearances:

Darold O. Lowe, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing for the Union.  
 Godfrey & Kahn, Attorneys at Law, by Jon E. Anderson, appearing for the Employer.

ARBITRATION AWARD

Dane County, Wisconsin Municipal Employees, Local 60, AFSCME, AFL-CIO, herein the Union, and Sun Prairie Area School District, herein the Employer, jointly requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and decide a dispute between the parties. The undersigned was so designated. Hearing in the matter was held in Sun Prairie, Wisconsin on March 18, 1992. A stenographic transcript of the proceeding was received on March 27, 1992. The parties completed the filing of post-hearing briefs on April 30, 1992.

ISSUE:

The parties were unable to stipulate to a wording of the issue and agreed that the arbitrator would frame the issue in his award.

The Union's version of the issue reads as follows:

Did the Employer violate the labor agreement at Article VII, 7.03, when it refused to promote the grievant, Darlene Sturm, to the position of building custodian at Bird School? If so, what is the appropriate remedy?

The Employer's version of the issue reads as follows:

Did the District violate Article VII, Section 7.03, of the applicable labor agreement when it hired Orval Anderson for the position of day custodian at C. H. Bird Elementary School? If so, what is the appropriate remedy?

The undersigned believes the following to be an accurate statement of the issue:

Did the Employer violate Section 7.03 of the labor agreement when it promoted Orval Anderson, rather than Darlene Sturm, to the position of day custodian at Bird Elementary

School? If so, what is the appropriate remedy?

BACKGROUND:

In June of 1991 the position of day custodian at the Bird School became vacant. The vacancy was posted pursuant to the labor agreement. The posting included a nonexhaustive list of duties of the position.

Twelve individuals applied for the position. Eleven of the applicants were interviewed by Ludwig Jazdzewski, the Employer's Supervisor of Buildings and Grounds, and Tom Altenburg, the Employer's Building Principal at the Bird School, each of whom graded the applicants on their verbal answers to four questions and on their verbal descriptions of their experience in five areas, i.e., custodial experience, maintenance capability(experience), leadership experience, grounds care experience, and experience with boilers. The maximum point value for each of the nine factors was 10. Seniority was considered as the tenth factor with a maximum point value of 10 also. A numerical total was generated for each applicant. Based on those totals, the Employer selected Orval Anderson for the position. Six of the applicants, including Sturm, had more seniority than Anderson. Five of the applicants had more seniority than Sturm. Anderson's seniority date is 8-19-80. Sturm's seniority date is 1-28-80.

RELEVANT CONTRACTUAL PROVISIONS:

7.03 Filling Vacancies

An employee interested in such position shall file a written request by 4:30 p.m. of the fifth day of the posting with the Director of Business Services. The selection of any applicant to fill the job vacancy shall be made on the basis of skill, ability, and seniority. If the skill and ability of two or more employees is relatively equal, the employee with the greatest district-wide seniority shall be chosen. The qualified senior employee shall be (health assistants are required to have a current active LPN or RN license) given the position within thirty (30) working days of the date of posting.

The employee shall have a sixty (60) calendar day probationary period in which to prove his/her qualifications for the job. If during such sixty day probationary period the selected employee fails to make satisfactory progress to qualify for the new position, he/she shall be returned to his/her former position and selection will be made from the remaining employees who signed the job posting according to the criteria set forth above.

POSITION OF THE UNION:

The Union argues that while the interview scores were designed to measure relative skill and ability, the reliance on the subjective evaluation of two male supervisors skewed the test results against the grievant. Although the two supervisors may not have intended any gender discrimination, their explanation of how they gauged certain scores constitutes unconscious gender discrimination and rendered this test instrument as invalid, as evidenced by the following facts:

1. Jazdzewski scored Anderson over Sturm for maintenance capability even though Sturm had more applicable hands-on experience for the instant job.
2. Jazdzewski scored Anderson higher than Sturm on leadership experience even though Sturm had experience working as a day custodian and Anderson did not.
3. Both Jazdzewski and Altenburg discounted or gave less weight to Sturm's relevant custodial work in the District and greater weight to Anderson's experience outside the District as a farmer and construction foreman.

The misplaced weight given by the interviewers to Anderson's pre-District work and the discounted weight they gave to Sturm's relevant custodial experience serves as the basis for the claim of arbitrary and capricious results from the interview process. The reliance on the interview process as the exclusive selection tool raises the likelihood that subtle and unconscious forms of discrimination (in this case, gender discrimination) may occur.

