IN THE MATTER OF THE	)	
	)	ARBITRATOR'S
ARBITRATION	)	
	)	OPINION
BETWEEN	)	
	)	AND
KODIAK ELECTRIC	)	
ASSOCIATION, INC.,	)	
(The Employer)	)	AWARD
	)	
AND	)	
	)	
INTERNATIONAL	)	Grievance: Rejection of Dispatch of
BROTHERHOOD OF	)	S----------
ELECTRICAL WORKERS,	)	
AFL-CIO, LOCAL 1547	)	AAA 75 L 300 00158 96
(The Union)	)	

HEARING: October 24, 1996

HEARING CLOSED: December 13, 1996

ARBITRATOR:

Sylvia Skratek, Ph.D.
26324 166th PL SE
Kent, Washington 98042

REPRESENTING THE EMPLOYER:

Richard R. Huffman
Kemppel, Huffman and Ellis, P.C.
255 E. Fireweed Lane, Suite 200
Anchorage, Alaska 99503-2025

REPRESENTING THE UNION:

Thomas A. Ballantine
Attorney At Law
PO Box 100735
Anchorage, Alaska 99510

APPEARING AS WITNESSES FOR THE EMPLOYER:

James F. McIntosh, Operations Manager, Kodiak Electric

APPEARING AS WITNESSES FOR THE UNION:

Mark S------, Grievant, Journeyman Lineman
Barbara "BJ" Jewell, IBEW 1547 Business Representative
Brett Randolph, IBEW 1547 Business Representative

BACKGROUND

The Kodiak Electric Association, Inc., (hereafter "the Employer" or "KEA") and the International Brotherhood of Electrical Workers, AFL-CIO, Local 1547 (hereafter "the Union" or "IBEW") agreed to submit a dispute to arbitration. A hearing was held before Arbitrator Sylvia Skratek in Anchorage, Alaska on October 24, 1996. During a pre-hearing conference the parties were able to agree to a partial statement of the issues and provided the Arbitrator with the authority to frame any remaining issues.

At the hearing the parties had full opportunity to make opening statements, examine and cross examine witnesses, introduce documents, and make arguments in support of their positions. The Arbitrator made a tape recording of the hearing and advised the parties that the recording was being made to supplement her notes and should not be considered an official record of the hearing.

The parties were provided the opportunity to submit their closing arguments in the form of post hearing briefs. The briefs were received by the Arbitrator on December 13, 1996 and the record was closed as of that date. The award in this case is based upon the evidence, testimony, and arguments put forward during the hearing and the arguments presented by the parties in their post hearing briefs.

STATEMENT OF THE FACTS

The Kodiak Electric Association, Inc., is an electric cooperative owned by its membership in the state of Alaska. It provides services on Kodiak Island which is a remote environment with considerable unpopulated terrain and, on occasion, harsh weather conditions. The services provided by KEA consist of the generation of electric energy through either diesel or hydroelectric generation facilities and the distribution of electric energy through transmission lines and distribution lines.

James McIntosh, is the Operations Manager for KEA and is responsible for requesting referrals from the IBEW dispatcher when a position needs to be filled in the KEA Operations Department. On May 9, 1996, KEA through McIntosh, faxed the union hall a request to have three NECA Temporary Linemen for a one to six month temporary job call (Em.ex.#15). Applicants were requested to fill out a KEA application. On May 20, 1996, McIntosh requested an additional dispatch from IBEW of a temporary lineman. Mr. Mark S-------,the Grievant, was referred to McIntosh in response to the May 20th request.

McIntosh reviewed the application form that had been completed by S------ (Em.ex.#1) and rejected S------ as a temporary employee. He requested that another applicant be referred from the Union dispatch hall (Em.ex.#16). When S------ contacted McIntosh to obtain a reason for his rejection he was told that there was no requirement that a reason be provided.

