

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

NICOLET AREA VOCATIONAL, TECHNICAL
AND ADULT EDUCATION DISTRICT

and

NICOLET AREA TECHNICAL COLLEGE
SUPPORT PERSONNEL UNIT

Case 13
No. 51778
MA-8737

Appearances:

Mr. Gene Degner, Executive Director, WEAC UniServ Council No. 18, P.O. Box 1400, Rhinelander, Wisconsin 54501, on behalf of the Local Union.

Mr. Robert W. Mulcahy, Michael Best & Friedrich, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108, on behalf of the District.

ARBITRATION AWARD

According to the terms of the 1993-95 collective bargaining agreement between Nicolet Area Technical College Support Personnel Unit (hereafter Union) and Nicolet Area Technical College (hereafter District), the parties jointly requested that the Wisconsin Employment Relations Commission appoint a member of its staff to act as impartial arbitrator of a dispute between them regarding whether the District violated the collective bargaining agreement when it appointed Tina Jarocki to the position of Secretary at Lakeland Campus. The Commission appointed Sharon A. Gallagher to hear and resolve the dispute. A hearing was held at Rhinelander, Wisconsin on January 10 and February 7, 1995. No stenographic transcript of the proceedings was made. The parties submitted their initial briefs and reply briefs by March 27, 1995, which were thereafter exchanged by the undersigned. The record was thereupon closed.

Stipulated Issues:

The parties stipulated that the following issues should be determined in this case:

Did the District violate Article XV, Section C, when it appointed Tina Jarocki rather than Sandi Williams to the position of Secretary at the Lakeland Campus? If so, what is the appropriate remedy?

Relevant Contract Provisions:

ARTICLE II - MANAGEMENT RIGHTS

The Board, on its own behalf, and on behalf of the Nicolet Area Technical College, hereby retains and reserves unto itself all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and the constitution of the State of Wisconsin and of the United States, except as modified by the specific terms and provisions of this agreement.

These rights include, but are not limited to:

1. Determining the mission of the college and the methods and means necessary to fulfill that mission.
2. Determining the size and the composition of the workforce.
3. Utilizing personnel, methods, and means in the most appropriate and efficient manner, as determined by Board.
4. Transferring, assigning, or retaining employees.
5. Suspending, demoting, discharging, or taking other appropriate disciplinary action for just cause.

These rights must be exercised consistent with other provisions of the agreement.

ARTICLE XV - VACANCIES AND REASSIGNMENTS

A. All vacant or new positions shall be posted internally on an official bulletin board for three (3) working days prior to being posted externally.

In-house recruitment for supporting staff positions shall be for a period of three (3) days. All support staff personnel may apply for vacant positions by submitting a written application. If a position is not filled by a bargaining unit employee within the three (3) day period, then the position shall be opened to the public.

. . .

C. If hiring is to be done in-house and two employees apply for the same position and both are equally qualified, the position shall be filled by the most senior employee.

Background:

Sandi Williams has been employed by the District for the past four years. For the first two years, she worked in the District's Business Office and then applied for an Administrative Assistant position to the Dean of Economic Development. Williams tested for the latter position and was selected over one other internal candidate who had greater seniority than Williams. Williams has been employed in this Administrative Assistant position (Category 3) for the past two years. While Williams was employed at the District's Business Office, her immediate supervisor was Bill Peterson. At that time, there were four other women working in clerical positions in the Business Office with Williams. Peterson was their only supervisor. During her two year tenure in the Business Office, Peterson never formerly evaluated Williams' performance and Peterson never issued Williams any warnings or reprimands during this time. Williams' position in the Business Office was paid at a Category 3 while her Administrative Assistant job to Dean of Economic Development, Karen Isebrands, was paid at a Category 4. 1/

Tina Jarocki, was employed in the District's Registration Office from May, 1992 through September, 1993. At that time, her direct supervisor was Donna Kohlbeck, the District's Registrar. In October, 1993, Jarocki was awarded the position of Secretary to the Director of Research and Development at the District. At that time, Harry Cottrell was the Director of Research and Development. Jarocki remained in this position until the end of November, 1994, when she was awarded the position in dispute, Secretary at the Lakeland Campus.

The opening for a Secretary at Lakeland Campus was posted on August 22, 1994. That position was originally posted as a pay Category 2 position. At the time of its initial posting, Williams was the only internal applicant who signed the posting and was interested in it, despite the fact that the position represented a significant decrease in pay. Sometime after the job was posted as a Category 2, that posting was removed. Jarocki stated that she saw the initial posting as a Category 2 but did not apply for it because she could not afford to go back to Category 2 pay.

1/ When Williams began her employment with the District, she was paid at a Category 2 in the Business Office. Thereafter in 1991, her job as well as other jobs at the District were reclassified and her position was upgraded to Category 3 pay. When Williams began her employment with the District, she was paid \$7.65 per hour. At the time of the instant hearing, Williams was being paid \$10.90 per hour as an Administrative Assistant.

On September 1, 1994 a new position was posted for the Secretary to NATC Lakeland Campus. This posting indicated that the job would be paid at a Category 3, \$10.27 per hour. Both Sandi Williams and Tina Jarocki signed this posting, submitted resumes and lists of references and both were thereafter considered for the position. Tina Jarocki was selected by the District for the position and she began on a full-time basis on December 1, 1994. The position description for the "Secretary to NATC Lakeland Campus" read in relevant part as follows:

. . .

