

IN THE MATTER OF ARBITRATION BETWEEN

**International Union of Operating Engineers,
Local 70 [Clellan Ringeisen]**

And

**Opinion and Award
FMCS Case No. 09-0821-03704-3**

**St. Catherine University, St. Paul,
Minnesota**

ARBITRATOR

Joseph L. Daly

APPEARANCES

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JURISDICTION

In accordance with the Master Agreement between College of St. Catherine Engineers and International Union of Operating Engineers, Local Union #70, June 1, 2008-May 31, 2011; and under the jurisdiction of the United States Federal Mediation and Conciliation Service, Washington, D.C., the above grievance arbitration was submitted to Joseph L. Daly, arbitrator, on December 17, 2009, in Minneapolis, Minnesota. Post Hearing Briefs were filed by the parties on January 26, 2010. The decision was rendered by the arbitrator on February 26, 2010.

ISSUES AT IMPASSE

The Union states the issue as:

1. Whether the employer's decision to lay-off Mr. Ringeisen with 17 years of tenure while retaining less senior employees in an eight-person bargaining unit, violates CBA?
2. If so, what is the remedy?

The Employer states the issue as:

1. Did the employer violate the Collective Bargaining Agreement when it laid-off Clellan Ringeisen out of seniority on May 29, 2009?
2. If so, what is the appropriate remedy?

The potentially relevant contractual language is:

Article 14 – Seniority

Section 1. The principles of seniority rights for employees covered under this Agreement apply to work assignment, promotion, and layoffs where the qualifications are equal. Article 7 also includes vacation scheduling or selecting.

Article 18 – Management Rights

The management of the college and the direction of the working forces shall be vested solely and exclusively in the College, except as specifically limited by the express written provisions of this Agreement. The provision shall include, but is not limited to, the right to determine the quality and quantity of work performed; to determine the number of employees to be employed; to assign and delegate work; to require observance of College rules, regulations, retirement and other policies not in conflict with this Agreement; to schedule work and determine the number of hours to be worked; to enter into contracts for the furnishing and purchasing of supplies and services; and to decide qualifications of employees, as long as the provisions of this article do not conflict with applicable federal or state laws.

FINDINGS OF FACT

1. The parties stipulated prior to the arbitration hearing that “budgetary constraints led to a need to layoff one member of the bargaining unit.”
2. On June 4, 2009, the International Union of Operating Engineers, Local #70 filed a grievance on behalf of Mr. Clellan Ringeisen. The grievance stated in applicable part:

Nature of Grievance

Mr. Clellan Ringeisen was laid off May 29, 2009. The Union believes Mr. Ringeisen was laid off unjustly and others within the bargaining unit have fewer qualifications than Mr. Ringeisen.

Contract Violation(s): Article 14; and any and all other articles, policies and/or past practice which may apply.

Remedy Desired: Return Mr. Ringeisen to full-time status and make him whole in all respect. [Union Exhibit #4].

On June 19, 2009, Susan Sexton, Director of Human Resources for St. Catherine University responded to the Union by stating:

Please accept this letter as our written reply to the grievance dated June 4, 2009.

During the Budget process, it was determined that staff reduction from within the Engineers bargaining unit was necessary. The long-term needs of the University were considered, when determining the type of work to be performed in the future.

We reviewed the job classification and the seniority of each individual, as well as qualifications to perform the work necessary to accomplish the work in the future.

The least senior member of the bargaining unit is a journeyman electrician, so we considered our electrical needs first. Over several of the past summers, one or the other of our electrician staff has been out for medical purposes for extended periods. During each of these cases, temporary electrical staff was used to keep up with the demands of the campus. It was determined that two electricians are necessary for proper continued maintenance of the campus. We then focused on the engineer classification.

The engineer, with the lowest seniority, is one of two engineers with extensive experience, licensure in air conditioning and appliance repair. With each of the latest new hires into this position, AC and refrigeration has been a determination. The goal was to keep two engineers in the group with this knowledge and experience. It has become a high priority of the institution to be able to react competently and quickly to appliance needs in the kitchen. These needs often consume most of this engineer's workday. The engineer, with the lowest seniority, also came to the college with a pool licensure. While much of the pool chemical system is automated, when problems arise, this engineer has been the problem solver. We need someone to carry the responsibility of the pool chemicals and their usage and control.

The engineer, with the second lowest seniority, carries a Chief A boiler license, a qualification matched only in the group by the two lead engineers. Job succession

through this qualification makes the engineer in this position valuable for keeping in employment. This engineer has also shown ability to work with the CMMS system in both controls and now programming of the system.

