CASE: GLENDON #4

ARBITRATION

UNIVERSITY -and-

UNION

Log No. A331-1585-
Grievance No. B-12

SUBJECT

Bypassing senior bidder in filling of posted vacancy; minimum qualifications.

ISSUE

Did the Employer violate Paragraph 170 of the 1996-99 agreement when it bypassed grievant BOB STAND in the filling of a posted vacancy in the Maintenance Worker I classification in November 1997 and awarded the vacancy to a less senior bidder?

CHRONOLOGY

Grievance filed: November 24, 1997
Arbitration hearing: February 3, 1999
Award issued: February 15, 1999

APPEARANCES

For the Employer:

For the Union:

SUMMARY OF FINDINGS

The Employer violated Paragraph 170, because its decision that grievant was not qualified for the posted vacancy was based not on the minimum qualifications for the Maintenance Worker I classification as stated in the Classification Description, but on more stringent, extra-contractual considerations. The evidence showed he did possess the minimum qualifications as stated in the Classification Description, so he was entitled to the Maintenance Worker I position and shall be awarded it forthwith, with the trial period provided in Paragraphs 177 and 178, and if he successfully completes the trial period also with back pay equal to the difference, if any, between his wages as a Cook II since the position was awarded to the less senior employee and the wages paid to that employee.

BACKGROUND

Grievant BOB STAND has worked for the Employer since January 1990. He works at WATERS Hall as a Cook II, the classification he also held in October 1997 when he bid on a posted vacancy in the Maintenance Worker I classification at BIG VINE Complex. The position was awarded to another bargaining unit bidder, T. CARR, who had almost twenty-two months less seniority than grievant. The Union filed Grievance No. B-12 on November 24, 1997 claiming that was a violation of Paragraph 170 of the agreement and asking that grievant "be given a trial period" in the position and "made

whole for any and all losses." The Employer denied the grievance, asserting in its Step III answer that it did not violate Paragraph 170 because grievant had been "interviewed in the same manner as other applicants and was determined not to meet the minimum qualifications." The issue in arbitration is whether bypassing grievant and awarding the job to a less senior bidder did violate Paragraph 170, which reads as follows:

> The Employer will fill vacancies on a seniority basis first within a seniority unit where a vacancy occurs with employees who bid on posted vacancies and possess the minimum qualifications (as stated in the Classification Description) for the vacancy under consideration. Unsatisfactory work performance may be a proper cause for denial of consideration for a vacancy if substantiated.

The minimum qualifications to be a Maintenance Worker I are stated in the Classification Description (and were listed on the posting here in question) as follows:

- Casual knowledge of repair methods, equipment, and tools of the various building trades is necessary.
- One year of satisfactory experience or an equivalent combination of technical training and experience is necessary.
- Possession of a valid Michigan vehicles operator's license(s) is necessary.
- Supply own tools.
- Frequent lifting of less than 25 pounds and occasional lifting of over 75 pounds is required.

It is undisputed that even though grievant had held food service positions throughout his nearly eight years of employment, he worked several summers (when his cafeteria was closed) in maintenance, at both WATERS Hall and University Apartments. He testified that during those summers he performed a variety of tasks such as changing ballasts and tubes in fluorescent light fixtures, replacing floor tiles, repairing locks, and plastering

ceilings. Rick LAND, a long-service Maintenance Worker I at WATERS Hall, corroborated grievant's testimony. He said grievant worked with him during such summer assignments, performing a wide range of general repairs at WATERS. LAND also said he was familiar with the minimum qualifications in the Maintenance Worker I Classification Description and, having observed and supervised (as a crew leader) grievant's summer maintenance work, he believed grievant not only met but exceeded them. On cross examination, LAND acknowledged the Classification Description does not include all duties he performed as a Maintenance Worker I and lists some that he never has performed.

Local Union President J TREES testified that he also had held the Maintenance Worker I classification, at the Circle Complex, and with knowledge of grievant's summer experience in maintenance he too believed grievant possessed the minimum qualifications for the posted vacancy. TREES also testified, without contradiction, that the vast majority of employees in the Maintenance Worker I position have come to that classification from the kitchen, with experience gained in summer maintenance assignments.

