

IN THE MATTER OF ARBITRATION BETWEEN

School Service Employees Union, Local 284

[David Prescott]

And

**Independent School District #278, Orono,
MN, School District**

OPINION AND AWARD
Bureau of Mediation Service
Case #15-PA-0435

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of SEIU, Local 284

Kelly Gibbons, Internal Organizer

South St. Paul, MN

On behalf of Independent School District #278, Orono, MN

Trevor Helmers, Esq.

Kristin C. Nierengarten, Esq.

Rupp, Anderson, Squires and Waldspurger

Minneapolis, MN

JURISDICTION

In accordance with the Custodial Master contract between Orono Independent School District 278 and the School Service Employees Union, Local #284, AFL-CIO, and under the jurisdiction of the State of Minnesota Bureau of Mediation Services, the above grievance arbitration was submitted to Joseph L. Daly, Arbitrator on April 14, 2015, at the School District Offices. The parties filed post-hearing submissions on May 5, 2015.

ISSUES AT IMPASSE

SSEU, Local 284 states the issues as:

1. Did the grievant, David Prescott, file the grievance in a timely manner?
2. Did the Orono Independent School District violate Article V, Section A, of the Collective Bargaining Agreement when it failed to award the position Maintenance Technician Generalist to the grievant?

Independent School District #278 states the issues as:

1. Is the dispute arbitrable?

2. If so, did the district violate Article V of the 2014-16 Collective Bargaining Agreement when it refused to hire the grievant who was not qualified for the Position and was also the least senior internal candidate?

RELEVANT CONTRACT PROVISIONS

ARTICLE IV

HOURS, OVERTIME AND WORK ASSIGNMENTS

- G. Work Assignments. Work assignments will be made by the Coordinator of Facilities and Safety and the Director of Business Services with some consideration being given to seniority in the system. Qualifications for the position, however, will be the chief determining factor.

ARTICLE V

JOB POSTING

- A. Vacancies. New positions or vacancies of more than thirty (30) days duration and with no defined end date will be posted for a period of five (5) days, and the most senior employee, provided the employee is qualified, of those employees posting for the position, will be assigned the position within five (5) days after the close of the posting, provided, nevertheless, that the School District reserves the right to make assignments of employees to particular buildings owned, rented or used and maintained by the School District.
- F. The District shall inform the union steward about postings, new jobs, policy changes, job changes or working conditions affecting members of this unit.

Article XV

GRIEVANCE PROCEDURE

- A. Definition. A “grievance” shall mean a written complaint by an employee, group of employees, or the union that there has been a violation, misinterpretation, or misapplication of this Contract or of Board policy or practice, or that there has been unfair or inequitable treatment of the grievance by the School District.
- B. Timeliness. Within fifteen (15) working days following knowledge of the act or condition which is the basis of the employee’s complaint, the grievant may file a grievance beginning at Step 1 and proceeding through each succeeding step until the grievance has been resolved.

FINDINGS OF FACT

1. On July 30, 2014, the School District posted an internal job posting for “Fulltime Maintenance Technician Specialist”. The posting stated the applicable specifics were:

Two years athletic field maintenance preferred;

Knowledge of turf management;

Knowledge and ability to also perform and assist with irrigation, HVAC and equipment repairs/maintenance.

2. The district received internal applications from Mr. Prescott and three other, more senior candidates.

3. The job description stated in its entirety:

POSITION TITLE: MAINTENANCE TECHNICIAN SPECIALIST

FULL TIME

UPDATED: 7/24/2014

Title: Maintenance technician – Generalist

Unit: Custodial

Classification: Class IV

Job Summary:

This position is responsible for having a wide knowledge of the general operation of the school districts physical plant. This position will support many areas of daily operation which includes but not limited to: Painting, custodial backfill, grounds maintenance, HVAC general maintenance and deliveries.

