

IN THE MATTER OF THE ARBITRATION BETWEEN

**PINE ISLAND EDUCATION ASSOCIATION.,
UNION,**

**DECISION AND AWARD
GRIEVANCE OF JOHN STAPLETON
BMS CASE NO. 09-PA-0941**

- and -

**INDEPENDENT SCHOOL DISTRICT NO. 255,
PINE ISLAND, MINNESOTA,
EMPLOYER.**

ARBITRATOR

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APPEARANCES

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PROCEEDINGS

The hearing in this case was held on August 11, 2009, beginning at 9:30 a.m. in the board room of the school district at 223 First Avenue SE in Pine Island, Minnesota.

At the hearing, the Association presented the testimony of Jim Huston, a retired science

teacher, David Johnson, a retired science teacher and a former athletic director at the Pine Island High School; John Stapleton, grievant and social studies teacher, and Beth Koehner, a mathematics teacher and former contract negotiator for the Association.

At the hearing the District presented the testimony of Dave Boser, former School Board member; Brian Grenell, former school district superintendent and labor negotiation advisor to the School Board; Kevin Cordille, High School Principal; and Rick Canton, teacher and athletic director.

The parties submitted Joint Exhibits 1-6; Union Exhibits 1-5, and Employer Exhibits 1-16, which are listed in the appendix to this Decision and Award.

In addition to the testimony and exhibits, the Association and the District both presented oral arguments at the hearing and submitted post hearing briefs posted on August 28, 2009.

Based upon the testimony, the exhibits and the oral and written arguments of the parties, the Arbitrator makes the following Decision and Award for the reasons stated in this Opinion.

DECISION AND AWARD

I. THE GRIEVANCE IN FACTUAL CONTEXT

This grievance arose when the grievant was not selected to fill the position of head football coach at Pine Island High School. Rather, the position was given to an applicant from outside the school district. The grievant bases his claim upon the Collective Bargaining Agreement (hereinafter CBA), which he argues requires that coaching positions must be awarded to a qualified internal applicant before they can be awarded to an outside applicant.

The coach position was advertised in January, 2009. The position was posted internally and advertised externally at the same time. Grievant Stapleton, a social studies teacher in the

school district, applied for the position by submitting an application letter, a resume, and two letters of recommendation. A third recommendation (a coach at Winona State) was called by Rick Canton, the Pine Island Athletic Director.

Based upon his application, Stapleton was interviewed for the position. Prior to the interview Stapleton was given a form to submit with additional information and notified that he should be prepared to discuss certain topics at the interview. Mr. Stapleton brought all requested items to the interview but was not asked about all of them. Some of the items were discussed.

The persons conducting the interviews and eventually effectively recommending the filling of the coach=s position were Kevin Cardille, the Pine Island High School Principal, and Rick Canton, the Pine Island High School Athletic Director. They had screened all of the original written applications and conducted all interviews following the policy approved by the school board. From among the applicants three were interviewed, the grievant, Thomas Krambeer, and Gary Buns. Each interview was conducted and scored according to a standard form. After the first interview, the committee of two were impressed more favorably with Krambeer and Buns, the two outside candidates for a variety of reasons, including the conclusion that they had much more detailed and developed plans about how they would run the team and about how they would develop relationships with the community. As to grievant, however, they were concerned about his failure to articulate to their satisfaction a plan to run the team and to manage relations of the football program in the broader community.

Because grievant was the inside candidate, the Principal and the Athletic Director invited him back to give him a chance to rehabilitate the impression he had made. He was also asked for the written documents that he had not turned in at the first meeting. Following the second

meeting, the committee remained convinced that Krambeer and Buns were better qualified candidates and the position was offered to Krambeer, the highest scorer in the interviews. The district submitted as exhibits the applications of the three, their score sheets, and the interviewer=s notes. [Employer Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16]

Grievant=s first interview was on March 17, 2009, and his second interview was on March 23, 2009. On March 28 he was notified that he had not been selected.

On March 31, 2009, the Union filed the grievance herein alleging that grievant as Aqualified internal candidate should have received the position in preference to the external applicants under Article IX, Section 1" [Joint Exhibit 2] The contract provision invoked herein states as follows:

Article IX

FILLING OF VACANCIES, REASSIGNMENT, AND RESIGNATIONS

SECTION 1. VACANCIES. Vacant positions shall be filled by the school district with the best qualified candidate as determined by the School District. The District reserves the right to fill any position with an outside applicant if internal candidates do not have the needed qualifications or if no internal candidates apply.