Position Summary:

Under the general supervision of the Dean of Lakeland Campus and Outreach Education, provides secretarial and support services to the Lakeland Campus Dean, Outreach Coordinators, and instructors. This is a full-time position with full benefits.

Duties/Responsibilities:

The following duties are normal for this position. These are not to be construed as exclusive or all inclusive. Other duties may be required and assigned.

- * Maintain files and records for Outreach Education.
- * Contact instructors and schedule routine courses.
- * Assist coordinator with obtaining new instructors and scheduling new courses.
- * Schedule facilities for classes and process billings.
- * Assist coordinator with identifying potential new facilities to rent.
- * Assist with instructor contact and course scheduling.
- * Assist with facility requests, scheduling, and billing.
- * Process course registrations and course fees.
- * Prepare instructor rosters and packets.
- * Complete and route transmittals, registration forms, and monies to the appropriate offices.
- * Process time cards, travel requests, course changes. Notify students and faculty of changes in course location.
- * Answer community inquires (sic) regarding courses other services provided by NATC.
- * Prepare purchase orders.
- * Prepare correspondence.
- * Input course requests and changes.
- * Participate in the development and continuous improvement of processes and procedures related to Outreach Education.

- * Maintain mailing lists and participate in publicity efforts.
- * Handle the arrangements for special events.
- * Maintain library collection including on-line computer services at the Lakeland Campus. This would include video tapes, periodicals, inter-campus loans, video home study.
- * Work with Lakeland Campus library patrons.
- * Provide site facilitation for distance learning classes at the Lakeland Campus.
- * Administer GED tests.

Qualifications:

1. Education: Graduation from high school/GED. Post high school training in secretarial science or office management preferred.
2. Experience: A minimum of two years general office experience. Experience in an educational setting preferred.
3. Knowledge, Skills, and Abilities: Thorough knowledge of computers, e.g., word processing and spreadsheet. Good organizational, communication, telephone, typing, and human relation skills.

In evaluating candidates for this position, Nicolet may consider a combination of education, training, and experience, which provides the necessary knowledge, skills, and abilities to perform the duties of the position. Normally, education may be substituted for experience, or experience substituted for education, on a year for year basis.

Beginning Date: As soon as can be arranged.

Salary: \$10.27/hour; Category 3 of the NATC Support Personnel Unit Agreement.

Application Procedures and Deadline: Completed Nicolet College application form, letter of interest, and a recent resume must be on file in the Human Resources Department no later than by 4 p.m., Wednesday, September 7, 1994. Applicants who submit materials after the deadline date or who submit incomplete application materials will not be considered. Only complete application

packages will be submitted to the search committee for consideration.

Nicolet Area Technical College is an Equal Opportunity/Affirmative Action Employer.

Facts:

The dispute in this case revolves around the District's selection of Tina Jarocki for the position of Secretary to the Lakeland Campus. In reaching its decision, the District denied the disputed position to a more senior employe, Sandra Williams, assertedly because it found Jarocki more qualified for the position. Ms. Williams filed the instant grievance in this case.

The facts surrounding the selection of Ms. Jarocki for the disputed position are as follows. After the position was posted internally the second time, the District appointed a Screening Committee to evaluate the two internal applicants, Jarocki and Williams, and attempt to arrive at a consensus regarding which if either should be the successful applicant. The Screening Committee consisted of the following District employes: Sandi Dietrich, Office Manager and Administrative Assistant at the Lakeland Campus; Judy Kaiser, Secretary at the Lakeland Campus; Mary Fortier, Outreach Coordinator at the Lakeland Campus; Martha Schouweiler, Coordinator at the Tomahawk Campus; and Terry Liewendowski, Business Office Payroll Specialist at the Lake Julia Campus. 2/ The chairman of the Screening Committee was the Dean of the Lakeland Campus, Beth Dailey. None of the above members of the Screening Committee had ever supervised or worked regularly with either Williams or Jarocki. Dietrich, Kaiser and Liewendowski are all members of the Union which has pursued the grievance on Williams' behalf. Both Fortier and Schouweiler are members of the faculty bargaining unit represented also by the WEAC in a separate unit. Beth Dailey is not a member of any labor organization and the only management representative who served on the Screening Committee.

After the receipt of both Jarocki and Williams' applications, the Screening Committee members met with Vice President of Human Resources for the District, Bob Pound. Although the evidence is disputed regarding Pound's instructions to the Committee members, it is clear that Pound described the types of questions to ask and the types of questions not to ask, and he indicated that the Screening Committee should seek the best qualified applicant. Judy Kaiser got the impression from Pound that he wanted the Committee to select one of the two internal applicants. Kaiser asked him, if all things were equal, would the person with the most seniority at

2/ Originally, Donna Kohlbeck (Registrar) had been asked to serve on the Screening Committee but she declined and asked Terry Liewendowski to take her place.

the District receive the position. It is undisputed that Pound responded that rarely are all things equal, that things would not likely be equal and that the Committee should select the best person for the job among the internal candidates. It is disputed whether or not Mr. Pound

indicated that the Screening Committee had the responsibility only to check the top candidate's references or whether Pound stated that the Screening Committee should check all references for both candidates. 3/ Beth Dailey stated that Pound told the Committee at this meeting that only if the two internal candidates were exactly equal, would seniority be used.

