

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 2, Affiliated with MILWAUKEE DISTRICT
COUNCIL 48, AFSCME, AFL-CIO

and

WHITNALL SCHOOL DISTRICT

Case 48
No. 51642
MA-8682

Appearances:

Podell, Ugent & Cross, Attorneys at Law, by Ms. Nola J. Hitchcock Cross, appearing on behalf of the Union.

Quarles and Brady, Attorneys at Law, by Mr. David B. Kern, appearing on behalf of the District.

ARBITRATION AWARD

Pursuant to a request by Local 2, affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO, herein the Union, and the subsequent concurrence by Whitnall School District, herein the District, the undersigned was assigned as Arbitrator by the Wisconsin Employment Relations Commission, pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on January 11, 1995 at Greenfield, Wisconsin. The hearing was not transcribed. The parties completed their briefing schedule on March 6, 1995.

After considering the entire record, I issue the following decision and Award.

ISSUES:

The parties stipulated to the following issues:

1. Did the District violate the collective bargaining agreement when it promoted Deanna Prochnow to the position of Custodian I in July of 1994?
2. If so, what shall be the remedy?

FACTUAL BACKGROUND:

The Whitnall School District, herein District, employs a number of employees involved in custodial and maintenance work in a bargaining unit represented by the Union. Part-time custodial employees, classified as "Custodial Aides", perform cleaning and housekeeping functions in the District's facilities. The entry level full-time custodial position, known as "Custodian I", performs essentially the same functions on a full-time basis.

The grievants Don Godec (seniority date August 29, 1988) and Michael Bregantini (seniority date September 26, 1988), are Custodial Aides who have been employed at the High School. In the Summer of 1994, they posted for the position of Custodian I at the Middle School. A third Custodial Aide at the High School with a seniority date of August 19, 1991, Deanna Prochnow, also applied for the position.

As part of the selection process, Brian McCormick, Middle School Principal, interviewed the three candidates. He met with each of the three individuals for fifteen (15) minutes and asked them the same questions, relating to their human relations and public interaction skills, their mechanical background, their knowledge of cleaning procedures and cleaning chemicals, their attention to detail, and questions relating to why they wanted the job. Each of the candidates was also given an opportunity to ask questions. McCormick wanted to insure that the successful applicant would have good cleaning skills (the essential function of this position), as well as an ability to deal effectively and courteously with the public since the District regularly rents out its facilities to community groups for various activities. The District has stressed the importance of interacting appropriately with members of the public, and on at least three occasions McCormick has had to discipline custodial employees for not working with the public in an appropriate manner.

As a result of the interviews, McCormick concluded that Prochnow was the best qualified candidate for the position because she demonstrated a great deal of enthusiasm for the job, was knowledgeable regarding cleaning chemicals and material safety, showed a high degree of attention to detail, and asked pertinent questions about the position. In contrast, Godec and Bregantini did not perform as well during the interview. For example, Godec asked few questions about the position, and Bregantini asked none at all. Prochnow's answers were clear and contained more detail than Godec and Bregantini's answers. In addition, although Godec and Bregantini both described a greater degree of mechanical aptitude and experience with respect to repairs and maintenance tasks, McCormick did not consider this factor to be significant, in light of the fact that the position would essentially be a cleaning position, and that other employees would be available to perform maintenance tasks. McCormick was accompanied during the interviews by the Head Custodian at the Middle School, Dale Callen, who agreed with McCormick's conclusion that Prochnow was the best qualified candidate for the position.

Prior to making a recommendation to the Business Manager, McCormick spoke with the Supervisor of Buildings and Grounds, Richard Keene. Keene was the direct supervisor of all three employees at the High School, and was familiar with the quality of their work as well as their abilities. Keene felt strongly that Prochnow was "the best person for the job" based on the following factors: Prochnow was superior in terms of the quality of her cleaning work, receiving far fewer written "reminders" than either Godec or Bregantini; Prochnow's work was always completed and up to the standards expected by the District while Godec's work was rarely completed and Bregantini's work was occasionally not complete; Prochnow worked much better independently and without supervision, and was always found in her work area upon building checks -- in contrast, both Godec and Bregantini had difficulty remaining in their work areas; and, Prochnow had superior relationships with the public and other staff members, whereas Godec and Bregantini had been uncooperative or rude on occasion.

In addition, Keene was aware that Prochnow had received the "Custodian of the Quarter" award just one year earlier as a result of her "Outstanding Service and Top Performance" as a custodial employe with the District. In contrast, the grievants had never received or even been nominated for the award.