The engineer, with the third lowest seniority, was Clellan Ringeisen. While he has provided valuable service to the college plumbing repair needs, it has been determined that there is a higher need for refrigeration work, AC and appliance repairs, than plumbing at this time and in the future. Mr. Ringeisen carries a 1st class A boiler license, which is equal to the next-senior engineer in the group. Between these two engineers, seniority is the determining factor. It should also be noted that on a recent performance review, Mr. Ringeisen was unable to single-handedly change the boilers from gas to fuel-oil, during his on-call week, when called to curtail our fuel system. Another member of the engineering department had to come in and complete the task in his place. This ability is well within the skill set of a 1st class A boiler operator. While this did not lead to a disciplinary measure, the expectation was set that this is something he should already know and needs to learn.

The information provided above indicates that seniority, job classification and qualifications were considered when making the determination of staff reductions.

Please feel free to contact me, if you have questions. [Employer exhibit #9].

On July 10, 2009, the Union again filed a similar grievance on behalf of Mr. Ringeisen stating:

Nature of Grievance

Mr. Clellan Ringeisen was laid off May 29, 2009. The Union believes Mr. Ringeisen was laid off unjustly and in violation of the seniority provisions.

Contract Violation(s): Article 14; and any and all other articles, policies and/or past practice which may apply.

Remedy Desired: Return Mr. Ringeisen to full-time status and make him whole in all respect. [Union Exhibit #4].

2. Mr. Ringeisen is a fifty-year-old maintenance engineer. He has worked for the University of St. Catherine since July 1992. Mr. Ringeisen is a military veteran who obtained his GED diploma before coming to work for the employer in 1992. He has never been disciplined. He has been rated an “outstanding” performer in each of the performance evaluations he has received [Employer exhibits 1-3]. In each year that Mr. Ringeisen received formal evaluations from his supervisor, his rating was “outstanding,” and in each year the

performance numbers improved. Mr. Ringeisen obtained a Boiler License for high and low-pressure steam boilers in 1991. At the time of his hire, the University had high-pressure boilers and required this license. Since being hired, the University has replaced the high-pressure boilers with low-pressure steam boilers. During the summer of 1991 and the spring of 1992 Mr. Ringeisen completed “Steam and Hot Water Boilers” classes and “Refrigeration 1” classes through Dakota County Vocational Technical College. In February of 1997, Mr. Ringeisen obtained an “HVAC Certificate of Completion” for classroom training concerning “Indoor Air Quality Solutions.” The training covered “High-Voltage Alternating Current” (HVAC) systems including air conditioning systems, their upkeep and maintenance. In December 2002, Mr. Ringeisen was awarded a “Diploma of Completion” (DC) of the professional plumbing program. In January of 2001, Mr. Ringeisen received his “Certificate of Completion of Steam Trap Operation and Maintenance.” Mr. Ringeisen has hands on experience in electrical, general mechanical and HVAC. Over the 17 years at St. Catherine University, he has had electrical maintenance and repair duties including two years as an understudy to the unit’s master electrician, Mr. Haddock. During this period, it was his responsibility to maintain and repair the University’s exterior lighting, including repairing and replacing fixtures. He replaced ballasts in the library’s fluorescent lights, and replaced fixtures, switches and outlets throughout the campus. Under the master’s supervision, he performed rewiring jobs, installed conduit and other fixtures. Mr. Ringeisen maintained and repaired electrical components connected to the HVAC system a variety of small motors, and kitchen electrical components such as garbage disposals, dishwashers, heating trays and ovens. Mr. Ringeisen testified he has independently performed all the aspects of campus electrical work, except high voltage jobs.

During his 17 years, Mr. Ringeisen performed building rounds. For a number of years he has been responsible for the maintenance and repair of mechanical components in each of four buildings at St. Catherine’s University. During these rounds, Mr. Ringeisen checked the buildings’ air conditioning units, heating, plumbing and HVAC units. He regularly repaired mechanical and electrical components attached to these systems such as pumps and motors. Mr. Ringeisen has performed all manner of plumbing jobs on campus from fixture repair and/or replacement, such as sinks, toilets and showers to bathroom remodel jobs.

Recently, he directed the replacement of much of the campus’ galvanized pipe with copper pipes. The employer directed Mr. Ringeisen to undertake these jobs because of his skill

at plumbing. Mr. Ringeisen testified that in recent years he spent approximately 40% percent on the galvanized pipe replacement work. He also testified that he spent approximately 60% of his time on other maintenance engineer tasks while performing his regular rounds and on-call shifts.