At the conclusion of this meeting, the Screening Committee made arrangements to meet on or about September 20 to discuss and share the types of questions that they wished to ask the candidates. All of the Committee members had input and assisted in drafting the interview questions. Pound reviewed the Committee's questions thereafter. Each Screening Committee member had an identical set of questions for each of the two candidates. The interview question sheet indicated that each candidate should be graded, one being a low score, five being a high score, on each question. Each Screening Committee member asked the same questions of each candidate, taking turns with Dailey asking three questions, and each of the other Screening Committee members asking two questions. The interview question sheet read as follows:

. . .

1) Beth Why are you interested in this

3/ Sandy Dietrich testified that Pound did not state that the Committee should only check the top candidate's references. Dietrich further stated that during the four previous times she had been on Screening Committees at the District, the Screening Committee members had checked all the references for the top two candidates, and that if there appeared to be a personality clash with a recent immediate supervisor the Screening Committee had gone back farther to get other references. Mr. Pound's testimony and that of Beth Dailey directly contradicts Ms. Dietrich's testimony. Mary Fortier and Martha Schouweiler were not called as witnesses in the instant hearing. Judy Kaiser could not recall whether Mr. Pound had stated that only the top candidate's references would be checked. Terry Liewendowski was not asked any questions on this topic.

position?

"General Insight,"

1 (Wants to escape present job)

2

3

4

5 (Mentions characteristics of job)

- 2) Beth What do you know about Outreach Education?

"Interest in job, willingness to learn"

- 1
- 2
- 3
- 4
- 5

(Rate on level of interest)

- 3) Judy What computer applications are you familiar with - and how have you applied them?

"Computer Experience, willingness to learn"

- 1
- 2
- 3
- 4
- 5

(Depth of knowledge)

- 4) Judy What experience have you had working with diverse populations? What populations?

"Comfortable w/public, attitude"

- 1
- 2
- 3
- 4
- 5

(Negative)

(Positive)

- 5) Martha Describe how you interact with co-workers and supervisors.

"Team player, attitude"

- 1
- 2
- 3

(Unable to define)

4
5

(Answers all qualities of team player)

- 6) Mary All of Outreach will be centered at the LKLD Campus. One of the things that will need to be done is setting up the office. How would you go about that?

"Organizing skills, experience, team player"

1 (Never done it-do not know where to begin)
2
3
4
5 (Self-motivation w/team involvement)

- 7) Mary If you felt there were more efficient ways of getting a job done how would you approach your co-workers with this?

"Professionalism, experience"

1 (Wouldn't approach)
2
3
4
5

- 8) Terri What special skills/experiences/strengths can you give to this position making you the most qualified candidate?

"General insight, "

1
2
3
4

5

(Has all criteria listed)

9) Terri What weaknesses do you feel you might bring to this position?

"General insight,"

1 (Has none of criteria listed)

2

3

4

5

10) Sandy Someone comes to the window to register for a class, the phone rings and someone else wants to check out library material - all at the same time; how would you handle this?

"Stress, experience, sense of humor"

1 (Unable to resolve)

2

3

4

5 (Resolves calmly)

11) Sandy A student comes in complaining loudly because he was given wrong info i.e. came in 1 week early for a class; how would you handle this?

"Professionalism, stress,"

1 (Unable to resolve)

2

3

4

5 (Resolves calmly, professionally)

12) Martha Where do you picture yourself in 5 years?

"General insight"

1

2

3

4

5

13) Beth

Questions for us.....

Qualities we are looking for: (not necessarily in this order)

1. Flexible in work schedule
2. "Pitch-in, roll w/punches" to get job done (ex: answer phone for others)
3. Computer experience, applications, comfortable to use
4. Comfortable w/public, diverse populations
5. Team player - attitude, cooperative
6. Professionalism
7. Organizational skills
8. Independence, self-motivated
9. Creative thinker
10. Willingness to learn
11. Ability to handle stress
12. Good sense of humor

Both Jarocki and Williams were interviewed on September 27th, each for 45 minutes. The Committee interviewed Williams first. After both candidates had been interviewed, the Screening Committee continued to meet to discuss the relative qualifications of the two candidates. It became clear, early on, that Fortier, Schouweiler, Kaiser and Dietrich all felt that Williams was more qualified for the job than Jarocki. Both Beth Dailey and Tina Liewendowski felt that Jarocki was more qualified for the job. During the discussion of the various strengths and weaknesses of the two candidates, Liewendowski told the Screening Committee that she was aware that Williams had made many errors in inputting into the computer in her position as Administrative Assistant to the Dean of Economic Development. Liewendowski also stated that she was aware of no such errors having been made by Jarocki, as Jarocki had trained her for three weeks when she first came on board at the Business Office. At this point, Dietrich accused Liewendowski of being unfair in making these comments regarding Williams. The Screening Committee had to leave the room in which they were meeting, as another meeting had previously been scheduled for that time of day. Dailey indicated that she would check both candidates' references and that she wished the Screening Committee to meet the next day in the same room. 4/

4/ Dailey did not collect the interview question sheets of the Screening Committee members nor was there ever any composite made of the results of the rankings on the interview question sheets. It is also undisputed that none of the Screening Committee members looked at the other Screening Committee members' question sheets. Although Dailey stated that she had not intended to use the rankings as scores which could be added up to find the "winner" she added the scores on her sheets and found that Jarocki received a 46 and Williams received a 43. Dailey also stated that she used the rankings as scores because she was curious and because it was a process by which to find the best candidate.