Mr. Brett Randolph, the shop steward, also attempted to obtain a reason for McIntosh's rejection of S-------but was also told that there was no requirement that a reason be provided.

On May 22, 1996, a grievance (Jt.ex.#2) was filed by S------ and Randolph alleging that McIntosh's actions had violated Article I, Section 1.9 and any other

applicable articles and sections of the collective bargaining agreement (Jt.ex.#1). The parties were unable to resolve their differences and submitted the dispute to arbitration.

STATEMENT OF THE ISSUE

The parties were able to agree to a partial statement of the issues and provided the Arbitrator with the authority to frame any remaining issues. The issue that the parties agreed upon is stated below as the first issue. The second issue is based upon the language submitted by the Employer during the pre-hearing conference. The issues before the Arbitrator are:

1. Did the Employer violate the collective bargaining agreement in the manner suggested by the grievance when it rejected the referral of Mark S------?

2. Did Mark S------ have standing under the collective bargaining agreement to initiate a grievance against the Employer?

3. If the answer to either, or both, questions is yes, what is the appropriate remedy?

POSITION OF THE UNION

The Union does not dispute that the Employer has the authority under Section 1.9 of the agreement, to reject applications of prospective employees that it finds unsatisfactory. Such rejection however, must be done in good faith and not for any arbitrary or capricious reason. In this case, the Union contends that the rejection of Mark S------ by KEA was not done in good faith . To support their contention, the Union put forward S------'s prior work history and the fact that he had a journeyman linemen fitness card. There was no information on record that indicated that there had been any previous work problems with S------. Nor was any evidence provided that any of S------'s previous employers have ever had a complaint relating to his performance on the job.

The Union argues that the Employer has an obligation to support any rejections of applicants that it finds to be unsatisfactory by providing specific reasons for the rejection. Repeated attempts by S------ and the shop steward, Randolph, to obtain the Employer's reasons in this matter were met with the assertion by the Employer that no reason needed to be provided. Randolph testified that McIntosh had been willing in the past to provide reasons for the rejection of other applicants for temporary positions. He further stated that McIntosh told him that S------ would be acceptable at another time, but not for this position. McIntosh however, would not provide any specific reason for the rejection of S------. The Employer's only attempt to put forward an explanation for the rejection was after-the-fact. The explanation provided at the hearing by McIntosh was based upon S--'s failure to complete the application and his failure to provide adequate references.

Testimony by S------ and Jewell at the hearing indicated that applications for temporary positions were often not thoroughly completed due to the time constraints often imposed by the application process. There is no past history of an applicant being rejected as unsatisfactory based upon failure to adequately complete an application.

Testimony by McIntosh at the hearing highlighted the fact that he had made only minimal effort to contact the references listed on S------'s application. In one instance, McIntosh did not even contact a reference who had been working for him on May 20th, the date of S------'s rejection. Of those references that he did contact, he refused to provide the name of an individual who had provided negative commentary regarding S---'s ability to work within a team environment. McIntosh further acknowledged that this commentary was provided to him after S------ had already been rejected. The one successful contact that McIntosh made in a timely manner with one of S------'s references, Sonny Wilson, resulted in a comment from Wilson that S------ "was not a team player". Even though McIntosh testified that he had given great weight to such comments, he was unable to provide any context for the comments; he did not know if the comments referred to S------'s job performance, his membership in IBEW, his union activities, or some other matter.

In response to the Employer's contention that Mark S------ may not initiate a grievance under the collective bargaining agreement, the Union asserts that KEA has never contended the appropriate procedural steps were not followed with regard to the grievance nor was there ever any assertion by KEA that S------ was not entitled to grieve a violation of Section 1.9 of the collective bargaining agreement. KEA's failure to assert such a bar at any time during the course of the steps of the Grievance Procedure at Article IX of the agreement precludes them from putting forward the argument at the arbitration level. Even if KEA is deemed not to have waived the argument, the term "employees" must include prospective employees. Under Section 9.2 of the agreement, any violation of the collective bargaining agreement may be subject to the grievance procedure. This would include any violations of Section 1.9 which addresses the procedures by which union members may be used to fill temporary or permanent jobs. Inasmuch as Section 1.9 can be the subject of a grievance, it follows that prospective employees fall within the definition of employees for purposes of a grievance filed under that section.