Reporting Relationship:

The Maintenance Technician – Generalist reports directly to the Coordinator of Facilities and Safety

Duties and Responsibilities:

- A. General knowledge of the proper maintenance and commercial grade repairs including by not limited to: floors, walls, ceiling tile, doors and hardware, furniture, specialty equipment, etc.
- B. Assist in painting, painting schedules and painting priorities in the district.
- C. Maintain practice and game fields for outdoor athletic events including set up of fields and striping
- D. Responsible for snow removal on all district driveways and parking lots prior to the start of school. This includes sanding for icy conditions to insure safety of building users.
- E. Assist with mowing and grooming of grounds
- F. Performs landscaping, tree plantings at the direction of Coordinator of Facilities and Safety
- G. Perform the general repair of the following systems: fencing, asphalt, concrete, storm sewer, irrigation, etc.
- H. Perform a variety of grounds construction projects such as installation of new systems, crowning football fields and new concrete, asphalt or paver installations
- I. Maintain grounds equipment in good working condition, including washing, cleaning, lubrication, sharpening blades, etc.

- J. Inspect and monitor the following systems for proper, efficient and safe operation: furnishings, walls, windows, doors, floors, etc.
- K. Actively participates in completing and scheduling preventive and reactive maintenance work orders.
- L. Makes and/or directs on-site maintenance personnel in repairs to building fixtures and equipment and notifies the Head Custodian or Coordinator of Facilities and Safety when repairs require an outside contractor.
- M. Must be willing and able to be on the call list for such things as security call backs, emergency repairs, etc.
- N. Provide assistance in monitoring work of outside contractors or suppliers to ensure work is performed efficiently and meets job specifications.
- O. Responsible for maintaining Material Safety Data Sheets/Safety Data Sheets for products used and knowledge of Volatile Organic Compounds in occupied settings.
- P. Maintain a positive working relationship with Community Education staff, Activities Director, youth coaches, associations and parents, coaches, teachers, principals, students and all other facility users.
- Q. Operates a variety of equipment including, large dump truck, tractors, large mowers, rental equipment, snow plow equipment, tractor driven snow blowers and brooms, etc.
- R. Assist with scheduled and emergency repairs to heating, ventilating, air conditioning, refrigeration and controls systems as necessary.
- S. Fill-in for day-time custodians out on vacation and or sick time.
- T. Assumers head custodial duties in their absence, as assigned
- U. Perform other related duties as apparent or assigned.

Supervisory Responsibilities:

- A. Oversee summer or seasonal employees

Knowledge, Skills and Abilities Required:

- A. Ability to get along with district employees and be courteous and helpful with students and general public.
- B. Ability to make decisions on a variety of issues.
- C. Ability to prioritize multiple demands, determining how a project will be completed and by basing decision making on factors such as: public safety, cost effectiveness and “customer” or public satisfaction.
- D. Knowledge of requirements of maintaining school buildings in a safe, clean and orderly condition.
- E. Knowledge of modern cleaning methods including basic methods of cleaning and preserving floors, white boards, carpets, furniture, walls and fixtures.
- F. Knowledge of cleaning equipment, tools, materials and supplies used in custodial work.
- G. Knowledge of building retaining walls, landscaping plantings and turf management

- H. Knowledge of low voltage systems such as security system, fire alarms, energy management, etc.
- I. Knowledge and ability to maintain and replace door hardware
- J. Knowledge of modern day painting practices.
- K. Ability to perform custodial procedures, methods and schedules.
- L. Ability to maintain classrooms, offices and other school facilities in a clean, safe and secure condition.
- M. Ability to observe and report safety hazards and maintenance repair needs.
- N. Ability to combine a strong mechanical aptitude with strong inter-personal skills.
- O. The ability to adapt to a continuously changing schedule is critical.
- P. Ability to confer with site administrators and supervisor regarding maintenance needs, schedules and concerns.