SUBD. 1. EARLY NOTIFICATIONS. Per District, teachers and the Association will receive early notification of vacancies and current staff, who meet the qualifications of the vacant position are welcome to apply. A letter of application, resume and other materials required by the notice of vacancy not contained in the District personnel file will be required. If a current staff member applies for a position is not selected, upon request, rationale for the selection made, will provided.

. . .

SUBD. 4. INVOLUNTARY REASSIGNMENT. On occasion an involuntary reassignment of classroom positions may be necessary to meet the educational needs of the District. Upon request of the teacher who is involuntarily reassigned,

rationale for the reassignment will be provided.

While the arguments of the parties extend to several different levels, the primary contest concerns the extent, if any, to which the internal candidates for open coaching positions have a right to a preference over external candidates under the CBA.

II STATEMENT OF THE ISSUE

Did the school district violate Article IX, Sub. 1 of the CBA when it denied the head coaching position to the grievant and selected instead an outside applicant?

III CONTENTIONS OF THE PARTIES

A. Union Arguments

The sequenced Union arguments begin with the contention that the contract language is clear and that it requires vacant positions to be posted internally and filled internally if an internal applicant has the Aneeded qualifications.@ In support of the position, the Union argues that it=s reading is the only reading that gives effect to all the relevant language, especially the second sentence of Section I, Article IX. That sentence would be superfluous if the first sentence removed all preferential treatment for Aqualified@ internal candidates.

Of course, when there are both qualified internal and qualified external applicants, the Union argues that, the best qualified internal applicant must get a preference over any external candidate. The second Union argument is that the hiring rules apply under the CBA to all vacancies including extra curricular positions. Of course, under this reading the claimed hiring preference would apply not only to classroom vacancies but also to a broad range of compensated extra curricular positions, including the coaching job at issue here. In this regard the Union argues it sought and achieved the language to permit special education instructors in

the elementary school a preference in filling classroom vacancies but they also intended the language to apply to any other compensated vacancies including coaching positions. The Union supported its argument by testimony of persons who sought and obtained the provision that they subjectively believed that the relevant article was broadly intended to apply to classroom and to non classroom positions including coaches positions. Indeed, one of these witnesses, Mr. Johnson had been the athletic director for fifteen years. During that time he had assisted in hiring many coaches. In addition to testifying about his understanding of the newly negotiated language he also testified as to why the Union=s understanding of the provision is a better one from the perspective of benefits to the students and the school as a whole. One of the reasons he believes it to be so is that students, especially student athletes, will connect to coaches who also are their teachers thus augmenting the students athletic and academic experiences.

The third major contention of the Union was that the grievant, Mr. Stapleton, had all the necessary qualifications to be the head football coach. The grievant=s qualifications, according to the Union, include that: (1) he had been a significant, skilled football player himself (2) he had coached at Winona State University Coaching clinics, (3) he had been the head coach of the high school=s B squad for several years, and (4) he had been the defensive coordinator of the district=s varsity high school teams.

In addition to his experience, the Union pointed out that Mr. Stapleton had three required references attesting to his coaching and leadership ability and that he has a philosophy of personal responsibilities and teamwork in harmony with the schools basic values.

While the Union did not really seek to compare grievant to the person who received the

job¹, it did argue that job posting included no requirements that Mr. Stapleton failed to meet, and in fact it had no job description against which candidates could be compared. According to the Union, this created a moving target without any objective criteria. Even so, the Union argued Mr. Stapleton scored well on his interview sheet showing clearly that he was well qualified even though others did slightly better at the interviews.

Finally, I repeat that the Union did not argue for a comparison of the applicants to determine after the fact who was the best qualified applicant. It did argue however that the hiring process and the results of it were arbitrary and capricious and thus an abuse of discretion. The Union supports this claim with its contention that the District set up an unclear or moving target for Mr. Stapleton that held him to a different standard than the other applicants by including in the process subjective criteria not logically job related in order to sink Mr. Stapleton's application.

In summary, the Union argues a contract preference for filling coaching jobs with internal applicants who are qualified, and that Mr. Stapleton was well qualified and should have gotten the job. As a fall back position, the Union argues that Mr. Stapleton's rejection for the head coaching job was arbitrary and capricious as a result of a process that precluded a fair comparison of applicants, i.e., that the deck was stacked against grievant.