That afternoon, Dailey spoke with Donna Kohlbeck, Harry Cottrell, William Peterson and Sandy Kinney 5/ in order to check references on Jarocki. Dailey stated that she decided to check references on Williams also, because she wanted the Screening Committee members to reach a consensus in favor of Jarocki, who she thought was the better person for the job. However it should be noted, that only William Peterson had previously supervised Sandi Williams (between 1990 and 1992) when Williams worked in the Business Office as a Business Office Specialist. Cottrell, Kohlbeck, Peterson and Kinney (one of Jarocki's supervisors at that time) had all supervised Tina Jarocki. Dailey stated that she asked each supervisor the following questions regarding Jarocki: 1) what was the accuracy of their work under stress, 2) how did they interact with people, 3) how did they react to constructive criticism/feedback, 4) how did they work with employes in the office. Dailey used these questions to ask Kohlbeck and Peterson about Sandi Williams' performance at the District. Although Donna Kohlbeck had not supervised Sandi Williams, she had been involved in training Williams to use the new computer system in order to input registration data while Williams was employed by the Dean of Economic Development. Kohlbeck told Dailey that she had found Williams difficult to train during the period in which she had the responsibility of training her on the computer system and that Williams had made repeated errors and did not appear to work well under pressure. 6/

Dailey also asked Bill Peterson about Williams' abilities and qualifications. Peterson stated that Williams had no problem interacting with people but that Williams lacked leadership and independent decision-making qualities. Peterson indicated that Williams had failed to resolve conflict and appeared to lack motivation to assist other employes when the work piled up. Peterson told Dailey that Williams had not demonstrated the ability to think on her own while

5/ Sandy Kinney did not testify herein.

6/ Kohlbeck stated in the instant hearing that the Dean of Economic Development, Karen Isebrands, had the habit of writing her own courses off the master list. This resulted in Kohlbeck being responsible to input those courses correctly into the computer system. Kohlbeck stated that she had complained about this to Isebrands but that Isebrands had said that this was the way that business people wanted the College to run their courses for Economic Development and this was the way that it would be. Kohlbeck stated that she then had to do the work the way Isebrands insisted. Kohlbeck stated that she had to check with the State on a couple of occasions in order to make sure that the courses that were being offered were proper under the law. Kohlbeck told Dailey that she felt that Williams became flustered in pressure situations, that she was not efficient, that she was not very organized and Kohlbeck had to continue to go back and re-train Williams and to correct her mistakes.

employed under his supervision and that Williams did not manage her time well. 7/

Dailey did not contact Williams' current supervisor, Karen Isebrands, Dean of Economic Development for a reference regarding Williams, as Isebrands was then out of town at a conference. Dailey stated that after receiving good references on Jarocki, she did not feel it was necessary to contact Isebrands and speak to her. Dailey admitted that she knew that neither Liewendowski nor Kohlbeck had ever supervised Williams but she felt she could rely on Liewendowski and Kohlbeck's statements regarding Williams' work with student records. Dailey also admitted that she never spoke to her immediate supervisor, Nita Fisher or to Vice President Pound, regarding the requirements of the collective bargaining agreement and employe rights thereunder, or how one would properly chair a Screening Committee. It should be noted that Dailey had never previously chaired a Screening Committee and that she had only served on one Screening Committee previous to the instant one, which had taken no action because the District had decided not to hire anyone for the position interviewed for by that Screening Committee.

The next day, September 28, 1994, the Screening Committee members met again at the Lake Julia Campus. All of them were present personally except Liewendowski who was present by telephone. Dailey began the meeting by essentially stating that she had checked Jarocki's references and that Jarocki had been evaluated higher than Williams. Dietrich along with other members of the Screening Committee were concerned that Dailey had not contacted Williams' immediate supervisor, Karen Isebrands. These Screening Committee members indicated that they did not feel the references were sound and they discounted the information as lacking in value. Dailey indicated that she still wanted a consensus from the Screening Committee and she asked that the strengths and weaknesses of both the candidates be placed on a large writing board that was in the room. Dailey indicated that Williams had made mistakes in student records and that this had been confirmed by both Liewendowski and Kohlbeck. Dailey stated that she did not check with Isebrands because Isebrands was out of town. Dailey stated that Tina's computer skills would take the Lakeland Campus into the twentieth century and that she felt Jarocki was the best candidate for the job. One of the members of the Screening Committee asked if a secret ballot vote could be taken but Dailey declined to do this. Finally, Dailey saw that no consensus was possible. She stated that she would recommend Jarocki for the job. Four of the Screening Committee members, Fortier, Kaiser, Dietrich and Schouweiler had recommended that Williams receive the position while Dailey and Liewendowski recommended that Jarocki get the position. One of the members of the Screening Committee queried whether Dailey could override the

7/ Although Williams was employed under Peterson's supervision in the Business Office between 1990 and 1992, Peterson never evaluated Williams until September 3, 1992. That evaluation was never shared with Williams. In his evaluation, Peterson rated Williams as "good" in eight areas of competency and at a level between "marginal" and "good" on three areas, initiative and judgment, time utilization, and knowledge regarding machinery theories and procedures.