General Requirements:

- A. Valid Class “D” Driver’s License.
- B. High School Diploma or equivalent, plus 2-3 years of relevant experience required.
- C. Computer skills for operation of the district’s online work order system, email and calendars.
- D. 2-3 years commercial building operation preferred
- E. 2 years’ experience with athletic field maintenance and snow removal preferred

Physical Requirements:

This position involves standing and/or walking 80% of the time. In addition 20% of that time involves: twisting, bending, stooping, squatting, and climbing stairs. Another 10% of the time involves push-pull while sweeping or mopping. Lifting requirements are of up to 40 pounds, extended reaches of 10-15 pounds overhead and lifting of 50-80 pounds with mechanical assistance. Reasonable accommodations may be made to enable individuals with disabilities to perform these tasks.

Hours:

6:00am – 2:30pm M-F

Compensation/Benefits:

Please see Custodial Master Contract

4. Mr. Prescott’s online application included his explanation for special job related skills and qualifications.

I have a high mechanical aptitude. Have no background in construction, I took on a large addition project to my home, over 1200 square feet of living space plus an additional 800 sq ft for garage and unfinished work/utility room. I performed almost the entire project myself. This started with design and drawings,

excavation, footings, framing and everything else to reach and include finish work, trip, tile, paint etc. This includes mechanicals, all plumbing, electrical and much of the heat/ac. This project took me 2 years to complete, while still maintaining my full time employment. While I do not have any specific custodial background, my knowledge and experience will match or exceed the average applicant. I am intelligent and capable of self taught instruction. I have no concerns in my ability to learn how to operate any piece of trade equipment. In the 2 years I spent in HR at City Sprint, I had my best results hiring drivers with no prior experience. Hiring a high quality, teachable candidate produced the best drivers. I found trying to undo bad habits that had been learned elsewhere to be very difficult.

Mr. Prescott also listed “additional information which help in determining professional qualifications.”

Prior to my start as a courier, I spent a couple years as a landscaper, while mostly new construction, installing trees, shrubs and sod. This would be of value regarding grounds maintenance. My experience in managing a fleet of drivers may prove valuable should future opportunities exist to manage group custodial projects.

5. The district interviewed the four applicants. Mr. Prescott’s interview, originally scheduled for August 15, had to be rescheduled to August 18, 2014. At the interview, Mr. Prescott talked about his home construction project. He also talked about his experience laying sod and working for a landscaping company. He stated in the interview he did not have turf management experience or irrigation systems experience.

6. Following the interviews, the interviewing team determined that all four of the candidates lacked the qualifications requested.

7. On August 22, 2014 Mr. Prescott, along with the other candidates, was informed by phone that he would not be hired, that he was not qualified for the position.

The school district decided to post the position externally.

8. On September 4, 2014 the school district then interviewed three external applicants. The district ultimately decided to hire an external candidate “because he exceeded the posted qualifications due to his experience with grounds maintenance, turf management, field striping, and irrigation systems.” [Post-hearing brief of School District at 4]. The candidate hired had worked for the school district on its summer grounds crew every summer since 2009. That candidate had also worked on special projects for the school district during winter breaks for a number of those years. An offer was extended to the external candidate on September 9, 2014.

Also, on September 9, 2014, the school district informed Mr. Stephen Miltich, union steward, that the position had been offered to an external candidate.

On September 12, 2014, the district received the results of the external candidate's physical exam, and he was officially hired to fill the position. On that same day, the school district sent an email newsletter to staff members that contained the hiring announcements, including the fact that the specific external candidate had been hired.

9. After learning that an external candidate had been hired, Mr. Miltich, the union steward, approached each of the four internal candidates about the possibility of filing a grievance. Three more senior internal applicants than Mr. Prescott, the named grievant, told Mr. Miltich they were not interested in filing a grievance. Mr. Prescott, the fourth most senior internal applicant, agreed to participate in this grievance. The grievance dated September 19, 2014, was delivered to the school district on September 23, 2014. On September 24, 2014, the school district denied the grievance on the grounds that it was untimely. The district further explained that the grievance was also denied on its merits because Mr. Prescott was "not qualified" for the position.