B. Employer Arguments

The Employer argues that the controlling current contract provision, Article IX of the

¹Of course the Employer argued that the CBA does not require a preference for an internal candidate in the selection process. Rather it contends it may (perhaps must) hire the best qualified applicant. One of the Union's responses to the claim is that, even if so, the District abused its discretion and that its decision that grievant was not the best qualified applicant was arbitrary and irrational.

CBA, was added to the contract in the 1995-1997 agreement for a very specific purpose advocated by the Union. Supported by testimony of the District's negotiating team, the District argues that the Union's demand for this provision was caused by instances in which classroom teaching vacancies were filled by external applicants without notice (and a chance to apply) to internal special education teachers. The District believed then that the demand, and the provision to which it eventually agreed, applied only to licensed teacher positions. The District contended that at no time did the Union suggest that a vacancy and transfer language would apply to extra curricular positions. The District argued that for consistency of application, the vacancy and transfer provisions must be consistent. The involuntary transfer language self evidently could not apply to coaching positions which are not licensed. Therefore, the vacancy provision also cannot be applied to unlicensed extra curricular positions such as coaching jobs.

The District, in addition to arguing that the relevant CBA provision did not apply to coaching openings, argues that even as to the covered licensed teaching positions, Article IX is read incorrectly by the Union. The District argued, and provided bargaining evidence to the effect, that Article IX was intended to protect the District's prerogative to fill all vacancies with the best qualified candidate whether internal and external. Thus the effect of the new language was merely to require notice of vacancies to internal candidates and an explanation if an external candidate was selected. The testimony was very explicit that the contract language was selected from an Albert Lea CBA that had been subject to arbitration that had upheld the right of the District there to hire the most qualified external candidate over the senior, qualified internal applicant. Further testimony regarding the Pine Island negotiations indicated that everyone explicitly agreed that the new language protected the District's right to hire the most qualified

applicant. Eventually, after adding language on notice of vacancy, the right to apply and the right to an explanation if not selected, the new provision was placed in the CBA in its current form.

As to the application of the CBA since the new language was added, the District presented testimony that no internal applicant has ever been given preference over an external candidate who was deemed more highly qualified, and in two cases a volley ball coach and a soccer coach, external applicants had been selected as more qualified without a grievance being filed.

Finally, with regard to the coaching application process, and the relative qualifications of the applicants, the District presented a detailed description of the application policy on the selection of coaches and how it was applied to the applicants in this case. Included in the exhibits were detailed interview sheets showing the interviewers scores of each applicant and the basic qualifications of each in terms of past experience.

The District was candid in testifying that the applicants selected for interviews were regarded as being the most qualified on paper, and the grievant was in this group. The District interviewers, the Principal and athletic director, were also clear that they placed the burden on the applicants to Asell@ themselves in the interviews. In this setting, the interviewers testimony was that grievant was less impressive in several respects in terms of his ability to articulate community relation plans, philosophies, football strategies and motivational strategies. While the interviewers overall impression after the first interview was that grievant was less well prepared and organized than two outside candidates, they gave him a second interview to permit him to improve his chances to be selected. However, their impression was unchanged after the

second interview. Based primarily on the interviews, then, the District regarded the outside applicant as best qualified and he was selected over grievant.

V ANALYSIS AND CONCLUSIONS

A. Article IX and Coaching Vacancies

While the parties spent much effort on arguments about whether the provision covers coaching vacancies, the record on this issue is a difficult one. Article IX refers to Avacant positions@ but does not further define positions. Thus, the contract language is vague in the sense that it does not make references to coaching positions or extracurricular positions. On the other hand, it does not refer to Alicensed teaching@ positions either. If we were to treat the term Apositions@ as being vague or ambiguous, there is much conflicting extrinsic evidence submitted by the parties on the point. At most, this evidence establishes that each party has a conflicting interpretation from the other, but two points support the District=s argument that the provision does not apply to extra curricular vacancies.

First, the evidence of negotiations show that the Union=s concern in negotiating this language was with licensed teaching openings in the elementary school. Especially, the concern was that these vacancies were not posted for applications by special education teachers. Thus, at the time of negotiation the expressed concerns were not with extra curricular openings. Second, the provision, Article IX, should be read as a whole. Subdivision 4 on involuntary reassignment is puzzling if Article IX applies to extra curricular positions since it applies only to Aclassroom positions@ and it seems clear that it would not apply in any event to extra curricular positions.