Screening Committee's majority recommendation. Dietrich stated that she had been under the impression that the Screening Committee as a team would decide upon the best candidate. Dailey stated that although she had wanted a consensus from the Screening Committee, it ended up that it was her right, not the committee's, to decide who would receive the position. This concluded the meeting.

In a memo dated September 30, 1994 to Nita Fisher, Dailey recommended the hire of Jarocki. That memo read as follows:

Thank you for your input into the screening and selection process for the Secretary position for the Lakeland Campus and Outreach Education. I am recommending that we hire Tina Jarocki. Tina possesses innovative problem solving skills, creative thinking, organizational skills, extensive computer experience, library experience, an ability to handle multiple tasks under stress, and a professional manner. These qualities will add to an already rich and dynamic Outreach Department.

On October 5, 1994, Ms. Fisher accepted Dailey's recommendation. On October 3, 1994, Vice President Pound sent Ms. Williams the following letter:

. . .

Thank you for interviewing for the position of Secretary to the NATC Lakeland Campus. The screening committee recommended Tina Jarocki, and it was approved. 8/

You should not consider the appointment of another individual as a negative reflection on your qualifications and background; rather, it should be considered an appointment made between two well-qualified individuals. . . .

At the instant hearing, Dean of Economic Development Karen Isebrands stated that she had chaired the Screening Committee which had ultimately interviewed internal candidates for the position of her Administrative Assistant in 1992. She stated that tests were given for the position and that she selected Williams for the job. Isebrands also stated that the Screening Committee was not unanimous in its decision and that she made the decision to hire Williams as her Administrative Assistant over more senior internal applicant and Union representative, Nancy Kaines. Isebrands

8/ Pound later sent a letter to Williams, correcting the error made in his October 3rd letter, stating that the Screening Committee had been divided and Jarocki had been hired.

stated that the Screening Committee may have recommended Kaines, however she (Isebrands) made the ultimate decision. This is the only instance described at hearing in which support staff internal applicants competed for a position and the decision of the Screening Committee was not unanimous and the Supervisor ultimately selected the successful candidate (Williams) who was the less senior candidate. 9/

Finally, Karen Isebrands stated that the Screening Committee which had been designated to select the candidate for the Lakeland Campus Secretary position never contacted her for a reference regarding Williams' work. Isebrands stated that had she received such an inquiry, she would have given Williams a good reference. Isebrands also stated that in her capacity as Screening Committee chairman regarding the Administrative Assistant job to the Dean of Economic Development, she had called Bill Peterson and had received from him a positive reference regarding Sandi Williams' work for Peterson in the Business Office. Isebrands stated that Peterson said nothing negative regarding Sandi Williams when she called him for a reference in that instance.

Positions of the Parties:

Union:

The Union asserted that Sandi Williams was more qualified for the Lakeland Secretary position than was Tina Jarocki. The Union noted that Williams had more experience and a more responsible and higher paid position than did Jarocki at the time Jarocki was selected over Williams for the Lakeland Secretary position. The Union urged that both Jarocki and Williams were both highly rated by their superiors but that Williams was the preferred candidate by four of the six members of the Screening Committee. Thus, the Union noted, it met its burden of proof under Article XV(C), by showing that Williams was more qualified than Jarocki so that Williams' greater seniority should have been the determining factor.

The Union argued that Article XV(C) clearly requires that the more senior internal applicant be selected if two internal applicants are found "equal". The Union observed that Human Resources Vice President Pound had instructed the Screening Committee that the College

9/ Vice President Pound testified regarding the operation of two Screening Committees which ultimately recommended two non-bargaining unit management candidates where the President of the College vetoed the Screening Committees' recommendations and hired someone of his own choosing. Mr. Pound also testified regarding one instance in which a faculty bargaining unit vacancy was filled by a candidate who was not recommended by the Screening Committee. I find these three examples to be irrelevant to this case. In this regard, I note that none of these examples arose within the context of the support staff unit collective bargaining agreement.

preferred to fill the Secretary position internally. Thus, the contract would compel the hiring supervisor to select the more senior internal applicant as should have occurred in the instant case.

The Union urged that management's judgment of internal candidates' qualifications is subject to challenge by the Union on the ground that management's decision was unreasonable under the facts, arbitrary, capricious or discriminatory. In this case, the District used applications and resumes and a Screening Committee to determine the qualifications of Williams and Jarocki. The Union contended that the results of this process were overlooked and dismissed so that Supervisor Beth Dailey could exercise her personal preference. Also, the

Union noted that Dailey only selectively checked Williams' references, choosing not to contact Williams' current supervisor, Karen Isebrands, and to rely upon comments made by individuals (Donna Kohlbeck and Terry Liewendowski) who had never supervised Williams. The Union further noted that Dailey also relied upon comments made by Williams' former supervisor Bill Peterson and his evaluation of Williams in 1992 which had never been shared with Williams. Thus, the Union contended, Dailey's personal opinion of Jarocki and Williams' qualifications should be given little weight because it is not supported by factual evidence and because Dailey's inquiries were clearly slanted in favor of Jarocki. The Union further noted that Dailey had not worked with or previously supervised either candidate so that her opinion of them should be given less weight, in any event.