In conclusion, the Union argues that arbitral authority provided by KEA establishes a duty to act in good faith when rejecting an applicant as unsatisfactory (Em.ex.#11, p.21). In this case, the Employer did not act in good faith. The grievant was qualified for the position and there was no proof of any previous problems with his job performance. McIntosh's explanations are nothing more than ever-shifting, after-the- fact rationalizations for his actions. The Union requests that the Arbitrator grant the requested remedy of full compensation and benefits that would have been received by S------ less any amounts he has subsequently earned and a declaration that KEA must provide a good faith basis for rejection of an applicant if requested to do so.

POSITION OF THE EMPLOYER

The Employer argues that S------ is not an employee at KEA and therefore does not have standing to bring a grievance under the terms and provisions of the collective

bargaining agreement. The ability to submit disputes to resolution by a grievance procedure and arbitration is discerned from a review of the language of the agreement itself. In this case, the language is found at pages 30 through 31 of Joint Exhibit 1, the Collective Bargaining Agreement. Under the provisions of Section 9.3, a grievance may be filed by "any employee or group of employees." There is no provision for a grievance to be filed by a prospective employee. The references throughout the grievance procedure are consistent and only provide for an "employee" to file and pursue a grievance. Mr. S-- is clearly not an employee of KEA and is therefore barred from pursuing this matter. Furthermore, Mr. Brett Randolph, who appears as the second signatory on the grievance and is listed as an initiator of the grievance, is not an employee of KEA. Rather he is a shop steward for the KEA bargaining unit and acting in his Union capacity. Neither Randolph nor S------ are employees of KEA and therefore the grievance was not initiated by a group of employees as defined in Section 9.3 of the collective bargaining agreement. Therefore the grievance does not qualify as a grievance within the meaning of the collective bargaining agreement between the parties and is not arbitrable. The Arbitrator has no authority to add to, alter, delete, or modify the labor agreement or issue any award on a matter which is not raised in the complaint. To permit this grievance to go forward would constitute an expansion of authority to the arbitrator under the grievance clause which does not exist. To support all of the above arguments, the Employer puts forward numerous citations of previous arbitration decisions.

Even if the grievance is arbitrable, the Employer contends that it fulfilled its obligations under the collective bargaining agreement. KEA has reserved at Section 2.1 of the agreement, management rights including the right to hire, classify, grade, suspend, reassign, lay off, discharge, promote, or transfer its employees, provided it does not conflict with the provisions of the Agreement. McIntosh, complied with the dispatching procedures found at Section 1.9 of the agreement and with previously established practices based upon his experience at KEA and at other cooperatives both within and outside the state of Alaska. McIntosh's request for a NECA temporary lineman, with

specific instructions regarding steps to be taken before an applicant would be considered, was consistent with practices uniformly applied in the Operations Department of KEA.

McIntosh reviewed S------'s application (Em.ex.#1) and had significant problems with it for several reasons: it was incomplete as to names and addresses of prior employers; an answer provided on page 8 was less than adequate; and comments from his subordinate, Sonny Wilson regarding S------'s previous work experience at KEA indicated that S------ was not a "team player" and was a "troublemaker". In addition, McIntosh reviewed the KEA files for any other information about S------ and could not find anything of significance. McIntosh was unsuccessful in his attempts to reach S------'s references and ultimately rejected S------. McIntosh's actions are consistent with the wide latitude that employers have been provided by arbitrators in hiring decisions. Numerous arbitration citations were provided by the Employer to support its right to reject unacceptable job applicants.

