

CONNECTICUT STATE BOARD OF MEDIATION AND ARBITRATION

ARBITRATION AWARD

CASE NO.: 2024-A-0041

CASE NAME: Naugatuck Board of Education and Naugatuck Non-Certified Employees Union, NIPSEU

Appearances:

For the Union: Eric R. Brown, Attorney

For the City: Nicholas Grello, Attorney

Place of Hearing: SBMA, 38 Wolcott Hill Road, Wethersfield, CT

Date of Hearing: April 3, 2024

Date of Award: August 27, 2024

BACKGROUND

The Naugatuck Board of Education (hereinafter “Board” or “Administration”) and Naugatuck Non-Certified Employees Union - NIPSEU (hereinafter “Union”) are parties to a collective bargaining agreement, effective July 1, 2022 to June 30, 2025 (hereinafter “Agreement” or “Contract”).

On May 26, 2023, the Union filed a grievance alleging the Board violated “Article IV, Section 4.3. Letter B, paragraph 4 – Department Seniority shall be the deciding factor,” because it did not hire Caitlin Healy (hereinafter “Grievant”) for the position of Head Custodian at Naugatuck High School (hereinafter “NHS”). On May 30, 2023, John Lawlor, the Director of Human Resources (hereinafter “HR Director”), denied the grievance stating that, “qualifications of candidates were not considered equal by the interview committee. Candidate with less department seniority was considered more qualified.” The grievance was subsequently denied at Steps 2 and 3. On September 7, 2023, the grievance was submitted for arbitration with the Connecticut State Board of Mediation and Arbitration.

An arbitration hearing was held on April 3, 2024. Each party was provided full opportunity to introduce evidence, examine and cross-examine witnesses, and make arguments. The parties presented three joint exhibits. The Union presented seven exhibits. The Board presented two exhibits. The following witnesses appeared at the hearing and testified under oath: The Grievant; the HR Director; and Corey Rogers, Naugatuck School District Custodial Manager (hereinafter “Custodial Manager”).

Post hearing briefs were received on or about May 17, 2024. At that time, the record was closed.

ISSUE

The parties agreed to the following statement of the issue:

Did the Naugatuck Board of Education violate Article IV, Section 4.3.B of the collective bargaining agreement between the Board and the Union when it did not select the Grievant for promotion to the Head Custodian position at Naugatuck High School? If so, what shall be the remedy?

RELEVANT CONTRACT PROVISIONS

Article II – Rights of the Board of Education

Unless expressly limited by a specific provision of this Agreement, the rights, powers, and authority of the Board over matters involving the Naugatuck School System including, but not limited to, the full control over the policies, practices, procedures and regulations with respect to the employees of the Board covered by this agreement at all of its' school, shall remain solely and exclusively with the Board.

Article IV - Section 4.3.B (in relevant part)

In making its selection of the applicant to fill [a vacant] position, the administration shall consider the following qualifications: education; training; certification; skills and experience as related to the position; job performance; ability, skills or knowledge valuable to the school.

Between applicants within the bargaining unit, department seniority shall be the deciding factor where qualifications are considered by the administration to be equal.

Article IX – Section 9.2.D – Step 4 (in relevant part)

In no event will the arbitrators be empowered to or have authority to render an award which would add to, subtract from, modify, or otherwise alter any provision of this Agreement. The decision of the arbitrator shall be final and binding.

FINDINGS OF FACT

The Board and the Union are parties to a Working Agreement, effective July 1, 2022 through June 30, 2025 (hereinafter “Agreement” or “Contract”). Article IV of the Contract contains provisions that define seniority, certain rights attendant with seniority, and procedures the Board are required to follow when filling a job vacancy or newly created position within the bargaining unit.