The Union urged that Williams had relevant job experience, 25 years in the work force as a Secretary and Administrative Assistant, 19 of which were served in an educational setting (four of these years were served at the District); that Williams had successfully moved from a Category 2 to a Category 4 position at the District after taking a battery of tests; and that Williams' every day tasks in her past two years in her Category 4 Administrative Assistant position, involved her regularly in working with special interest courses, registrations and computers. All this evidence showed that Williams was the more qualified candidate for the Lakeland Campus Secretary position.

The Union then compared Williams' Category 4 job description to the job description for Jarocki's former job as Secretary to the Director of Research and Development. The Union observed that Jarocki's former position required less education, less experience, fewer skills and abilities in fewer secretarial tasks than does Williams' position as Administrative Assistant. The Union noted that no testing was required for Jarocki's former job nor was any testing required for the Lakeland Campus position. Yet, Beth Dailey disregarded these facts as well as the majority recommendation of the Screening Committee and decided, admittedly without regard for the requirements of the labor agreement, that Jarocki possessed the "vision" for the Lakeland Campus job opening. The Union pointed out that Dailey admitted that the qualities of vision and forward thinking were not contained in the position posting for the Lakeland Campus Secretary position nor were they listed in the job description. Thus, the Union urged the Arbitrator to set aside

Dailey's decision as it was not based upon specific and understandable extrinsic evidence and therefore was arbitrary.

District 10/

The District argued that by its grievance the Union is challenging the District's right to establish qualifications and criteria for hiring and to make the decision to hire Tina Jarocki. The District noted that the Union failed to support any of its claims that Beth Dailey had improperly preferred Tina Jarocki in advance of Dailey's post-interview decision to select Jarocki over Williams. The District urged that Article XV, Section C, only provides a tie-breaking method if two internal candidates are equally qualified. In fact, the District argued, according to past practice the seniority tie-breaker mechanism has never been used because no two candidates have ever been found to be equally qualified.

The District noted that the Lakeland Secretary position required special skills and the ability to work well with Beth Dailey. The District admitted that the initial posting was for a Category 2 position due to Dailey's "poor internal communication" of the position's job responsibilities. Yet, the District urged that the process used to select Jarocki was fair and regular. It noted that Human Resources Vice President Bob Pound had instructed the Screening Committee regarding the interview process and it stated that only if two candidates were equal would seniority come into play and that this happened very rarely. Although Pound had told the Screening Committee that they should only check references for the top candidate, the District noted, Dailey decided after the interviews to check both Williams' and Jarocki's references in an effort to build a consensus for selecting Jarocki. The District observed that the references given by those contacted by Beth Dailey clearly showed that Jarocki was the better qualified candidate for the job. The District observed that if Williams had wanted Dailey to have a reference from Karen Isebrands, Williams should have gotten a written one from her and submitted it along with her application packet.

The District stated that past practice should control the instant case. The District pointed out that there were four such instances involving one instructor, two managers and grievant Williams herself. In addition, the District contended that Article II - Management Rights clearly shows that the District has retained the right to determine the criteria and qualifications for new and open positions. The District asserted that the caselaw and the evidence strongly support a conclusion that unless the District, in selecting Jarocki, is shown to be unreasonable, arbitrary, capricious, discriminatory or acted in bad faith, the Arbitrator should sustain the District's decision

10/ In its brief, the District quoted testimony at length from the instant hearing. No transcript of the proceedings was made so that no record of the proceedings exists in this case which can be quoted.

even if she might not have reached the same conclusion. The District urged that Beth Dailey's decision to select Jarocki over the recommendation of the Screening Committee was justified based on Dailey's overwhelming need to properly run her program. The District observed that Dailey's receipt of references favored Jarocki and that Dailey had ranked Jarocki higher during the interview process. The District therefore sought an award denying and dismissing the grievance in its entirety.

Reply briefs:

Union:

The Union asserted that it has not called into question management's right to set qualifications for positions. Rather, the Union stated, it has questioned the District's fairness and objectivity in evaluating Jarocki and Williams. The Union contended that both Jarocki and Williams are overqualified for the Lakeland Secretary position and the District's assertion that the Lakeland Secretary position requires special skills is belied by the written qualifications contained in the job description which lists basic secretarial duties and qualifications. The Union recognized the vested interest that supervisor Beth Dailey has in getting the best candidate for the Lakeland Campus position. However, the Union asserted that this interest should have been balanced with the rights contained in the labor agreement. These latter rights were completely ignored by Dailey, the Union urged.