3. The job description for maintenance engineer purpose, qualifications, major activities, contacts, and conditions reads in applicable part:

1. Position Purpose

The engineer is responsible to independently perform regular preventive maintenance of mechanical, heating, air conditioning, ventilation and plumbing systems for all campus buildings and facilities. This incumbent, with assistance as needed, will have the ability to find a problem, diagnose it, and order parts as needed. Under terms of the union agreement, the incumbent will be available for call-ins as determined by supervisor.

6. Qualifications

High school diploma or GED. Minimum boiler license, State of Minnesota First Class C. Engineer. Minimum of five years applicable experience. Skilled in the use of power and hand tools.

7. Major Job Activities

% Time	Activity
35	Maintain heating systems- boilers steam lines, traps, thermostats, etc.
10	Maintain plumbing systems and perform drain cleaning duties
25	Maintain HVAC systems – air handlers, ducting, coils, filters, chillers, towers, converters, pumps, refrigeration, etc.
5	Install or repair various appliances – stoves, refrigerators, dishwashers, disposals, etc.
15	Daily rounds of assigned facilities to ensure proper function of equipment
10	Maintain the Building Maintenance system. (Energy Management) Other related duties as assigned.

9. Working contacts

Day-to-day interactions with customers on job locations. Interaction is required to find out the needs and desires of each person/department on the job. The engineer must maintain a professional attitude and cooperative manner in all contacts both within and outside the Facilities Management Department.

10. Working Conditions

Extreme heat or cold work outside in summer or winter. Some work in confined spaces and some noisy conditions, lifting occasionally up to 100 lbs. Regular

lifting of 50 lbs. Some work requires climbing ladders, work on roofs and operating lifts. The engineer is required to follow all safety regulations of the college and/or department including, but not limited to the use of proper PPE. [Employer exhibit #1].

4. On May 29, 2009, the employer bypassed four less senior employees and laid off Mr. Ringeisen.

5. The Union contends:

- A. The employer violated the seniority article of the CBA where the grievant has demonstrated sufficient ability. The seniority provision in the Collective Bargaining Agreement is a sufficient ability clause. Comparisons between applicants are unnecessary and improper and the job must be given to the senior bidder if he is competent, regardless of how much more competent some other bidder may be. Thus, the senior qualified employee will be entitled to preference even though a junior employee possesses greater skill and ability.
- B. Mr. Ringeisen meets all the qualifications determined by the employer.
- C. Even assuming the parties intended a relative ability standard, the employer still violated Article 14. Seniority is a hallmark of the unionized workplace. Consequently, seniority should take a backseat only when there is clear contractual language supporting it and compelling a difference in demonstrated skills and abilities favoring the junior employee. When interpreting seniority clauses providing that seniority shall govern if ability is equal, arbitrators understand that the term “equal” does not mean “exact equality”, but only “substantial equality” and that the near equality of competing employees should trigger the seniority factor. There is a primacy of the seniority principle in the collective bargaining environment. Arbitrators faced with interpreting seniority language must favor interpretations affirming the use of seniority over rejecting the use of seniority, especially where work opportunities are limited.
- D. The employer didn’t know and failed to take into account Mr. Ringeisen’s comprehensive training experience. The employer claimed that the less senior engineer came to the college experience in air conditioning and refrigeration and with a swimming pool licensure. Yet, the employer has admitted that it did not know or inquire about the extent of Mr. Ringeisen’s training and licensure. Mr.

Ringeisen secured refrigeration class training, which covered, in a comprehensive fashion, refrigeration theory, practice and components. Mr. Ringeisen also received air conditioning specific training that was embedded in his course of study at the school of plumbing. The swimming pool license is a non-factor. No member of the bargaining unit had ever held, or was ever told to hold, a pool license. The Department of Health regulations in Minnesota require a single pool license for the operation of public pools. The person currently in charge of the pool already holds a license. Further, it takes only one day to obtain a pool license. The Union requests an order sustaining the grievance and directing the employer to rescind the decision to lay-off Mr. Ringeisen. The union also asks that Mr. Ringeisen be made whole including prompt reinstatement to his prior position, back-pay to his date of separation, together with the restoration of all lost seniority benefits and benefit credit.