Keene was also aware that both Godec and Bregantini had more mechanical experience than Prochnow did, but discounted the importance of that fact, because the primary focus of the disputed position was cleaning.

Finally, Keene was aware that both Godec and Bregantini had received extensive discipline during their employment with the District. In contrast, Prochnow had never received any discipline during her tenure with the District.

McCormick then recommended to the Business Manager, Ben Villarruel, that Prochnow be selected for the position based upon the fact that her qualifications for the position far exceeded those of Godec and Bregantini.

Villarruel received the recommendations of the aforesaid two administrators, reviewed the employment records of all three applicants, and made the final decision to award the position to Prochnow. Prior to making the decision, Villarruel spoke "extensively" with both McCormick and Keene about their recommendations because he was aware of the greater seniority of the grievants, and because he wanted to make sure his decision was fair. Based upon their answers to his inquiries, as well as his familiarity with the applicants, Villarruel concluded that Prochnow was the best person to fill the position.

After Prochnow was selected, Godec and Bregantini filed timely grievances contesting the District's selection of Prochnow. The parties stipulated that there are no procedural issues, and that the instant dispute is properly before the Arbitrator for a decision on its merits pursuant to the

terms of the parties' collective bargaining agreement.

PERTINENT CONTRACTUAL PROVISIONS:

...

3. SCHOOL BOARD FUNCTIONS: The Board possesses the sole right to operate the school system 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:

...

C. To hire, promote, transfer, schedule and assign employees in positions with the school system;

...

K. To determine the methods, means and personnel by which school system operations are to be conducted;

...

7. PROMOTIONS AND TRANSFERS:

A. Qualifications: Promotions or transfers (except as provided in subsection C, D, E, and F below) to another job classification shall be determined on the basis of relative ability, experience and qualifications. Where the above stated factors are relatively equal, seniority shall be the determining factor.

...

8. GRIEVANCE PROCEDURE:

...

D. Arbitration:

...

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

PARTIES' POSITIONS:

The Union basically argues that because the grievants had more seniority, a "broader range of experience," "greater mechanical ability," and had previously performed the disputed Custodial I position on a fill-in basis they had relatively "superior ability, experience and qualifications over the new employee."

The Union also argues that the grievants' prior discipline should play no role in the required contractual assessment of "relative ability, experience and qualifications" because one, the contract makes no mention of reviewing discipline records as part of the application of that standard; and, two, the District has waived discipline as a basis for promotion decisions citing the District's selection of Godec in 1992 for promotion to the very same position in support thereof.

In conclusion, the Union states the record supports a finding that the relative ability, experience and qualifications of the candidates puts the grievants ahead of the successful applicant, even according to the District's own testimony, and the District should select one of the grievants for the aforesaid full-time position based on their "vast seniority."

The District, on the other hand, maintains that it properly selected Deanna Prochnow for the Custodian I position because the relative ability, experience and qualifications of the candidates were not relatively equal. In this regard, the District argues Prochnow's work record and quality of performance is far superior to the grievants' based on her receipt of the Custodian of the Quarter Award, her lack of prior discipline, her ability to do quality work independently, and her record of interacting courteously with members of the public and other staff members. The District also cites her superior interview performance in support of her selection.

The District rejects the Union's arguments that the District erred in selecting Prochnow based on the following reasons. One, the fact that Godec was almost placed in a Custodian I position in 1992 has no bearing on this dispute because there was no competitive posting in that situation. Two, notwithstanding item 16 on the Custodian I Job Description which calls for a Custodian I to perform simple maintenance tasks the job is essentially a cleaning position like the Custodial Aide position held by all three applicants and Prochnow is far more qualified to

fill said position than the grievants. Three, the grievants' disciplinary records can be considered in determining relative ability according to arbitral precedent, and the District has not waived consideration of discipline as a basis for promotion decisions based on Godec's promotional opportunity in 1992.

Finally, the District argues that the essential question herein is whether the District's determination is reasonably supported by the evidence, or whether it was influenced by improper considerations such as arbitrariness, caprice or discrimination. Based on the entire record, the District concludes there is "literally no comparison between" Prochnow's qualifications and those of the grievants and based on same the Arbitrator should deny the grievances.

DISCUSSION:

At issue is whether the District violated Section 7A of the collective bargaining agreement when it promoted Deanna Prochnow to the position of Custodian I in July of 1994. The Union argues that there is a contract violation while the District takes the opposite position.