The Employer emphasizes that Section 1.9 of the agreement provides that the *"Employer reserves the right to reject any prospective employee dispatched that it finds unsatisfactory".* There is no limitation place upon this right other than those provided by statutory law.

Furthermore, the Employer argues that the bargaining history between the parties favors the Employer's contentions. The Union sought changes to Section 1.9 during 1994 negotiations that included the strengthening of the exclusivity of the hiring hall process and the requirement that the Employer state the reason for the rejection of prospective employees. No limitation was included in the final language on the Employer's right to find an employee unsatisfactory nor was there any restriction in hiring criteria included in the final agreement.

Additionally, the Union's reliance on an arbitration decision issued by Arbitrator McCaffree (Em.ex.#11) is misplaced. In that dispute, limitations existed by virtue of

express terms of the bargaining agreement between the parties. No such limitations can be found in the instant case.

Even if the Arbitrator finds that the Employer is subject to implied limitations, there is substantial basis which justified the decision to reject S------. S------ did not complete the required employment application; references indicated that he was not a team player and was a troublemaker; and S------ had no previous substantive work history with KEA. KEA relies in part upon Policy No. 705 (Em.ex.#19) which provides rules of conduct for KEA employees. Within those rules it states that employees are expected to treat their fellow employees, supervisors, members of the cooperative and members of the general public with courtesy and dignity. Additionally, the job description for Journeyman Lineman (Em.ex.#20) requires that the employee work cooperatively and courteously with fellow employees, supervisors, and the general public. McIntosh had reason to believe that S------ could not abide by these rules and requirements.

In conclusion, if the grievance is deemed substantively arbitrable, the Employer has reserved the right to make hiring decisions without restriction or limitation. Even if there are implicit limitations upon that right, the Employer had a reasonable basis to reach the decision to reject Mr. S------ as an employee and did not act arbitrarily. The Employer requests that the grievance be denied.

ANALYSIS AND CONCLUSIONS

Arbitrator's Jurisdiction

Prior to any discussion as to the merits of the grievance, it is incumbent upon the Arbitrator to initially resolve the question as to whether Mark S------ had standing under the collective bargaining agreement to initiate a grievance against the Employer. The Union contends that the Employer is barred from raising the issue for the first time at the Arbitration hearing. The Employer argues that there is no authority within the collective bargaining agreement that allows a "prospective employee" to file a grievance. The

Employer cautions the Arbitrator that she has no authority to add to, alter, delete, or modify the labor agreement. In essence, if she were to permit S------ to file a grievance, the Employer maintains that she would be exceeding her authority.

The question that the Employer is raising goes directly to whether or not the Arbitrator has jurisdiction over the grievance dispute. While the Union may object to the Employer raising this matter for the first time at the Arbitration hearing, Arbitrators have generally declined to find a waiver of the arbitrability defense in matters where there is a question of whether or not the Arbitrator has jurisdiction. An Arbitrator cannot create arbitrational jurisdiction where it does not exist. Therefore, the failure of the Employer to contest jurisdictional arbitrability at an earlier level does not prevent them from doing so at the hearing. As stated in *Bally Case & Cooler Co.,* AAA Case No. 93-10 (Galfand, 1966):

> *The doctrine of estoppel-perhaps applicable to the failure to take advantage of a procedural failure-cannot, in my opinion, be applied to the fundamental question of the arbitrator's jurisdiction. It is certainly helpful to harmonious labor-management relations, and courteous to advise that a position of nonarbitrability will be taken, but I cannot hold that the failure to do so constitutes a fatal or disabling defect.*

In this case, the Employer raised the arbitrability matter regarding S------'s standing for the first time at the hearing. They proposed an issue statement that was rejected by the Union but was used by the Arbitrator as the basis for the framing of the second issue. The Union had time to prepare a response and did so in its post hearing brief.