B. PEAR was the Assistant Manager at the BIG VINE Complex, in which capacity he interviewed those bidders initially determined to be potentially qualified for the Maintenance Worker I vacancy. Based on their performance in the interviews he decided which of them did or not actually possess the minimum qualifications for the classification. For the interviews he devised a list of questions related to maintenance work typically done at BIG VINE, answers to which were to be accompanied in some instances by hands-on demonstration, such as assembling a Sloan (plumbing) valve and water lines to a faucet, assembling a sink drain trap, and hooking up wiring to a telephone.

PEAR testified that he determined grievant did not possess the minimum qualifications because he answered some of the questions incorrectly and made some mistakes in the hands-on assignments, such as not saying he would have shut off the water before starting to work on the Sloan valve or the faucet, initially being unable to locate the vacuum in the Sloan valve, using a metal rather than plastic compression fitting on a plastic water line he connected to the faucet, not shoving a "tail piece" in far enough when putting the trap together, and trying to hook up all four wires to a telephone rather than only two as required. He also said grievant lacked knowledge about steam heat and equipment

such as the air compressor, brine tank and condensation pump in the mechanical room, where he also incorrectly identified a water softener as a water heater. On cross examination, PEAR conceded that Maintenance Workers do not actually work on the steam heating system, although they respond to residents' complaints about inadequate heat by going through such rudimentary diagnostic functions as checking for leaks, stuck valves, open windows and blocked convection areas.

On rebuttal, LAND testified that in his experience repairs to the steam heat system were left to skilled trades employees from Physical Plant. He also said the primary need for a Maintenance Worker is basic mechanical aptitude, which he said grievant had amply demonstrated in his summer maintenance assignments, and he was certain grievant could grasp the steam heat trouble-shooting functions described by PEAR after brief verbal instruction. He also testified that placing a metal instead of plastic compression fitting on a plastic water line, while not "optimal," would not cause any real problem.

The Union contends the demands placed on grievant by PEAR's interview questions and demonstrations exceeded minimum qualifications for the Maintenance Worker I classification as stated in the Classification Description and that his disqualification based on mistakes he made during that interview therefore violated Paragraph 170. The Union argues that if he had not possessed such qualifications it is not reasonable to believe that the Employer would not have let him work several summers in maintenance. In its view his success in those assignments, vouched for by LAND and reinforced by LAND's well-informed opinion that he not only met but exceeded them, was proof that he *did* possess the minimum qualifications set forth in the Classification Description.

The Employer contends it has the contractual right to determine bidders' qualifications through an interview process designed to test skills and knowledge most pertinent to the work typically performed in the particular position which is posted. Having done so here, and grievant having made numerous errors during his interview, it insists it properly exercised its authority under Paragraph 170 by disqualifying him and selecting another bargaining unit bidder who clearly did possess the minimum qualifications necessary for the particular position at BIG VINE which was posted. It claims support for these views in arbitrators' awards in four other cases between these parties.

DISCUSSION AND FINDINGS

It is understandable that the Employer would prefer to determine bidders' qualifications strictly with reference to specific tasks that might be performed by an employee in the particular vacancy which is posted. But that is *not* what Paragraph 170 authorizes, requires or even contemplates, nor is it what the four other arbitrators decided.

In a 1986 award (Grievance No. CL-11, *Gy),* arbitrator Patrick McDonald upheld the bypassing of a senior bidder for a building security worker vacancy because she could not do "steady moderate and occasional heavy lifting," which was one of the "minimum qualifications *as set forth in the job description."* (Emphasis added.)

In a 1991 award (Grievance No. ET-3 *Gez),* arbitrator Ellen Alexander upheld the bypassing of a senior bidder for an Arena Maintainer vacancy because he did not possess the "refrigeration experience" listed as a minimum qualification in the Classification Description for that classification. Specifically, the minimum qualifications in that Description included the following:

> Experience working and identifying problems with refrigeration in an ice arena.
> Working knowledge of refrigeration equipment and its application to large ice surfaces, and ice arena repair methods, equipment and tools.