Section 4.3.B of the Agreement (“Promotions, Vacancies and Transfers”) states the Administration shall consider the following qualifications when it selects an applicant to fill

a position – “education; training; certification; skills and experience related to the position; job performance; ability; skills or knowledge valuable to the school system.” The next sentence in this subsection states, “[b]etween applicants within the bargaining unit, department seniority shall be the deciding factor where qualifications are considered by the administration to be equal.”

The Board hired the Grievant in February 2008 as the part-time head custodian at the Tuttle House, a historic home at 380 Church Street, Naugatuck. In 2011, the Administration transferred her to a shift custodian position at Hop Brook Elementary School. In 2015, the Administration transferred the Grievant to a shift custodian position at the Central Avenue building. In 2018, the Board appointed her interim head custodian at the Andrew Avenue Elementary School, where she worked for less than a year. In 2019, the Board appointed the Grievant head custodian at Hop Brook Elementary School. During her tenure, the Grievant worked for Michael Bonnard, the Board’s Facilities Director (hereinafter “Facilities Director”).

In 2021, the Board hired Corey Rogers to be its Custodial Manager (hereinafter “Custodial Manager”). He is responsible for the custodial services performed at all Board buildings and facilities. He hires and supervises all custodial staff. The Custodial Manager reports to the Board’s Facilities Director.

In May 2023, the Grievant (one of four female custodians employed by the Board) continued to work at Hop Brook Elementary School, during the day shift. No other custodians worked with her during the day shift. However, she supervised one full-time and one part-time custodian, both who worked the evening shift. The Grievant meets with the full-time custodian at the beginning of his shift and speaks with the part-time custodian on the telephone to provide supervision and delegate assignments.

On or about May 1, 2023, the Board posted a notice that it was seeking to fill an anticipated vacancy for the Head Custodian at NHS. The position was held by Nick Albanese, who planned to retire.¹ The Grievant never obtained a paper copy of the job posting. At first, she testified that she did not recall specifics about what the posting said. Subsequently, she remembered the posting did not refer to prior knowledge of the NHS building or experience with pool maintenance.²

¹ Mr. Albanese is the father of the bargaining unit employee subsequently selected by the Board’s Superintendent and HR Director to fill the NHS Head Custodian position.

² No job posting or job description for the NHS Head Custodian position was introduced into evidence. When the Board decides to fill a job vacancy, Article 4, Section 4.3.A requires it to post, for five working days, a “brief description of the job duties, the hours of work and the pay rate” for the position.

The NHS Head Custodian supervises eight full-time and two part-time custodians. At no time during her employment with the Board did the Grievant supervise this number of employees. She never worked at NHS.

On May 1, 2023, the Grievant sent an email to the Custodial Manager expressing her interest in the NHS Head Custodian position. He responded she would be added to the list of candidates to be interviewed. The Board did not require candidates to complete an application or submit any documentation.

The Custodial Manager was responsible for recommending the interview panel members and developing the interview questions. He recommended to the HR Director that John Harris (hereinafter "NHS Principal"), the Facilities Director, and he should comprise the interview panel. The HR Director concurred with the recommendation.³ The Custodial Manager attempted to follow the requirements of Article IV, Section 4.3.B when crafting the interview questions.

On Friday, May 12, 2023, Custodial Manager, NHS Principal, and Facilities Director interviewed the Grievant and Nick Albanese Jr. (hereinafter "AJ") for the position. The panel used a 2-page "Head Custodian Interview Question" form (hereinafter "Question Form"), that contained 10 questions and a 0-4 scoring rubric. The interview panel also utilized a one-page sheet, titled "Scenario Questions," that contained 3 scenarios developed by the Custodial Manager.

The Grievant did not challenge the composition or expertise of the panel. She did not know the NHS Principal personally and did not believe he was biased against her.

During each candidate's respective interview, the panel members collectively asked all of the prepared questions. Additionally, the Facilities Director asked the Grievant three questions related to pool maintenance experience that were not on the Question Form. The Grievant testified she believed it was inappropriate for the Facilities Director to ask her questions regarding her experience managing a pool because the job posting did not say such experience was required. The Custodial Manager testified that he disregarded the Grievant's responses to these questions and believed they were not relevant to his assessment of the candidates.