To support their contention that S------ does not have standing to file a grievance, the Employer cites a number of cases in which the grievances did not comply with the requirements of the grievance procedures that required the initiation of a grievance by an "employee". While the Arbitrator found the cases enlightening, they pointed specifically to the failure to have an employee's signature on a grievance. The most pertinent case was *PPG Industries, Inc.,* 53 L.A. 597 (Duff 1969) in which Arbitrator Duff found that "...the labor management agreement only applies after a person is hired...". It is on this

point, that the Arbitrator's decision in this case is based. According to the testimony by S------ at the hearing, on May 20, 1996 he was not an employee of KEA. The Arbitrator's review of the collective bargaining agreement found that the language consistently refers to "employee" or "employees". Additionally, Section 1.14 entitled Union as Sole Bargaining Agent "...recognizes the Union as the sole bargaining agent for all classifications of employees..." (emphasis added). At the time that the grievance was filed, there was no employee-employer relationship between KEA and S------. He was in fact, an applicant for a position. The Arbitrator reviewed the Union's argument that the references to "prospective employee" found within Section 1.9, coupled with the language at Section 9.2 which defines a grievance *"as an alleged violation of the terms of this Agreement",* would imply that the misapplication of Section 1.9 could be grieved by "prospective employees". That argument fails however, when one considers the reality that if the parties had intended that "prospective employees" would have access to the grievance procedure, they would have specifically provided for such language, not only within the grievance procedure itself but also within the recognition clause of the agreement. It is a well established principle of contract interpretation that a specific reference within one section that does not continue throughout the agreement, by its very nature excludes such reference from the other portions of the agreement. While the specific term "prospective employees" can be found within the agreement at Section 1.9, it is noticeably, and presumably, intentionally, absent from other sections of the agreement. The Arbitrator would be exceeding her authority if she were to add the term "prospective" to other sections of the agreement. For all of these reasons, S------ had no standing under the collective bargaining agreement to seek a remedy for the Employer's rejection of his application. That is not to say however, that the misapplication of Section 1.9 cannot be grieved. If S------ were the only initiator and signatory on the grievance, the Arbitrator would have no jurisdiction over this matter. However, the grievance has been filed not only by Mr. S------ but also by Mr. Randolph as the shop steward for IBEW, Local 1547.

The Employer argues that Mr. Randolph has no standing either but the Arbitrator finds that the Employer did not raise that matter at any time prior to the closing date of

the hearing, December 13, 1996. The Arbitrator's review of the record did not find any challenge to Mr. Randolph's ability to file a grievance. In fact, the issue statement suggested by the Employer only challenged the standing of Mr. S------. The Arbitrator finds that Mr. Randolph's status is raised for the first time by the Employer in their post hearing brief. To raise the matter for the first time in closing argument, deprives the Union of a full opportunity to review the matter and prepare a response. Furthermore, there was no evidence or testimony provided at the hearing related to this matter that would serve as a basis for the Arbitrator's decision. Unlike the language related to "employee" and "employees" found within the agreement, there is no clear and unambiguous language regarding the status of a shop steward and his/her ability or inability to file and pursue a grievance on behalf of all employees of the bargaining unit. In fact, a review of the grievance procedure finds several references to "shop steward". The Arbitrator is not rendering a decision on whether or not a "shop steward" may file and pursue a grievance but rather is finding that in this case, no testimony or evidence was provided that would support dismissal of the grievance based upon Randolph's lack of standing. Therefore, the Arbitrator finds that she has jurisdiction over this matter. This finding in no way precludes the Employer from challenging a shop steward's ability to file and pursue a grievance in future cases.

It is important to note, that there is no dispute as to whether the subject matter of this grievance is properly before the Arbitrator. Clearly, the dispute arises out of the application of Section 1.9 of the collective bargaining agreement.

Merits of the Grievance

The Union contends that the Employer has violated the collective bargaining agreement through its rejection of the dispatch of Mark S------ and its failure to demonstrate or give a reason as to why S------ was unsatisfactory. The Employer responds that it was fully within its rights when it rejected S------ and was under no obligation to provide a reason. Furthermore, the Employer maintains that it had good cause for the rejection of S------ as demonstrated through the testimony of James McIntosh.