The Union asserted that the parties have never considered equal qualifications to be a tie-breaker under Article XV, albeit the parties have never bargained regarding any change in that language. The Union took exception with Vice President Pound's self-serving statements that no two employees can be judged to be exactly equal. The Union observed that Dailey's reference checks were not fairly sought or balanced. The Union noted that a simple look at a map supports Williams' statement that she wanted the Lakeland Secretary position because it meant one hour less driving to and from work. Thus, the Union urged that the District's speculations regarding Williams' motives were unfounded. Finally, the Union contested the validity of the District's arguments that past practice supports its position.

District:

The District asserted that the Union ignored all the credible evidence showing that Williams' had "performance problems in areas that directly related to her ability to function effectively as the Lakeland Campus Secretary." In addition, the District noted that the Union failed to prove that the District engaged in any wrongdoing in selecting Jarocki for the Secretary position. The District pointed out that the Union was wrong in its portrayal of the Screening Committee -- that the Committee was made up of four WEAC members and only one administrator, Beth Dailey. The District also disputed the Union's assertions that Category 4

employees have more qualifications in general than do Category 3 employees; and that Dailey had completely disregarded the labor agreement in making her decision.

If the contract had stated that seniority would prevail if two candidates were minimally qualified, the results would be different, in the District's view. The District re-asserted that the language of Article XV, Section C, reads in its favor and that the past practice also supports the District's view of this case. Because Williams was Dailey's second choice for the job, there was no need for Dailey to check Williams' references at all, the District argued. The District observed that Dailey did more than she needed to, where Vice President Pound's instructions had been to check only the top candidate's references. The District reiterated that Beth Dailey's view of the candidates' abilities and qualifications should control in this case. The District criticized the Union's unfounded attacks in its initial brief on the character of certain District witnesses. The District also took issue with several inaccuracies it found in the Union's portrayal of the facts in its initial brief and questioned the Union's good judgment in bringing a case which essentially has pitted Union members against Union members. In all of the circumstances, the District urged that this case should be dismissed.

Discussion:

Absent express language to the contrary, employers are free to set and judge employee qualifications for positions, subject to challenge by the Union that the employer's ultimate decision was unreasonable or clearly wrong under the facts, capricious, arbitrary, discriminatory or made in bad faith. In the instant case, Article XV - Vacancies and Reassignments, at Section C, indicates that if two in-house employees apply for the same position and both are "equally qualified, the position shall be filled by the most senior employee." In labor parlance, this type of language is known as a "relative ability" clause. As a general rule, arbitrators hold that the term "equal" does not mean the two candidates must be exactly equal in order for seniority to prevail, but that two candidates need only be substantially equal. Thus, an approximate or near equality of employees rather than exact equality is necessary before the seniority factor may come into play. Where two internal candidates are both well qualified, an interview and reference check may reasonably break the tie if no skills tests are required for the position.

The crucial inquiry in this case, as posed by the Union, is whether the District's decision to hire Tina Jarocki as Lakeland Campus Secretary over Sandy Williams was, in all the circumstances, reasonable, based on the facts and/or done in good faith. Based on the record evidence in this case the undersigned is convinced that Dean Dailey's decision to select Tina Jarocki over Sandi Williams was based upon Dailey's judgment that Jarocki did better than Williams during the interviews, and upon the positive references Dailey received regarding Jarocki. In addition, I note that the Union failed to prove that Dailey acted in bad faith or had a discriminatory motive in selecting Jarocki. In this regard, the record evidence showed that the Lakeland Secretary position was initially posted as a Category 2 position and that Sandi Williams was the only District employee who signed that posting. However, the initial posting was removed and Williams was not considered for the opening as it existed as a Category 2 position. No grievance was filed regarding the removal of the original posting.

The Lakeland Secretary position was thereafter reposted as a Category 3 position after Beth Dailey wrote a memo to Vice President Bob Pound in which she described the position as follows:

Position Description

80% Outreach Education Support

- Maintain files and records for Outreach Education.
- Provide secretarial support for the Dean, Outreach Coordinators, and instructors.
- Assist with instructor contact and course scheduling.
- Assist with facility requests, scheduling, and billing.
- Process course registrations and course fees.
- Prepare instructor rosters and packets.
- Complete and route transmittals, registration forms, and moneys to the appropriate offices.

Assist with time cards, travel requests, course changes, and the notification of students, facilities, and faculty of these changes.

Answer community inquiries regarding courses.

Prepare purchase orders.

Prepare correspondence.

Input course requests and changes.

20% Library Support

Maintain library collection including on-line computer services at the lakeland Campus. This would include video tapes, periodicals, inter-campus loan, video home study.

Work with Lakeland Campus library patrons.

Provide site facilitation for distance learning classes at the Lakeland Campus.

...

The above-quoted list of duties for the Lakeland Campus Secretary position contains essentially routine secretarial/clerical duties, which both Jarocki and Williams were qualified to perform based on their prior positions with the District.

An analysis of the entire process by which Dailey decided to hire Jarocki for the Lakeland Campus Secretary position over Williams is necessary. Initially, I note that Vice President Pound's instructions, as recalled by Dailey, were that only if two internal candidates were exactly equal would seniority come into play and that Dailey needed only check the top candidate's references before making the decision to hire. Obviously, no two candidates will ever be exactly equal. Indeed, Dailey found Jarocki to be more qualified than Williams after their interviews. The fact that Pound may have made an incorrect statement regarding the meaning of the work "equal", does not require a conclusion that Dailey acted arbitrarily in selecting Jarocki. Nor does the fact that Dailey did not follow her understanding of Pound's instructions, that she was to check only the top candidate's references before making the decision to hire, require an award in favor of the Union.