The Grievant testified that, in response to a question from the interview panel about her "qualifications," she told them about the 10-Hour OSHA Outreach Training Certificate of Completion she received in 2019. The Grievant testified that, during her interview, she informed the panel members of her experience supervising approximately 20-40 kitchen, grounds, and cleaning staff during a seasonal job.

In response to the answers provided by each candidate, the interview panel members wrote brief notations on their Question Form. The notes did not constitute the

³ The Facilities Director supervises the Custodial Manager. The Custodial Manager did not recommend that Assistant Superintendent Melissa Cooney be on the panel.

complete response provided by the candidates to each question. The panel members assessed the candidates' responses, independently determined the score he believed should be assigned based on the rubric/scoring guide printed on the Question Form, and then recorded the score.

The NHS Principal scored the Grievant 21 (and included the following notation on his form – “Pool – would need training”) and AJ 33; the Custodial Manager scored the Grievant 21 and AJ 34; and the Facilities Director scored the Grievant 27.5 and AJ 36. The average score for the Grievant was 23.2; and for AJ was 34.3.⁴

On May 12, 2023, after completing the interviews and scoring the candidates, the interview panel members discussed the pros and cons of each candidate.⁵ The interview panel members did not review the job candidates' respective performance reviews or personnel files.⁶

They decided to recommend AJ for the position. The Custodial Manager testified he believed that AJ had more training than the Grievant. In support of his position, the Custodial Manager cited AJ's experience at Cross Street, Hillside, Andrews, and NHS.

On Friday, May 12, 2023, the Grievant informed the Union President that the Facilities Director had asked her questions about her pool maintenance experience during her interview. The Grievant said she believed those questions were inappropriate because the job posting did not state that pool experience was required. The Union President spoke to the HR Director that day and expressed her concerns about the questions.

On Monday, May 15, 2023, the Custodial Manager sent Christopher Montini, Superintendent of Schools (hereinafter “Superintendent”) and the HR Director an email recommending AJ be offered the NHS Head Custodian position. The Custodial Manager wrote the interview panel had concluded AJ's history, knowledge of the school, and ability

⁴ The maximum possible score was 40.

⁵ The Custodial Manager was the only interview panel member who testified. No testimony was solicited from him regarding the substance of the interview panel members' deliberations regarding the candidates qualifications.

The Custodial Manager testified the “education” relevant for the NHS Head Custodian position was the “experience” each candidate gained working at Board schools. He testified he found the Grievant's job performance to be satisfactory. The Custodial Manager concluded AJ had more valuable experience than the Grievant because he had worked at multiple schools, including at NHS as the Interim Head Custodian during the summer of 2022.

⁶ The Custodial Manager did not believe there was value in considering the performance reviews. He believed the reviews are influenced by relationships and, therefore, are not a reliable source of information.

to lead made him “the best choice to continue with the successful operations and condition of the high school.”

After receiving the interview panel’s recommendation, but before deciding to select AJ for the NHS Head Custodian position, the HR Director spoke with the Custodial Manager about the concerns raised by the Union President regarding pool maintenance questions asked of the Grievant during her interview. The Custodial Manager confirmed this had occurred. The HR Director asked to see the interview questions and scoring rubric. He noted there were no questions on the form related to pool experience.

The HR Director spoke with the Superintendent. They agreed not to consider the answers to any question asked about pool experience when selecting the candidate for the NHS Head Custodian position. They did not believe the interviews were tainted or that it was necessary to convene a new interview panel. They did not review the personnel files of the Grievant or AJ before making the final hiring decision.

On May 22, 2023, the Custodial Manager notified the Grievant that she was not selected for the job. On May 23, 2023, the Grievant sent the Custodial Manager an email noting that she had more seniority than AJ and asking what factors the Board considered in deciding to hire him. The Custodial Manager responded that the top considerations were knowledge of the NHS building and events, as well as experience working in large scale buildings and running a large team.