In making a final determination in this case, the Arbitrator must review the facts of the case against the cited provisions of the Agreement.

Article I, Section 1.9 Dispatching

Article I, Section 1.9 Dispatching provides in part that:

> The Employer agrees to accept or reject, any prospective employee dispatched by the Union within one working day of receipt of notice of referral and applicant's completed KEA application form (or resume which reflects employers for the preceding three years.) Failure to notify of acceptance or rejection of a prospective employee dispatched by the Union within one working day period shall result in an extension of time equal to the length of delay. If the Union is unable to fill the position with satisfactory employee within the designated period of time, the Employer may hire from other available sources.
>
> Employer reserves the right to reject any prospective employee dispatched that it finds unsatisfactory.

The Union maintains that this language requires the Employer to provide a good faith basis for the rejection of any prospective employee. The Arbitrator recognizes that the Union has an undeniable interest in maintaining the integrity of the dispatch process. If the Union is unable to provide the Employer with satisfactory prospective employees, the Employer is free to hire from other available sources. Such freedom would strike at the very heart of the Union hiring hall process. The integrity of the process can only be maintained through the good faith behavior of both parties. It is critical that the Union make a good faith effort to provide to the Employer, referrals that the Employer will find satisfactory. The Employer is correct in that it alone has the right to determine whether or not an applicant is satisfactory. However, it is critical that the Employer make such determination in good faith and not in an arbitrary or capricious manner. The question becomes: how does the Union determine whether the Employer acted in good faith if it is not provided with a reason for the rejection of an applicant?

The Employer argues that it is under no obligation to provide a reason for the rejection of an applicant. To support this argument the Employer provided the Arbitrator with the negotiations history of the language from the 1994 bargaining discussions (Em.exs.2-10). Within those exhibits it is clear that the Union sought to include language within Article I, Section 1.9 that would require the Employer to state the reason for the rejection of an applicant (Em.ex#2). The Union was unsuccessful in its attempt to include such specific language. Jewell, however, testified that as the chief negotiator for the Union, she believed the specific language was unnecessary due to an arbitration decision issued by Arbitrator McCaffree in 1991 (Em.ex.#11). In Jewell's opinion, that decision required the Employer to provide a reason for the rejection of an applicant even without specific language within the collective bargaining agreement. She felt confident that even with the withdrawal of the demand for the specific language, the Union would still be able to obtain a reason for the rejection of an applicant based upon the findings in McCaffree's decision. The Employer argues that the circumstances and the language surrounding the dispute in the McCaffree decision are somewhat different than those surrounding the dispute before this Arbitrator: in the McCaffree decision, there was specific language that required the Employer to use "Classification specs" as the sole criteria to determine bid awards and hiring. The Employer is correct that no such language exists in this case. Furthermore, the Employer is correct in its assertion that the final language that emerged from the 1994 negotiations provided both parties with significant changes that they had sought. Specifically, the Union obtained an expanded Union referral clause which extended exclusive hiring hall provisions to the Union and in return the Employer retained its right to reject applicants which it found unsuitable. The Arbitrator would be exceeding her authority if she now modified the language to require the Employer to provide reasons for the rejection of an applicant at the time of their rejection and thereby provide the Union with the language that it unsuccessfully sought in the 1994 negotiations. While the Union withdrew their demand for the language based upon the belief that a reason would be provided, there was no evidence or testimony at the hearing that the Employer concurred with this belief. There simply was no meeting of

the minds between the parties that a reason for rejection would be provided at the time of the rejection.

That is not to say however, that the Employer may never be required to provide reasons for the rejection. To the contrary, how would it be determined if it were appropriate for the Employer to go outside the hiring hall process if there were no ability to determine if the reasons for an applicant's rejection were done in good faith? To allow the Employer to simply reject an applicant with no ability to challenge the rejection, would open up the ability for the Employer to simply ignore the entire provision of the agreement.