While there are some persuasive arguments not to interpret Article IX as covering

coaching positions, the issue is a close one which I hesitate to decide if it is not necessary to resolve this grievance. Therefore, I will proceed to analyze the remaining issues assuming without deciding that the coaching position is covered by the vacancy provision.

B. Article IX and Preference for Internal Applicants

Assuming Article IX coverage of the coaching position, the Union=s burden here includes convincing the Arbitrator that Article IX establishes a selection preference for qualified internal candidates over better qualified external candidates. In particular, the Union=s case is based upon an interpretation of Article IX which would require that a qualified applicant for a vacancy who is presently covered by the CBA would be entitled to get the position even if there were a more qualified external candidate. The Union=s argument is based primarily on the second sentence of Section 1, Article IX which says:

The District reserves the right to fill any position with an outside applicant if internal candidates do not have the needed qualifications for the position or no internal candidates apply.

This sentence, of course, does not give internal candidates any preference. Rather it is phrased as a reservation of District rights to select a qualified external candidate if there are no qualified internal applicants. The Union asks why this sentence would be needed, however, if the District already can select the best qualified external candidate even if there is a qualified internal applicant. While this question is not easily answered, it ignores the first sentence of Section one which says:

Vacant positions shall be filled by the school district with the best qualified candidate as determined by the school district.

This first sentence clearly states that the whole provision is qualified by the District=s reservation of the right to pick the best qualified person. Of course, the two sentences seem to

conflict in their inferences, if not their explicit statement. Again, if we assume an ambiguity there are several ways to approach the resolution. One, we may conclude that the Union has the burden in this interpretation dispute to persuade that its interpretation is the correct one. Two, the seeming clarity of the first sentence may over balance the less clear second sentence. Three, the bargaining history demonstrates the District's belief that its interpretation was intended: especially the detailed testimony as to how they sought to protect the District's duty to pick the best qualified applicants and the attempt to carefully achieve the result by research in the Albert Lea case. Four, the District testimony was clear that it attempted whether successful or not to make the Union was aware of the District's understanding. Putting conclusions together, my ultimate conclusion is that the District's testimony of bargaining history is persuasive that the CBA provision, Article IX, permits the District to select the most or best qualified applicant to fill any vacancy covered by the article even if the best qualified applicant is external and there are qualified internal applicants.

C. The Relative Qualifications of the Applicants

Again, the Union did not argue the comparative qualifications of the grievant and the external applicant who was hired. Rather, it argued that grievant was well qualified and thus should have been hired on the basis of a preference under Article IX. Since I have concluded that Article IX requires notice and explanation but not a preference, I also conclude that Article IX was not violated.

In reaching this conclusion, I note that both parties submitted a clear record of the application process which convinced me that grievant was qualified for the position, but the District required the person it selected as better qualified for the job. In other words, the District

through its committee provided a fair careful process and decided in good faith that the external candidate was best qualified. I am in no position to agree or disagree with the District's ultimate conclusion because the decision was and should be the District's under the CBA which says, "Vacant positions shall be filled by the school district with the best qualified candidate as determined by the school district." [emphasis added] Regardless of whether Article IX covers the coaches position that is what occurred in this case. The school district posted this position, allowed grievant to apply, regarded him as a finalist for the job, but selected an external candidate that it regarded as better qualified.

D. The District's Decision Was Not Arbitrary or Capricious

Again, without deciding that Article IX applies to coaches and without strictly comparing qualifications, I comment on the association's argument that the employer's choice here was arbitrary and capricious. In short, I have concluded that the district made a good faith decision after a thorough careful and fair process. The evidence shows this, I believe, and requires the conclusion that the decision ultimately was based mostly upon the interviews, and not primarily upon the full resumes of the applicants. While this may introduce some subjectivity into the process, it is not unusual to make final selections based upon interviews. Further, the interviews were consistent, and scored as objectively as possible. They certainly cannot be concluded to have resulted in an arbitrary or capricious decision. Again, I conclude that the decision was made in good faith. I ultimately conclude, then, that the District did not violate Article IX in this case as alleged by the grievant.

V AWARD

Based upon the above opinion and analysis, the grievance herein is dismissed. Whether or not Article IX applies to coaching vacancies, that provision preserves the District=s right to hire the best qualified person even if that person is an external applicant. In this case, the District acted in good faith to do just that. In the process, it gave grievant his right to notice, his right to apply, and his right to an explanation. As I read Article IX, it gives no preference to a qualified internal applicant over an external candidate determined in good faith to be the best qualified.

Dated: February 8, 2010

William E. Martin
Arbitrator