On May 26, 2023, the Grievant sent an email to the Union President and the Union Attorney indicating that she was seeking to file a grievance because the Board did not select her for the NHS Head Custodian position. She wrote that during her interview she had been asked questions related to the pool,” although “pool certification or knowledge was not listed as a requirement in the job posting or description.”

The Grievant believes the hiring process was a charade. The Grievant believes the Custodial Manager, the Facilities Director, AJ, and his father colluded to deprive her of the position. The Union did not file a grievance alleging the Administration violated the Contract by colluding with any individuals to deprive the Grievant of the NHS Head Custodian position. The Custodial Manager and HR Director testified they did not collude with anyone during the hiring process.

THE UNION’S POSITION

The Union contends that the Administration violated Article IV when it failed to offer the Grievant the NHS Head Custodian position, claiming she had seniority and was as qualified as the selected candidate. The Union argues the Administration produced no evidence to support its conclusion that its selected candidate was more qualified than the Grievant. The Union asserts the Administration “relied on its conclusory determination” that AJ, a member of the same bargaining unit as the Grievant, had superior qualifications.

The Union contends the Administration's admission that it did not consider the Grievant's education, training, certification, and job performance establishes an Article IV violation. It asserts inclusion of the term "job performance" means the Administration must consider the Grievant's performance reviews. The Union also contends that the Administration's failure to produce AJ's performance reviews supports an adverse inference that he was less qualified than the Grievant.

The Union questions whether the Administration's decisions regarding each candidate's respective qualifications were made in "good faith." The Union argues that if such decisions were not, "it would have breached the terms of the agreement."

The Union asserts it was improper for the Facilities Director to ask the Grievant any question related to pool maintenance experience because the job description purportedly did not list that as a job requirement. The Union also emphasizes the NHS Head Custodian job posting did not state that (1) knowledge of the building, (2) experience with large scale buildings, or (3) experience running a large team were necessary qualifications. The Union argues that the Administration could not rely on these factors because they were not referenced in the job posting.

The Union contends that the selection process was "rigged." In this regard, the Union asserts a " cursory" review of the scoring sheets demonstrates the interview panel's assessments were "subjective" and done in "bad faith." The Union claims the wide disparity between the scores should raise suspicions about the Administration's motives.

The Union alleges that the interview panel favored the candidate who had experience working at NHS, under the supervision of his father and Principal Harris. The Union asserts the Administration improperly "relied upon" its knowledge the selected candidate had experience working at NHS and managing its pool. The Union also argues the Administration offered no evidence to support its "conclusory statement," the selected candidate had "demonstrated an ability to lead."

The Union asserts that the "all-male" interview panel was clearly biased. It contends that the Administration should have placed its female assistant superintendent on the interview panel.

Finally, if the Arbitration Panel determines the Administration violated Article IV, the Union asks the Panel to order the Board to create a new union position, co-Head Custodian position at NHS, and award the position to the Grievant. In addition, the Union asks the Panel to order the Board to negotiate with the Union over the impacts of establishing the new position, so that both the Grievant and AJ "remain whole."

THE BOARD'S POSITION

The Board argues that Article IV clearly and unambiguously requires that it consider seniority only after the Administration decides that two candidates are equally qualified. It also argues that Article IV gives it "the absolute right to determine the qualifications" of job

candidates. The Board asserts the Contract “does not dictate the means that the Administration must use to determine which candidate to select,” and that it could “use whatever means it deemed appropriate to address the qualifications of the candidates ... based on the criteria set forth under Article 4, Section 4.3.B of the ... agreement.”