6. The employer contends:

- A. Because of economic conditions, the unit needed to be decreased in size from eight to seven employees. The Union and the employer stipulated at the beginning of the arbitration hearing that this was a fact.
- B. Ms. Sexton, the Human Resources Director, and James Manship, Director of Facilities Management for the University, presented a list of the six bargaining unit members who worked in the lead maintenance or maintenance engineer classifications to the union business representative. The two bargaining unit employees working as master electricians, Richard Voltman and Michael Kirby, were not included on the list. Ms. Sexton and Mr. Manship had decided based on the University's needs and "qualifications" of the bargaining unit employees, that one of the six engineers would be laid-off. It was determined that the two electricians would not be laid-off because none of the engineers, including Mr. Ringeisen, were sufficiently qualified or licensed to perform the electrical work necessary for the operation of the University's facilities. Ms. Sexton and Mr. Manship testified that they made their decision after they had reviewed the Collective Bargaining Agreement, specifically Articles 14 and 18. Article 14 states that the principles of seniority rights for employees shall apply to work

assignment, promotion, and layoffs “where the qualifications are equal”. Article 18 provides that it is management’s right “to decide qualifications of employees, as long as the provisions of this article do not conflict with the applicable Federal or state laws”. Ms. Sexton and Mr. Manship reviewed the seniority list and the qualification of all employees and determined that both licensed electricians had to be retained. They also determined that Mr. Ringeisen would be laid-off despite the fact that he was senior to both electricians and two other maintenance engineers. They determined that Mr. Ringeisen’s qualifications were not “equal” to the other engineers and that none of the maintenance engineers were fully qualified to handle the electrical work which was performed by Mr. Voltman and Mr. Kirby.

- C. The University’s decision to retain four bargaining unit employees who are junior to Mr. Ringeisen was made only after considerable review and analysis of the University’s present and future needs and the relative qualifications of the maintenance engineers and electricians. An overview of the thought process was set forth in the June 19, 2009, letter from Ms. Sexton to the Union [see Finding of Fact #2, Employer exhibit #9]. Ms. Sexton and Mr. Manship determined that two electricians are necessary for proper continued maintenance of the campus. This is not to say that Mr. Ringeisen was not capable of performing some electrical work. However, the University determined that on a comparable analysis basis, his qualifications were significantly inferior to both Mr. Kirby and Mr. Voltman. The Union contends that “it is not possible to function effectively without two licensed electricians on staff. They [are] responsible for all lighting programs on campus as well as fire alarms and electrical outages. Maintenance engineers, on the other hand, [are] limited to testing circuits and replacing thermo-couples.” [Post-hearing brief of employer at 5]. The University also determined that the two maintenance engineers junior to Mr. Ringeisen were more qualified than Mr. Ringeisen to meet current and future needs of the University. Mr. Ringeisen worked almost exclusively on long-term plumbing projects. But when it came to refrigeration work and operating the boilers and the computerized energy maintenance system, he was very limited in terms of his duties and experience.

The other maintenance engineers have considerable training in heating and refrigeration. One of the less senior maintenance engineers carries a Chief Engineers license, which means he has 18,000 hours of certified boiler operation and can operate the boiler unsupervised.

- D. On one occasion in late 2008, St. Catherine University received a call from Xcel Energy and was required to immediately change the boilers from gas to fuel oil. It was the function of Mr. Ringeisen to do so. However, Mr. Ringeisen told his supervisor that he did not know how to perform the function so another member of the Engineering Department (who was not on-call) had to come in and complete the task.
- E. Mr. Ringeisen's supervisor also told him on a number of occasions he had to learn to perform duties other than plumbing and "diversify" the types of maintenance work he performed on the campus. Mr. Ringeisen's supervisor told him that "plumbing was going to run out" and other needs within the University would become more important in the future. Mr. Ringeisen did not request tuition reimbursement or other help for other certifications or training. He seemed content to continue with the plumbing work.
- F. Mr. Ringeisen's 2007 performance review recognized that he was doing a good job on plumbing work, but he was informed he needed to "get involved with more people in the department." Mr. Ringeisen's nickname is "Quiet".