Section 7A provides "Promotions or transfers . . . to another job classification shall be determined on the basis of relative ability, experience and qualifications." Where said factors "are relatively equal, seniority shall be the determining factor."

Where, as noted above, an agreement reserves to management the right to make selections for promotion on the basis of ability, at least in part, most arbitrators, including the undersigned, will defer to the opinions of supervision on issues of relative ability, when that discretion has been properly and fairly exercised. Consequently, if management develops criteria which are reasonably related to the job; applies those criteria to the demonstrated qualifications of the applicants through fair and even handed procedures, relying upon objective evidence wherever possible; and selects the applicant having demonstrably superior qualifications an arbitrator ordinarily will not "second guess" such a determination.

In the instant case, the District found Prochnow more qualified than the grievants for the Custodian I position based on comparative quality of past performance, disciplinary records, ability to work independently, peer recognition, supervisory assessments, ability to interact well with members of the general public, and interview performance. Based on the applicants' background and experience and overall record, the District concluded Prochnow "had far greater ability, experience, and qualifications for" the position. These factors, in the opinion of the Arbitrator, form a reasonable basis for the District's decision finding Prochnow more qualified than the grievants. Since the relative ability, experience and qualifications of the grievants and Prochnow were not relatively equal, the District was justified in disregarding seniority, and choosing the best qualified applicant -- Deanna Prochnow -- for the disputed position.

The Union argues, contrary to the above, that the disputed Custodian I position involves more mechanical maintenance work and outside groundskeeping than the part-time Custodial Aide

position and because the grievants have "greater mechanical ability" than Prochnow one of them should have been selected for said position. However, the record does not support a

finding regarding same. To the contrary, both the Custodian I Job Description and the testimony of the District's witnesses (Richard Keene and Brian McCormick) establish that maintenance duties comprise only a small part of the Custodian I position's duties and responsibilities. The Custodian I position is largely a cleaning job, and the record is clear that Prochnow performed her cleaning duties as a Custodial Aide better than the grievants. In addition, as a Custodial Aide Prochnow was responsible for assisting "with grounds maintenance, snow removal, grass cutting, etc. as needed" and as a result is, contrary to the Union's assertion, qualified to perform the outside groundskeeping duties as required of a Custodian I.

The Union also argues that it was improper for the District to consider the grievants' prior discipline in assessing the relative ability, experience and qualifications of the applicants. However, the Union did not cite any arbitral authority in support of said position. Nor was the Union able to cite any contractual provision, past practice or bargaining history which would restrict the District's ability to consider a candidate's disciplinary record when evaluating candidates for a promotional opportunity. To the contrary, Section 3C of the agreement provides that the District has the authority "to hire, promote . . . employees in positions within the school system;" while Section 3K gives the District the power "to determine the methods, means" etc. to accomplish same. Finally, as pointed out by the District, arbitrators have long held that consideration of disciplinary records is appropriate in the context of assessing "relative ability." 1/ Based on all of the foregoing, the Arbitrator rejects this argument of the Union.

The Union cites the District's near selection of Godec in 1992 for promotion to the very same position in support of the proposition that the District has waived discipline as a basis for promotion decisions. However, there is no evidence in the record that the District "waived" consideration of disciplinary records for promotion when it considered Godec for promotion in 1992. In fact, Godec's promotional opportunity in 1992 occurred without posting or School Board approval, 2/ and appears to have taken place outside the guidelines of Section 7A of the agreement. As such, it is distinguishable from the instant dispute, and has no precedential value.

It is true, as pointed out by the Union, that the grievants had previously performed the disputed Custodial I position on a fill-in basis, and, thus, had a broader range of experience than Prochnow. However, that alone in the Arbitrator's opinion is not enough to outweigh the other

1/ Elkouri & Elkouri, How Arbitration Works, Fourth Edition, pp 638-39, (1985).

2/ Uncontested testimony of Ben Villarruel, District Business Manager.

criteria considered by the District in deciding to award the position to Prochnow instead of the grievants. The record is clear that those criteria support a finding that Prochnow possessed superior qualifications for the position. Therefore, the Arbitrator rejects this argument of the Union as well.

Based on all of the above, the Arbitrator finds that the answer to the stipulated issue is NO, the District did not violate the collective bargaining agreement when it promoted Deanna Prochnow to the position of Custodian I in July of 1994, and it is my

AWARD

That the grievances of Donald Godec and Michael Bregantini are hereby denied and the matter is dismissed.

Dated at Madison, Wisconsin this 15th day of May, 1995.

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Arbitrator