The Board acknowledged the interview panel did not consider the performance reviews and that the Custodial Manager believed they were an unreliable source of information. The Administration contends, however, that no contract language requires it to review personnel records when assessing job candidates. The Board asserts that, although the Union may disagree with this approach, the Contract does not give the Union authority to require any specific factors be considered by the Board when assessing a job applicant’s qualification.

The Board emphasizes that the Arbitration Panel is not authorized to address Union claims it acted in a biased, discriminatory or bad faith manner in making its hiring decision. Specifically, it notes that if the Grievant wished to pursue a gender discrimination claim, she should have filed it with the Connecticut Commission on Human Rights and Opportunities.

The Administration also contends the proper forum for adjudicating allegations of bad faith is the Connecticut State Board of Labor Relations (hereinafter “SBLR”), not an arbitration panel convened pursuant to the Contract. It notes that, to address this type of purported bad faith conduct, the Union must file a complaint with the SBLR alleging a violation of the Municipal Employee Relations Act; not a grievance under the authority of the Agreement.

DISCUSSION

The issue before this Arbitration Panel is:

Did the Naugatuck Board of Education violate Article IV, Section 4.3.B of the collective bargaining agreement between the Board and the Union, when it did not select the Grievant for promotion to the Head Custodian position at Naugatuck High School? If so, what shall be the remedy?

After conducting a comprehensive review of the evidence proffered and the arguments submitted to this Panel, however, it appears the respective parties are seeking answers to two more refined questions – (1) Whether the Board appropriately determined that Grievant was less qualified than the candidate selected for the position? and (2) Whether the Board violated the Article IV provision that states it “shall consider” certain qualification factors when selecting job candidates?

An arbitrator may not ignore or abandon the plain language of a contract, except with the consent of the parties. See *Excel Corp. v. Food & Commercial Workers Local 131*, 102 F.3d 1461, 1468 (8th Cir. 1996). However, where contract terms delineating each parties’ respective duties and rights are imprecisely drafted, the parties to an agreement

authorize the arbitrator to analyze the agreement (and when appropriate extrinsic evidence, such as bargaining history and past practice) carefully and rationally to arrive at the most reasonable interpretation of the disputed provisions. This is one of those moments.

Article IV. Section 4.3.B – Seniority Provision

The provision at the center of this dispute states, in relevant part, “between applicants within the bargaining unit, department seniority shall be the deciding factor where qualifications are considered by the administration to be equal.” This type of provision is labeled a “relative ability” seniority clause. Such provisions obligate the employer to compare all job applicants with each other. “Only where there is relative equality in qualification is the employer required to consider seniority. Thus, not only are minimum requirements at issues, but also the fine points of comparison.” See *Jobs Bids, Promotions, and Transfers*, Susan R. Brown, Chapter 27, *Labor and Employment Arbitration*, LexisNexis, (Borstein, Gosline, Greenbaum, and Mayberry, General Editors).⁷

It is this essential management function [to determine the relative qualification of each job candidate] ... that seems to underlie some arbitrators inclination to place the burden of proof on unions under relative ability clauses. Because these provisions do not confer automatic entitlement on qualified senior workers, proof of [equivalent or] superior qualifications, according to this school of thought, falls to the union.... Where the Company has the power to initiate action, Arbitrators have quite uniformly held that to upset the [employer’s] action, the Union must show that it is arbitrary, discriminatory or capricious... Several arbitrators have held that the absence of arbitrary or capricious behavior is not sufficient reason to uphold management’s actions if the union can establish that a factual error has been made.

Id.

Under Article IV of the Contract, the Board committed to the Union that it will hire the candidate with greater seniority when it decides that said candidate is equally or better qualified than a candidate with less seniority. The Board, therefore, may only hire the junior candidate after it determines he or she is better qualified than a qualified employee with greater seniority.

⁷ For additional discussion of this topic, see, Seniority, Chap. 14.7.A.i, *How Arbitration Works*, Elkouri & Elkouri, (Under such terms, the “comparisons between qualifications of employees bidding for the job are necessary and proper, and seniority becomes a factor only if the qualifications of the bidder are equal.... When a company is promoting an employee to a supervisory position, the employer may give greater preference to ‘fitness and ability’ than to seniority.”)