Essentially, the University argues:

1. The lay-off of Mr. Ringeisen cannot be invalidated unless proven to be arbitrary, capricious or unreasonable. An employees' seniority by itself does not confer any rights. Instead, seniority rights, like other restrictions on management, must be clearly spelled out in the contract if they are to be asserted as a bar to management actions. Article 14 of the CBA states that seniority rights shall apply to lay-offs only "where qualifications are equal." This provision is what is commonly referred to as "relative ability" clause. Article 18 of the CBA gives management the right "to decide the qualifications of employees" such decision is "vested solely and exclusively in the college." The CBA provides that the company shall be the sole

- judge of employee qualifications and does not otherwise limit that discretionary authority.
2. The University determined in good faith that Mr. Ringeisen was less qualified than his peers. His qualifications were not equal to the two licensed electricians. His qualifications were not equal to the two less senior maintenance engineers. Both senior maintenance engineers had more education and experience than Mr. Ringeisen. Mr. Ringeisen's supervisor did not regard him as equally qualified as the two maintenance engineers.
 3. Mr. Ringeisen failed to mitigate damages. When he was laid-off from his \$24/hour job as a maintenance engineer, he refused St. Catherine University's offer of a \$6/hour janitor job. Mr. Ringeisen testified he has only applied for one job since he was laid-off.

In summary, St. Catherine University contends that the Union failed to carry its burden of proving that the University's lay-off of Mr. Ringeisen was arbitrary, capricious or unreasonable. St. Catherine University contends it provided substantial evidence showing that it considered Mr. Ringeisen's qualifications in comparison with qualifications of his peers and in light of the University's needs going forward and came to a reasoned conclusion that Mr. Ringeisen was the least qualified. The University's actions are consistent with its management's rights as expressly reserved in the Collective Bargaining Agreement, and its conclusion is supported by unrefuted evidence. The University requests that the grievance be denied.

DECISION AND RATIONALE

The contractual language involves two separate articles. Article 14, section 1 states "The principles of seniority rights for employees covered under this Agreement apply to...layoffs where the qualifications are equal." Article 18 Management Rights language states in relevant part "The management of the college and the direction of the working forces shall be vested solely and exclusively in the College... to decide qualifications of employees...." How is the language in Article 14 to be reconciled with the language in Article 18?

Probably the single most important right conveyed to employees by a labor contract is seniority. *Kansas City, Kansas Board of Utilities and International Brotherhood of Electrical*

53, 26 Lab. Arb. 1324 (Arbitrator Douglass Bonney, 2009). “One of the most significant limitations on the exercise of managerial discretion is the requirement that employees’ seniority be recognized in job assignment, promotions, layoffs and other personnel actions.” Elkouri & Elkouri, *How Arbitration Works*, 6th Edition 836 (BNA 2003).

There are three basic types of seniority clauses: 1. Strict seniority; 2. Sufficient ability; 3. Relative ability. *Sebastiani Vineyards and Winery, Distillery and Allied Workers, Local 186*, 85 Lab. Arb. 371 (Arbitrator Allen R. Rothstein, 1985); see also, Elkouri & Elkouri, *How Arbitration Works*, Sixth Edition 873 (BNA 2003).

In *strict seniority* cases, the company will always give preference in layoffs to employees with the greatest seniority. In *sufficient ability* clauses, the company will give a senior employee preference over a junior employee if the senior employee possesses sufficient ability to perform the job. This second type of clause still stresses seniority over performance factors in making layoff decisions. As long as the senior employee has sufficient qualifications to do the job, he/she keeps the job over the junior employee. The third type of seniority clause is the *relative ability* clause. When *relative ability* clauses are utilized, seniority becomes a factor only when the employees are relatively equal in qualifications. *Id.* at 873-876.

So the question becomes what type of seniority clause is Article 14. Article 14 states: “The principles of seniority rights for employees covered under this Agreement apply to...layoffs where the qualifications are equal.”

The employer contends Article 14 is a “relative ability clause”. “Accordingly, seniority becomes a determining factor *only* if the qualifications of the [employees] are equal.” [Post-Hearing brief of Employer at 9, citations omitted]. The Employer further contends that since Article 18 of the Collective Bargaining Agreement provides that the right “to decide the qualifications of employees” is “vested solely and exclusively in the college” then the employer shall be the sole judge of employee qualifications and does not otherwise have to limit that discretion. The Employer argues that as long as its decision is not arbitrary, capricious, or discriminatory, unfair or unreasonable then its decision cannot be overturned. *Id.* at 10.