Without specific restrictions within the collective bargaining agreement, the Employer may reject a prospective employee for any reasons that are deemed appropriate provided the reasons do not violate any statutory provisions. Within this collective bargaining agreement, restrictions are contained within Section 1.10 Equal Opportunity Employment and Section 1.9 Dispatching. There is no claim of a violation of Section 1.10 in this matter. Section 1.9 requires the Employer to first seek employees from the hiring hall. If the Employer has rejected a prospective employee from the hiring hall and chooses to seek employees from other sources than the hiring hall, it should be prepared to demonstrate that the rejection was done in good faith. The integrity of the hiring hall process can only be maintained through a good faith effort by both parties. The Union must, in good faith, provide applicants that it believes would be satisfactory to the Employer; the Employer must make a determination in good faith, as to whether or not a referred applicant is satisfactory. If the Employer finds that an applicant is not satisfactory, there is no requirement that a reason for a rejection be provided at the time of the rejection. However, if a reason is sought, the Employer must demonstrate that it made its determination in good faith. The Employer is in no way restricted as to how the determination is made, but if asked must present a reasonable basis for the rejection of an employee.

Having found that the Employer must demonstrate that a rejection of a prospective employee was done in good faith, the Arbitrator next reviewed whether the Employer acted in good faith in its rejection of Mark S------. Recognizing that the only restrictions upon the Employer's hiring decisions are contained within Section 1.10 of the agreement and that this Section is not in dispute, the Arbitrator focused only upon whether the Employer's determination that S------ was "unsatisfactory" was made in good faith.

The Employer reviewed S------'s application and found it to be incomplete by their standards. McIntosh was not satisfied by S------'s responses to some of the questions and found that several of the questions had been left unanswered. There were not sufficient and adequate references for the Employer to make a determination as to S------'s past employment history. The reference that was contacted, in a timely manner, was not complimentary to Mr. S------. The Arbitrator recognizes that the Union maintains that the Employer's behavior is inconsistent with a good faith finding that one is unsatisfactory but the fact remains that there is no limitation placed upon the Employer's right to make a determination regarding a prospective employee. Arbitral recognition of management's basic right and control in hiring has been well established. Under contracts that provide for union referrals but contain the requirement that referrals be satisfactory to the employer, arbitrators have allowed employers considerable discretion in rejecting union-referred candidates. The Arbitrator in this case, finds that the Employer made its determination in a reasonable manner and will not substitute her judgment for that of the Employer.

CONCLUSION

The Arbitrator finds that Mark S------ as a prospective employee does not have standing to file and pursue a grievance under the collective bargaining agreement between the parties however the Arbitrator finds that she has jurisdiction over this particular dispute based upon the initiation of the grievance by IBEW 1547 shop steward, Brett

Randolph. She further finds that the Employer is not required to provide a reason for the rejection of a prospective employee at the time that the rejection is issued, however the Employer is required to demonstrate that the rejection was made in good faith if the finding of "unsatisfactory" is challenged. Finally, the Employer demonstrated that its rejection of Mr. S------ was made in good faith.

The Arbitrator will enter an award consistent with the above findings.

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AFL-CIO, LOCAL 1547	)	AAA 75 L 300 00158 96
(The Union)	)	

After careful consideration of all oral and written arguments and evidence, and for the reasons set forth in the opinion that accompanies this award, it is awarded that:

1. The Employer did not violate the collective bargaining agreement in the manner suggested by the grievance when it rejected the referral of Mark S------. The Employer met the inherent requirement to provide a good faith basis for its determination that the prospective employee was unsatisfactory.

2. A prospective employee, Mark S------, does not have standing under the collective bargaining agreement to initiate a grievance against the Employer.

Respectfully submitted on this 14th day of January, 1997 by

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Sylvia P. Skratek, Arbitrator