The Administration argues this provision is clear and unambiguous, and undeniably gives it sole discretion to determine if the qualifications of a job candidates are equal. The Union did not challenge that interpretation. The Arbitration Panel agrees with the Board's reading of this provision; its meaning is not in dispute.

To establish the Grievant was as qualified as the selected candidate, the Union solicited testimony that (1) identified each Board facility the Grievant was assigned to work at from 2008 to 2023, (2) provided her job titles, (3) explained she supervised two custodians who performed the vast majority of their jobs during her off hours and over 20 staff members during work outside of the school district, and (4) reflected her belief that she was as qualified as the chosen candidate.

The Union also introduced the following evidence related to the Grievant's qualifications – (1) her performance reviews from Hop Brook Elementary School, dated 2020, 2022, and 2023; (2) her resume that was not in the Board's possession when it considered her for the NHS Head Custodian job, and (3) an OSHA 10-hour training certificate of completion, dated 2019. These documents were not considered by the Administration's representatives involved in the hiring process.

The record also contains the following documents, offered by the Administration, related to the assessment of both candidates' qualifications – (1) the scoring sheets completed by the interview panel members on May 12, 2023 and (2) the email from the Custodial Manager to the Superintendent and HR Director, recommending that AJ be offered the position.

The interview panel members consistently rated the selected candidate's responses to each question higher than the Grievant's. The Union argued that it considered the discrepancy in the scoring to be "subjective," "suspect," and "biased." However, there is no reliable evidence that permits this Arbitration Panel to conclude that the interview panel members did not evaluate the candidates in a fair and professional manner, that the questions asked were not reasonably related to the qualifications the Administration deemed relevant to the position, and that the scoring was incorrect.

The record also contained testimony from the Custodial Manager and the HR Director regarding their evaluation of each candidates' qualification. The HR Director testified that he and the Superintendent made the final hiring decision and that they did not consider answers to any questions about pool maintenance experience.

The Custodial Manager testified that he did the best he could to follow the requirements of the Agreement throughout the hiring process and that the Grievant's job performance was satisfactory. No testimony was solicited from the Custodial Manager regarding the discussions he had with the other members of the interview panel – the NHS Principal and the Facilities Director – regarding the qualification of the two candidates.

Given the totality of the record, the Arbitration Panel finds there is an insufficient factual basis to conclude that the Board erred when it determined that the selected

candidate was better qualified than the Grievant. This Panel, therefore, denies the grievance to the extent it is based on a violation of the seniority provision of Article IV.

Article IV, Section 4.3.B – Failure to Consider Qualification Factors

A second provision in Article IV, Section 4.3.B, states, “[i]n making its selection of the applicant to fill [a vacant or new] position, the administration shall consider the following qualifications: education; training; certification; skills and experience as related to the position; job performance; ability, skills or knowledge valuable to the school system.” (Emphasis added.) By including this language, the parties have agreed to a broad range of knowledge, skills, and abilities for the Administration to consider when evaluating a prospective job candidate’s qualification.

However, the plain language of the Contract does not expressly delineate how the Administration must implement these factors. Thus, this Panel must determine the most reasonable interpretation of this provision.⁸ The scope of the rights and duties created by this provision is far from clear and unambiguous.

It is axiomatic that management retains broad authority to identify the necessary qualifications for any given position. It also is beyond dispute that management retains the authority to require that its employees possess the qualifications needed to be successful in a given position.

Management also has discretion to agree to contract terms that would obligate it to consider specific factors when evaluating job candidates. However, unless it has agreed to such limitations, it retains its authority to base hiring decisions on any factors reasonably related to the position and which it determines to be of value to the enterprise.