The purpose of the relatively equal selection standard is to ignore the seniority factor only when the junior applicant is head and shoulders superior to the senior employee. The selection procedure used by the Employer in this case failed to objectively measure the relative skills and abilities of the applicants. The Employer's initial determination should be overturned and Sturm should be given an opportunity to qualify for the position.

POSITION OF THE EMPLOYER:

Seniority is only one of the three factors specified in the contract as criteria for filling vacancies. The contract does not require the senior bidder to be given the job, unless said employee's skills and abilities are relatively equal to those of the other applicants. The trial period language applies only to employees who have received a position through the normal posting procedure in the contract and is not a procedure for evaluating the qualifications of the senior applicant before an applicant is selected for the job.

Two supervisors with extensive knowledge of the job requirements and responsibilities developed a group of questions which were fair, objective and job related to determine which applicant would be the most qualified person for the position. Said two persons interviewed the applicants and individually scored each applicant's responses. Seniority also was given weight in the scoring process. After the interview process, the scores were totaled and Anderson was selected for the position.

While Sturm was slightly more senior than Anderson, Anderson demonstrated far greater skills and abilities directly related to effectively operating within the position. Anderson scored higher in six of the nine categories addressed in the interview questions. The point difference between Anderson's composite score and Sturm's composite score was enough to place Anderson in the top level of scores, while Sturm was in the second level of scores. On average, there was a ten point difference between the two groups of scores. In addition to Anderson, at least two other applicants scored higher than Sturm. Since the

candidates were not relatively equal in their skills and abilities, seniority was not controlling.

While Sturm may disagree with the Employer's assessment of the skill and ability of the applicants, under the contract such a determination is to be made by management. The assessment process was not arbitrary. The Employer determined the requirements of the job, developed specific and valid job related interview questions and administered those questions to each applicant on a uniform basis. The interviewers were familiar with the job and its requirements. The interviewers independently scored each applicant's responses.

The selection of Anderson for the position was reasonable and did not violate the contract.

#### DISCUSSION:

The thrust of the Union's argument is that the scores for certain of the questions on the evaluations reflected unconscious gender discrimination and thereby rendered the rankings invalid. Specifically, the Union referred to the scores in the areas of maintenance capability, leadership experience and custodial experience.

The scores for nine of the ten factors were based on subjective decisions by the evaluators. In such a situation, one can always question the validity of a specific score for one individual relative to the corresponding score for another individual. A review of the explanations given by the evaluators for the scores they gave to Anderson and Sturm demonstrates a reasonable basis for each of the scores as well as the differences between the scores given to the two applicants. The record does not support the Union's assertion that Sturm had more applicable hands on experience than did Anderson. It is true that Sturm had some limited experience (one and a half months) as a day custodian.

Jazdzewski testified that because Sturm's experience was custodial, he gave her a higher score than she would have received otherwise for such limited experience and that because Anderson's supervisory experience was as a construction foreman, he gave him a score of nine rather than ten even though Anderson had supervised crews of five or more employees for sixteen years. Such testimony reveals a logical and careful evaluation and comparison of the experience and ability of the applicants and fails to support a claim of an arbitrary, capricious, or discriminatory process or result.

The undersigned does not find that the selection process for the day custodian in this case was either flawed or resulted in gender discrimination. The Employer developed a set of job related questions which were applied and scored in a reasonable and systematic manner. Although both interviewers were male, they certainly were the logical choices to conduct the interviews in view of their responsibilities and their familiarity with the duties of the day custodian. The undersigned is persuaded that there was a rational basis for the difference in scores given to Anderson and Sturm. Said difference established that Anderson and Sturm were not relatively equal in their skill and ability. Therefore, the Employer was not required by the contract to make seniority the deciding factor in the selection process. It is also noted that this was not a situation involving a substantial difference in seniority. Rather, Sturm has less than seven months more seniority than Anderson has. In fact, other male employees with more seniority than both Anderson and Sturm applied, but were not selected for the job. Such a fact supports a conclusion that gender discrimination was not involved in this case.

The Employer accurately asserts that the trial period described in Section 7.03 of the contract applies only to employes who already have been selected as the successful applicant to fill a job vacancy. Said language does not require the Employer to place an employe in a vacant position before selecting the successful bidder to evaluate whether the employe has the ability to perform the job. Rather, the trial period only applies after the employe has been awarded the job.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD:

That the Employer did not violate Section 7.03 of the labor agreement when it promoted Orval Anderson, rather than Darlene Sturm, to the position of day custodian at the Bird Elementary School; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 24th day of July, 1992.

By \_\_\_\_\_  
Douglas V. Knudson, Arbitrator