10. The grievance stated in applicable part:

Nature of Grievance: Violation of Contractual Hiring procedure

First knowledge of the grievance: September 15, 2014

Specific Article of Contract Violated: Article V, A. Vacancies

Specific Remedy Sought: Appoint D. Prescott to Class IV Maintenance Technician Generalist position.

The grievance was dated September 19, 2014, signed by Mr. Prescott and Union Steward Miltich.

11. The basic position of the union is:

A. Mr. Prescott filed his grievance, "a written complaint by an employee," "within fifteen (15) working days following knowledge of the act or condition which is the basis of the employee's complaint." The union contends that September 12, 2014, marks the date on which the timeline began to run for Mr. Prescott to file his grievance, not August 22 as asserted by the school district. Only on September 12, 2014 did Mr. Prescott learn that the specific external candidate had been hired for the position; Mr. Prescott has seniority over this external candidate and is the senior employee who chose to exercise his rights under the contract; and Mr. Prescott is qualified. The union contends Mr. Prescott did not file a grievance on August 22,

2014, because he did not yet know the specifics of the denial of his application. He was not told why he was not qualified; he knew that there were other internal candidates who were more senior than him; he did not know until September 9, 2014, that an external candidate had been hired for the position; and he did not know the specific person hired until September 12, 2014. Since Mr. Prescott remained the sole bargaining unit employee interested in the position, he filed his grievance within 15 working days i.e. September 12, 2014 of becoming aware that he was the senior, qualified employee who had applied for the position. The grievance was timely.

B. Mr. Prescott was the senior employee who applied for the position of Maintenance Generalist Technician and who elected to exercise his right under the collective bargaining agreement. He remains the senior bargaining employee grieving his right to this position.

C. Mr. Prescott was qualified for the position of Maintenance Technician Generalist and was wrongfully denied this position by the school district in violation of the collective bargaining agreement. He had worked in landscaping. He has designed a 1200-foot addition to his home. He has performed all phases of construction: obtaining all necessary permits for construction, plumbing and electrical work. His architectural design was approved by the city. His plumbing and electrical work passed muster with city inspectors. Mr. Prescott is qualified to perform turf management. Mr. Prescott said he did not have “turf management” experience because he did not understand how the term was used. However, in the interview he described his landscape experience, including the installation of sod, trees and shrubbery and rock beds. His work included proper sloping of soil away from foundations and the operation machinery including a skid loader, a farm tractor and a tractor. Mr. Prescott is qualified to perform athletic field maintenance. The district did not properly consider how Mr. Prescott’s skills and prior experience would apply to athletic field maintenance. His skills and experience easily qualify him for this work. As a landscaper, including as an owner of a family business, he installed sod. Sod installation requires knowledge of soil type so that the sod may take hold. As a landscaper, Mr. Prescott ensured proper sloping of soil away from foundations, which easily translates to the minimal sloping required for maintaining a pitching mound or