The Union contends that “the seniority clause at issue in this case is more akin to a *sufficient ability* provision than a *relative ability* provision; the language of the clause denotes as much through the simple use of the term ‘qualification.’” Post-Hearing Brief of Union at 13, emphasis added. The Union points out “while dictionary definitions of the term ‘qualifications’

vary somewhat the core meaning is often reflected as ‘a quality, skill or condition that fits a person for a job or office.’” *Id.* The Union contends that the term “qualifications” relate to eligibility for a job or fit for a job, rather than to the performance in the job. If an employee is qualified, the employee is capable of holding the job in the first instance. The parties here intended “qualifications” to mean eligibility conditions, says the Union. Otherwise the seniority language in Article 14 would have used such terms as “skills”, “abilities”, “fitness” or “competence”. The Union contends that if the parties had intended the seniority clause to be a “relative skill or ability” clause, “they could have, should have used those very words.” Post-Hearing brief of Union at 13. Rather, says the Union, the parties intended “qualifications” to relate to “eligibility requirement” or “sufficient ability” criteria. In fact, argues the Union, past practice and bargaining history have routinely and consistently used the term “qualifications” and have always denoted it as “eligibility” criteria. The employer-drafted job descriptions have a “qualifications” section that is distinct from the “duties, abilities or responsibilities” sections and the “qualifications” always refer to requisite ability qualities, such as “high school diploma” and other fundamental credentials. *Id.* at 14 citing Employer exhibit #1 and Union exhibit #16; see also Findings of Fact #2 above. Therefore, the Union argues, in the bargaining history context the evidence demonstrates that the employer understood job “qualifications” to mean fundamental credentials necessary to be eligible for hire or transfer into the position. “The management rights clause cannot be read to mean that the employer may require qualifications that it has never articulated or that are wholly at odds with their articulated credentials. If read this way, seniority would be wholly meaningless and the employer could create arbitrary, subjective and unspoken qualifications for purpose of layoff determinations.” Post-Hearing brief of Union at 14-15.

There is no question that Mr. Ringeisen was fully qualified to do the job he was hired to do. He did it well and honorably for 17 years. Now St. Catherine University, in looking to the long term needs of the University, has changed the “qualifications”; yet, in making its decision who to layoff, the University failed to note Mr. Ringeisen’s licensure in Air Conditioning and Refrigeration. A pool license was never in the job description. Further, there is already a person with a pool license [the director of the pool]; and, it takes only one day to obtain a pool license.

With regards to Mr. Ringeisen's inability to switch from gas to fuel oil, Mr. Ringeisen had not done this procedure for a long time. It is not a particularly difficult procedure and Mr. Ringeisen now knows how to do it.

Mr. Ringeisen meets all of the "qualifications" determined by the employer. He has 'sufficient ability' to do the job. "Although seven years more senior than the unit's Master electrician, Mr. Volkman, the Union does not dispute that the employer has sound reason for retaining the junior employee with the Master's license. However, where the Employer admits that they need only a single master, there is no basis for retaining the newly hired journeyman electrician in the Grievant's stead. The record before this arbitrator establishes, without rebuttal, that the Grievant worked under a Master electrician, performing all manner of electrical. Beyond that, he is consistently, as are all engineers, doing electrical work in the form of repairing motors, kitchen appliances, and electrical components appurtenant to HVAC and other mechanical systems. Post-Hearing brief of Union at 16.

Because Article 14 is a "*sufficient ability*" seniority clause and not a "*relative ability*" clause, it is held that Mr. Ringeisen's contractual rights to seniority during the layoff were violated.

With respect to the mitigation of damages, Mr. Ringeisen was offered a janitor's job for \$6/hour. He had been earning \$24/hour. Mitigation of damages does not require that he take a completely different type of work for 75% less money. While an employee has an affirmative duty to mitigate damages "[a] discharged employee should be required to make a reasonable effort to mitigate 'damages' by seeking substantially equivalent employment. The reasonableness of his effort should be evaluated in light of the individual's qualifications and relevant job market. His burden is not onerous, and does not require that he be successful in mitigating his 'damages'. Further, the burden of proving lack of diligence or an honest, good faith effort on the employee's part is on management." Hill & Sinicropi, *Remedies in Arbitration* 216 (BNA Books 2d ed. 1991). Mr Ringeisen was not required to take the janitor job to show mitigation. Similar jobs in this economic downturn, i.e. relevant job market, are few and far between.

It is held that St. Catherine University shall rescind the decision to layoff Mr. Ringeisen make him whole, including prompt reinstatement to his prior position with back pay to his date of separation, together with the restoration of all lost seniority, benefits and benefit credit. There

shall be a set off for amounts Mr. Ringeisen received as severance and as unemployment compensation; and any other amounts he received from jobs he may have done since the layoff.

2/26/2010
Date

Joseph L. Daly
Arbitrator