In this case, the Administration’s authority to determine the appropriate qualifications is memorialized in the Agreement’s management’s right clause (Article II – Rights of the Board of Education). Such authority seems to be limited, to some unspecified degree, by Article IV’s requirement that the Administration “consider” the enumerated qualification factors “related to the position” and “valuable to the school system.” It appears that, once the Administration has complied with this directive, it has the discretion to hire the candidate it decides is best qualified to meet the Board’s employment needs, subject to the seniority provision found in Article IV, Section 4.3.B discussed above.

⁸ It is important to note that the resolution of this issue, will not modify the Panel’s decision that there is insufficient evidence to hold that the Board violated the seniority provision of Article IV, Section 4.3.B. If the Panel determines the Administration’s actions violated a requirement to consider all of the qualification factors enumerated in Article IV, the appropriate remedy would be to order the hiring processes for the NHS Head Custodian position be deemed invalid and require the Board to redo it in accordance with the Contractual requirement.

None of the factors listed in Article IV, Section 4.3.B (education; training; certification; skills; experience; job performance; ability, or knowledge) are defined in the Contract. Neither is it clear what purpose the provision's two qualifiers – "valuable to the school system" and "related to the position" – is intended to serve with regard to requiring the Administration to evaluate the listed qualification factors.

Neither party attempted to clarify the meaning of this provision's terms. Nor did either party introduced evidence of the provision's bargaining history or any past practice to illuminate their understanding of the meaning to be given these ambiguous words and phrases.

The Board argues the Contract "does not dictate the means [it must use] to determine which candidate to select." The Board concludes that "it is entirely up to the Administration to decide what means to use to select the successful candidate based on the criteria under Article IV, Section 4.3.B." (Emphasis added.). The Administration did not clarify the extent to which this provision requires it to consider all or some of the "criteria," i.e., qualification factors listed in Article IV, Section 4.3.B to select a candidate. Additionally, the Board offered no explanation of its understanding of the effect of the qualifying language contained in the list of qualification factors in Article IV, Section 4.3.B.

The Board's assertion that the Contract "does not dictate the means" by which it must evaluate a job candidate's qualifications, and does not require it to assess all of the enumerated qualification factors, indicates the Board believes that, under the Agreement, it retains total discretion to decide what qualification factors it must review when filling any given position. The Administration contends that it addressed its obligation to assess each candidates' qualification by convening an interview panel and scoring the answers to questions the Administration believed reflected the knowledge, experience, skills and abilities they wanted in the NHS Head Custodian. The Custodial Manager testified that he believed relevant "education" for the position was the on-the-job experience each candidate had gained.

The Union argues that this provision requires the Administration to consider all of the listed factors, but failed to consider the Grievant's education, training, certification, and job performance. The Union asserted this purported failure is evidence of the Administration's bad faith conduct and violates the Contract.

The Union also called into question the Administration's judgements regarding how best to evaluate the candidate's qualifications. For example, the Union expressed its opinion the Board should have considered performance reviews maintained in each candidates' respective personnel file. The Administration disagreed.

The Arbitration Panel finds that the Contract contains no clearly defined and objective standards the Board is contractually required to utilize when assessing job candidates. The Administration retains broad managerial authority to develop means to assess job candidates, as long as such methods and considerations are rationally related to

the job vacancy it seeks to fill. Therefore, this Arbitration Panel denies the grievance to the extent it is based on a violation of the qualification provision of Article IV.

AWARD

It is the decision of the majority of this Arbitration Panel that the Board did not violate Article IV when it did not select the Grievant for promotion to the Head Custodian position at Naugatuck High School. The grievance is denied.

BY THE ARBITRATION PANEL:

/s/ Alvin R. Wilson, Jr.
Alvin R. Wilson, Jr. (Public Arbitrator)

/s/ Jeffrey Scanlon (dissenting)
Jeffrey Scanlon (Labor Arbitrator)

/s/ Russell Melita
Russell Melita (Management Arbitrator)