a crown of a football field. Top dressing is simply adding a thin layer of soil to even out the ground's surface, while even the typical homeowner possesses a requisite skill to aerate and seed a lawn. Mr. Prescott has the skills through his experience as a landscaper. He operated machinery necessary to perform this type of work. Field striping, base alignment and field rotation require being able to follow a basic diagram. Mr. Prescott not only can follow a diagram; he can design that diagram. He demonstrated this by architectural designs of the 1200-foot addition he made on his home. The job posting stated, "2 years athletic field maintenance *preferred*" [emphasis added]. The district did not "require" but "preferred" 2 years athletic field maintenance. Mr. Prescott possessed the requisite experience and skills in landscaping, designing and constructing. This made him qualified to perform athletic field maintenance. Mr. Prescott is also qualified to operate the irrigation systems and to perform basic HVAC repairs and maintenance. While Mr. Prescott in the interview said that he lacked experience in irrigation, the district failed to consider how his considerable skills would readily transfer to working with the district's irrigation system. The Maintenance Technician Specialist position does not require the installation of irrigation systems. This has already been done. Rather, it requires basic repair and maintenance repairing and replacing sprinkler heads. Mr. Prescott has experience in plumbing his addition to his home. This includes plumbing in the bathroom, kitchen and washroom. His plumbing passed inspection by the city. During the job interview discussed that he can repair and replace sprinkler heads, diagnose a leak in a water pipe, and replace a damaged section of pipe whether PVC or copper. No license is required to perform HVAC repairs or maintenance. The position does not require any special license to perform substantive repair work on heating, ventilation and air conditioning systems. Mr. Prescott's skills in installing electrical wiring and plumbing transfer to the skills the school district to "qualified." Mr. Prescott is qualified to work with irrigation systems and HVAC systems.

D. The person hired lacks the qualifications for the position. He does not have work experience in landscaping, plumbing, electrical work or construction. He has no educational background at collegiate or vocational levels of turf management, athletic

field maintenance or similar areas. Mr. Prescott on the other hand brings a wealth of experience and skills to the position.

E. The union contends that Mr. Prescott is qualified for the Maintenance Technician Specialist position. He possesses the skills, knowledge and past and present work experience. He is also the senior qualified candidate for the job. The union requests that Mr. Prescott: 1. Be awarded the position of Maintenance Technician Specialist; 2. Be awarded back pay as the equivalent to the amount he would have earned as a full-time Maintenance Technician Specialist (calculated at 40 hours per week minus what he actually earned as part-time custodian).

3. The school district position is:

A. The grievance should be dismissed since the dispute is not grievable. The union and Mr. Prescott failed to submit the grievance within the 15-day timeline. The school district determined that Mr. Prescott was not qualified and it notified him on August 22, 2014, that he would not be hired for the position. This is the action he is grieving. Mr. Prescott's true intent is shown by the fact that he argued at length that the school district's determination that he was unqualified was incorrect. In fact, all discussions about the qualifications of Mr. Prescott are untimely and irrelevant since he did not make a timely filing of his grievance. He knew he did not get the job on August 22, 2014. He did not file a grievance with the school district until September 23, 2014, more than the 15-days required under the Collective Bargaining Agreement.

B. Mr. Prescott is not qualified for the position. He does not possess the required skills and experience for the position. The job posting for the position stated that a qualified applicant should have 2 years of athletic field maintenance, knowledge of turf management, and knowledge and ability to perform and assist with irrigation, HVAC, and equipment repairs and maintenance. At the interview Mr. Prescott admitted that he had no experience with turf management and that he had no experience with irrigation systems. The only experience he did mention was related to home construction and installation of landscaping and sod, which are not relevant to the position.

While Mr. Prescott claimed during the grievance process and arbitration hearing that he did not understand the question about turf management and irrigation systems,

he did not clarify these issues during the interview and he presented no information to the district during the interview, or even during the arbitration hearing, to prove that he was qualified for the position. In fact, Mr. Prescott admitted that he did not possess all of the qualifications for the position, insisting instead that he could learn while on the job. Mr. Prescott readily admits he has no experience with turf management, athletic field maintenance, or irrigation systems, which comprise roughly 85% of the position.

C. The school district maintains the inherent managerial right to set the minimum requirements for and to determine whether an applicant meets these requirements. Article IV, Section G of the collective bargaining agreement states that the chief determining factor for the district's hiring will be the qualifications of the applicant. The district has a right to require experience as a qualification, which it did in this case. Mr. Prescott was not qualified for the position.

