



ISSUE ALERT

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Arbitrator Noonan confirms NVTa position on Post & Fill

On March 5, 2024, the NVTa won an arbitration on the interpretation and application of Article E.20 – Posting and Filling of Vacant Positions. The arbitrator confirmed that a Memorandum of Agreement signed between the NVTa and the District in 1991, as part of a grievance settlement, is still in effect. The relevant sections of that settlement are included below:

6. The agreed interpretation and application of Article E-3 (as designated in the 1988-90 Collective Agreement) will be as follows:
 - vacancies shall be filled in the order of priority from “a” to “i” with employees who have the “necessary qualifications and experience to perform the duties of the vacant positions”. For example **an employee who meets the “sufficient ability” test in category “a” will be appointed rather than any employees in category “b” to “i” whether the other candidates have greater qualifications and experience or not;**
 - the final paragraph which states “In the event of the equality of qualifications and experience for two or more candidates, the employee with the greatest seniority will be given preference” will apply when two (2) or more employees are being considered in the same category. It is further agreed competition within a category will be based on relative ability and that **the choice of a junior candidate within a category will occur only when there is a significant demonstrable difference in qualifications and experience from the senior candidate(s).** It is also understood that **the greater the difference in seniority the greater must be the “significant demonstrable difference” between the candidates.**

(Emphasis Added)

At the time of the settlement, there were nine (9) categories (a to i) considered for the purpose of filling vacant positions. Since then, some of the categories were collapsed. So today, there are only five (5) categories (a to e). You can find a list of the current categories in article E.20.6 (p.103) of the most recently published [Collective Agreement](#).

What this means is the school district should never select a candidate from a lower priority category if there is a candidate from a higher priority category with the necessary qualifications and experience to perform the job. Further, it should be rare for the School District to select

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a more junior candidate for a position when a senior candidate has the necessary qualifications and experience to perform the duties of the position.

As has been the practice for years, the NVTa will continue to request posting results from the school district and when we find that less senior candidates have been given a position over a more senior ones, we will be carefully scrutinizing those incidents and taking the appropriate action.

If you are concerned that a position has been filled incorrectly, please contact the NVTa so we can gather all necessary information to assess the situation.