I note that Dailey admitted that after receiving good references from Kohlbeck, Peterson, and Kinney regarding Jarocki's past performance, she felt it unnecessary to contact any of Williams' listed references or her current supervisor, Karen Isebrands. Dailey, who had rated Jarocki higher than Williams during the interview process, had no responsibility to fully check Williams' references given the good references she received from Jarocki's supervisors. I also see nothing wrong with Dailey's taking into consideration comments made by Screening Committee member Terry Liewendowski, which were corroborated and supported by then-Registrar Donna Kohlbeck, regarding Williams' work habits and performance at the District, in making her decision to hire Jarocki. Although neither Liewendowski nor Kohlbeck had supervised Williams

in the past, Kohlbeck had worked regularly with her at one time and Kohlbeck would have served on the Screening Committee had she not declined to do so and asked Liewendowski to take her place. Dailey's consideration of the verbal evaluation of Williams' performance given by Bill Peterson was supported by documentary evidence and affirmed by Peterson's testimony herein. Dailey had no way of knowing that Peterson had not shared his evaluation of Williams with Williams or that Peterson had given a positive reference to Isebrands prior to Isebrands' decision to hire Williams as her Administrative Assistant in 1992.

The fact that Dailey failed to take into consideration the Screening Committee's recommendation that she hire Williams for the Lakeland Campus secretary position does not require a different conclusion. In this regard, I note that of the five Committee members only Dailey was a supervisor. Two other Committee Members (faculty bargaining unit employees Schouweiler and Fortier) did not testify herein. Dietrich and Kaiser, members of the support staff unit, stated that they, Fortier and Schouweiler, preferred Williams. In their capacities as non-supervisory employees who had never worked with Williams, these four Screening Committee members' opinions of Williams and Jarocki from their applications and from their 45 minute interviews does not carry a great deal of weight.

The District argued that Beth Dailey's ranking and opinion of Jarocki and Williams' abilities and qualifications for the Lakeland Campus Secretary position should control this case. In this case, both Jarocki and Williams were well-qualified on paper for the Lakeland Campus Secretary position. For Williams, receiving the position would have amounted to a demotion (from Category 4 to Category 3). For Jarocki, receiving the position represented a lateral transfer. I disagree with the Union on the issue of seniority -- Jarocki and Williams' seniority was similar. 11/ Jarocki had worked for the District for a little over two years and Williams had worked for the District for four years at the time they applied for the Lakeland Campus Secretary position. In this case, because no test of secretarial skills or abilities was required of the applicants for the Lakeland Campus Secretary, 12/ the interviews of Jarocki and Williams became more important. Dailey determined that Jarocki performed better than Williams during the interviews and after Dailey checked Jarocki's references she continued to believe that Jarocki was the better candidate for the Lakeland Secretary position. And the negative comments made by Peterson and Kohlbeck regarding Williams convinced Dailey there was no need for her to check Williams' other references. 13/ The evidence, therefore, supports a conclusion that Dailey reasonably believed

11/ I am not persuaded, as the Union urged, that Williams' work for many years for employers other than the District should be counted in this case.

12/ I note that neither Williams nor Jarocki were tested for their prior Category 3 positions at the District. It is within the District's discretion to require tests for positions or to decide no tests are necessary.

13/ I do not find it unreasonable in these circumstances, that Dailey decided not to wait for

Jarocki was better qualified for the Lakeland Secretary position based upon the interviews and Dailey's reference checks.

The Employer offered evidence which it asserted proved that the direct supervisor of a position at the District has the power to overrule the recommendation of the Screening Committee. In this regard, I note that the evidence showed that in the past, the President of the College has twice vetoed the selection by the Screening Committee of management personnel. Such management personnel are exempt from the application of any labor agreement. In these circumstances, the selection of management personnel is not relevant to this case. In addition, the evidence showed that a third vacancy on the faculty staff had occurred in the past where the recommendation of the Screening Committee had not been followed. I note that the labor agreement covering the faculty bargaining unit is separate from the instant labor agreement covering support staff personnel. However, a fourth instance concerned the Grievant herein, Sandi Williams, when she was selected over a more senior internal applicant, Nancy Kaines for the position of Administrative Assistant to the Director of Economic Development. In my view, this instance and the faculty staff case provide some independent evidence to prove that direct supervisors serving on Screening Committees have the authority to override a split recommendation of a Screening Committee.

In all of these circumstances and particularly in light of the fact that the Secretary to the Lakeland Campus position required less education, less experience, fewer skills and abilities in fewer secretarial/clerical areas, I conclude that the District had a reasonable basis to conclude that Jarocki was more qualified than Williams for the position of Lakeland Campus Secretary and I issue the following

AWARD

The District did not violate Article XV, Section C, when it appointed Tina Jarocki rather than Sandi Williams to the position of Secretary at the Lakeland Campus. The grievance is therefore denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin this 21st day of July, 1995.

By Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator

Isebrands' return from out of town before making her hiring decision.