Applicant Gez had driven a Zamboni ice resurfacing vehicle, but that seems to have been his only familiarity or experience with refrigeration of large ice surfaces. The Union apparently claimed that was enough, because operating the Zamboni was mostly what the Arena Maintainer did, but arbitrator Alexander found that was a challenge to the accuracy of the job description, not a basis for awarding Gez the posted vacancy when he did not possess the minimum qualifications *as stated in the description.*

In a 1992 award (Grievance No. ER-1, *Ron),* arbitrator Anne Patton upheld the bypassing of a senior bidder for a posted vacancy in the Maintenance Worker III classification. In that case, as here, the Employer devised a test of specific skills and knowledge relevant to the particular tasks performed by employees in the posted classification. But it did so in an effort to determine whether applicants possessed the minimum qualification, *as stated in the classification description,* of "Expert knowledge of repair methods,

equipment, and tools used in the various building trades." Arbitrator Patton upheld the use of a test of specific job-related skills and knowledge as a valid means of determining whether applicants had the minimally required *expert* knowledge.

In a subsequent 1992 award (Log No. A646-1585-90, *Kp),* arbitrator John Lyons upheld the bypassing of a senior bidder for another Maintenance Worker III position. In that case as well, the Employer subjected applicants to oral and hands-on testing of skills and knowledge related to specific work requirements of the posted vacancy and disqualified grievant *Kp*, like *Ron* in the case before arbitrator Patton, because his test results showed he did not have "expert knowledge of repair methods, equipment and tools used in the various building trades," which was one of the minimum qualifications stated in the Maintenance Worker III Classification Description.

Because the focus in all four of those cases was on minimum qualifications "as stated in the Classification Description," the disqualifications upheld by the arbitrators were entirely consistent with the plain language of Paragraph 170. In this case, however, the oral and hands-on test given to grievant and other applicants measured their ability to step into the Maintenance Worker I position at BIG VINE and perform it immediately, but with no real connection to the minimum qualifications stated in the Classification Description. Such a test might well be, as arbitrators Patton and Lyons found it *was,* a contractually appropriate means of determining whether an applicant had *expert* knowledge of repair methods, equipment and tools. But it was not an appropriate determinant of the minimum qualification stated in this Classification Description: *"casual* knowledge of repair methods, equipment, and tools of the various building trades." (Emphasis added.)

By basing grievant's disqualification on tests of specific skills and knowledge that might be used in the particular position that was vacant, the Employer went well beyond finding out whether he had "casual knowledge of repair methods, equipment and tools" and thus imposed more stringent, extra-contractual requirements than were justified under Paragraph 170. For *its* part, the Union presented convincing evidence that grievant *did possess* such "casual knowledge," which he had obtained and demonstrated during several summers doing maintenance work (as had other kitchen employees before him who became Maintenance Workers), and which was confirmed by LAND's testimony that,

based on having seen grievant's good mechanical aptitude while performing a variety of general repairs during such summer assignments, he believed grievant not only met but exceeded that minimum qualification.

It apparently is undisputed that grievant also possessed the other minimum qualifications stated in the Classification Description: one year of satisfactory experience, which he gained during the summer maintenance assignments; a valid driver's license; ability to supply his own tools; and being able to lift at least twenty-five and occasionally more than seventy-five pounds. With more seniority than the employee to whom the position was awarded, he therefore should have been selected for it and given the trial period provided for in Paragraphs 177 and 178 of the agreement. The Employer violated Paragraph 170 of the agreement by not doing so.

For these reasons, the grievance must be sustained, grievant shall be placed in the Maintenance Worker I classification forthwith and given the aforementioned trial period, and if he successfully completes the trial period the Employer also shall pay him any wages he lost as a result of being bypassed for such placement in November 1997. He may not have suffered any financial loss, because Cook II and Maintenance Worker I are both Level XII classifications and thus have the same hourly pay rate; but if there was such a loss, which could be the result of a difference in hours worked as well as of a discrepancy in the hourly rate, he will be entitled to recover it upon successful completion of his trial period as a Maintenance Worker I.

AWARD

Grievance No. B-12 is sustained. Grievant BOB STAND is awarded and forthwith shall be placed in the Maintenance Worker I position that was posted as Vacancy No. 170679 in October 1997 and awarded to T. CARR in November 1997, with a trial period as provided in Paragraphs 177 and 178 of the agreement. If grievant successfully completes the trial period, the Employer also shall pay him the amount, if any, by which wages paid to CARR exceeded grievant's wages from the date the position was wrongly awarded to CARR until the date grievant is placed in the position, with such comparison of wages limited to those dates on which both employees worked. The arbitrator retains jurisdiction until May 17, 1999 for the limited purpose of resolving disputes between the parties concerning calculation of the monetary remedial aspect of this award.

Paul E. Glendon, Arbitrator
February 15, 1999