DECISION AND RATIONALE

a. Arbitrability – timeliness

The union and Mr. Prescott filed the grievance in a timely manner. *Article XV B. Timeliness* requires that a grievance be filed within 15 working days “following knowledge of the act or condition which is the basis of the employee’s complaint.” Mr. Prescott was informed on August 22, 2014 that he did not get the job because he was “not qualified”, in a telephone conversation with Justin McCoy, Coordinator of Facilities for the Orono School District. The school district contends, “This is the action he is grieving.” [Post-hearing brief of school district at 7]. But, Mr. Prescott did not know why the school district deemed him to be “not qualified” nor did he know who was hired, if anyone at that point. Until Mr. Prescott knew who was hired and when he was hired, he could not judge whether the school district was actually denying him the job based on his qualifications or some other reasons. Not until September 12, 2014, did Mr. Prescott learn that an external candidate had been hired, that he has seniority over that specific external candidate, and that Mr. Prescott believed that the external candidate is not qualified. On September 12, 2014, Mr. Prescott and the union believed that Mr. Prescott, in fact, was qualified. Consequently, no “act or condition” giving rise to the grievance existed on August 22, 2014. The “act or condition” arose on September 12, 2014. Mr. Prescott and the union drafted the

grievance on September 19, 2014, and served on the school district on September 23, 2014, well within the 15-day requirement.

The filing of the grievance was timely.

b. **Qualifications**

Was Mr. Prescott qualified for the job of Maintenance Technician Specialist? There is no question that Mr. Prescott is a talented and experienced person. He built a 1200 square foot addition to his home and performed all phases of construction including plumbing and electrical work. He drew the necessary permits and the city inspectors approved the work. He has experience in landscaping.

On the other hand, during his interview, he told the interviewing team he had no experience with turf management or irrigation systems. He did mention having experience with the installation of landscaping and sod. The school district did not deem this experience relevant to the position Mr. Prescott was seeking.

The internal job posting called for: 1) Two years athletic field maintenance preferred; 2) Knowledge of turf management; 3) Knowledge and ability to also perform and assist with the irrigation, HVAC and equipment repairs/maintenance. Mr. Prescott admitted he had no experience with turf management, athletic field maintenance, or irrigation systems. The school district contends that these aspects of the job comprise “roughly 85% of the position.” [Post-hearing brief of school district at 9].

Management has the right to define the job duties required of an employee. If management chooses to emphasize “turf management, irrigation, and athletic field maintenance experience” it has a right to do so. Mr. McCoy testified, “This position was tailored to focus on grounds maintenance work.” [Testimony of Mr. McCoy; see also school district post-hearing brief at 9]. As far as the school district is concerned “lacking this experience, [Mr. Prescott] failed to meet the required qualifications for the position.”

There is no question that Mr. Prescott has skills, abilities and experience in a variety of construction matters including plumbing, electrical, building, etc. But he himself admitted during the interview, he had little or no experience in turf management, irrigation and athletic field maintenance. Because this constitutes 85% of the job – with a focus on grounds maintenance work – the school district had a right to conclude that Mr. Prescott is “not qualified” for this particular position. This does not mean that Mr. Prescott lacks qualifications in many

other fields. In fact, his expertise may, and probably will, be quite useful to the school district and hopefully the school district will find a way to use his impressive skill set. But, by his own admission, he lacks the very experience the school district was seeking for 85% of the work to be done by the Maintenance Technician Specialist.

The union contests that in a cold climate such as Minnesota, 85% of the effort of a Maintenance Technician Specialist will not be on field maintenance and turf management. Yet the testimony of Mr. McCoy at the arbitration hearing is precisely that 85% of the job consists of such work. This testimony is not countered by the fact that Minnesota is a cold climate.

This decision does not and should not diminish Mr. Prescott's extensive skill set. It simply points out that for this specific job at that specific time, Mr. Prescott was not qualified.

Based on the above reasoning, the grievance is denied.

June 23, 2015

Date

Joseph L. Daly

Arbitrator