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In the Matter of Arbitration

Between

Case No. 02-10-20090320-0001-01-03

OCSEA/AFSCME Local 11

Before: Harry Graham

and

The State of Ohio, Department
of Rehabilitation and Correction

APPEARANCES: For OCSEA/AFSCME Local 11:

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INTRODUCTION: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. Post-hearing briefs were submitted by both parties. They were exchanged by the Arbitrator on June 5, 2009 and the record was closed.

ISSUE: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Department of Rehabilitation and Correction violate the Contract when it placed Position Specific Minimum Qualifications on the Account Clerk II classification utilized in payroll? If so, what shall the remedy be?

BACKGROUND: The facts in this matter are straightforward. In the personnel system of the State there is the concept of the Position Specific Minimum Qualifications. (PSMQ's). PSMQ's are authorized by the Department of Administrative Services (DAS) at the behest of one of the State agencies, in this case, the Department of Rehabilitation and Correction. (DRC). On January 26, 2009 DAS issued PSMQ's for thirty-seven (37) Account Clerk 2 positions at various DRC locations in the state. The PSMQ at issue reads:

6 months experience in Workforce Management System (e.g. Kronos Timekeeping System, using and processing payroll; and

6 months experience in People Soft (e.g. OAKS HCM) Payroll, Time and Labor.

In the opinion of the Union that the Employer issued PSMQ's for the Account Clerk positions constituted a violation of the Agreement. A grievance protesting that alleged violation was filed. It was processed through the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

POSITION OF THE UNION: The Union points to events prior to issuance of the PSMQ's. In early 2008 the parties met to discuss the duties performed by Account Clerks in Rehabilitation and Correction. They did not discuss issuance of a PSMQ. Nor was the Union notified when the PSMQ was issued.

The Union was aware that the State was likely to layoff employees. Among those likely to be laid off were Account Clerks in DR&C. Given that incumbent Account Clerks were likely to be laid off the Employer sought people who could assume their tasks with minimal training, hence, the issuance of the

PSMQ's. While the position of the Employer regarding its reluctance to provide training is understandable, it is not permissible under the Agreement according to the Union.

When the State is contemplating issuance of PSMQ's a job analysis is performed. In this situation the Employer utilized three Subject Matter Experts (SME's) to perform that task. In this case, all wanted the issuance of a PSMQ. In fact, Joint Exhibit 4 shows that all rated each element of the position at the highest level with the exception of the element of "performing other related duties." The Union suggests this is suspicious.

DAS relies upon the information provided to it when determining whether or not to issue a PSMQ. It makes no independent evaluation of whether or not a proposed PSMQ is desirable. In this situation there is a strange confluence of events. At one time the Employer removed the task of dealing with the Kronos timekeeping system from bargaining unit work. Now, it has been placed back among the duties to be performed by bargaining unit members, with six months experience required. That was justified by the Employer at arbitration by indicating that to perform this function employees were required to know approximately five codes while other functions required knowledge of up to 65 codes. That is immaterial according to the Union.

At some locations Account Clerk 3's perform the same tasks as those performed by Account Clerk 2's elsewhere. A PSMQ was not requested for the Account Clerk 3 positions. In the opinion of the Union, that was due to the fact that Account Clerk 3's were less likely to be bumped in a layoff.

There is a manual detailing the manner in which job analyses and PSMQ's should be conducted. The manual provides that a PSMQ should not require more training or experience than the minimum qualification for the position, nor should an artificial barrier to filling the position be created, nor should the issuance of a PSMQ be aimed at selecting the "best candidate." A PSMQ should not be unnecessarily restrictive. Further, the DAS manual provides that vendor or agency-specific software for non-information technology jobs are unlikely to lead to issuance of a PSMQ. In this situation the PSMQ at issue breaches DAS guidelines. For instance, the positions at issue reference People Soft software. Thus, they were certainly unnecessarily restrictive and created an artificial barrier. In creating these PSMQ's the Employer contravened its own policy manual in the view of the Union.

At arbitration testimony was received from Erica Taylor, a Human Resources manager with the Department of Administrative Services. She reviewed the requested PSMQ's. She indicated that PSMQ's should not be used to secure the "best" candidate for a position. That is what occurred in this situation in the view of the Union. The Employer sought candidates for the Account Clerk jobs that could perform them with minimal training. That is not contemplated by the DAS manual.

It is the case that the classification series for this position contemplates that incumbents would be able to perform "routine" accounting functions. They can do so. Addition of the PSMQ does not add anything except a requirement to the position. Further, in Case No. 25-14-31593-03-01-13 (1993 Mychkovsky,

grievant) involving these parties I held that any personnel move there was bound to be some loss of efficiency during a learning period. Even a person entering the position in compliance with the PSMQ would need some time to familiarize themselves with the duties of the position. Some training would be necessary. Thus, the Union urges the grievance be granted. It seeks an award on its behalf with removal of the PSMQ's from the Accounting Clerk 2 positions. Further, it urges that if a position has been filled with recourse to the PSMQ's the position be opened and filled per Article 17, "Promotions, Transfers..." and back pay if appropriate be made. Finally, the Union asks I retain jurisdiction for 60 days from the date of the award to resolve any issues concerning remedy.

POSITION OF THE EMPLOYER: The State asserts that it acted properly in this situation. The Account Clerks involved in this proceeding are different from others employed elsewhere in DRC. They must have a different set of skills. Those skills are extraordinarily important to ensure that payroll is properly processed.

In support of its position in this matter the Employer points to arbitral precedent. In *SEIU District 1199 and State of Ohio, Department of Rehabilitation and Correction (Woodgeard, grievant)* 1999, Murphy. Arbitrator Murphy established a two-pronged test to determine if a PSMQ was proper. Under *Woodgeard* it was Arbitrator Murphy's view that if: the Employer possessed authority to establish a PSMQ and: 2. the decision to establish it was not arbitrary, a PSMQ was proper. The State contends that in this situation it

possessed the authority to establish a PSMQ and it did not act arbitrarily in doing so.

Article 5 represents the Management Rights article of the Agreement. It provides the Employer retains the right to determine the qualifications of employees covered by it. Section 123:1-7-04 of the *Ohio Revised Code* permits an agency to request PSMQ's that differ from the minimum qualifications for a position. Any such PSMQ's must be "rationally related to the performance of the essential functions of the classification and validated based upon the results of a thorough job analysis." Thus, there can be no question the State possesses the proper authority to establish a PSMQ according to the Employer.

Attention should thus turn to the tests established by Arbitrator Murphy. In his view a PSMQ is not arbitrary if it is reasonably related to the requirements of the job. In this situation that test is met the State asserts. In preparation of payroll the State uses a Workforce Management System which in turn utilizes a specialized timekeeping system known as Kronos. Data entered into Kronos must in turn be "interfaced" (Jt. ex. 4, p. 1) with a computer system utilized by the State known as OAKS. As that is the case the PSMQ for the Account Clerk positions provided for 6 months experience in the Workforce Management System (Kronos) and payroll processing. It also provided for 6 months experience in PeopleSoft (OAKS) payroll. Applicants who did not have direct Kronos experience but had the equivalent were considered.

Kronos and OAKS work in tandem. OAKS, the State version of PeopleSoft, turns data from Kronos into pay for employees. The Account Clerk

2's at issue in this proceeding must accurately deal with the systems. Those are not entry-level positions. Even an employee meeting the PSMQ would require training to properly navigate the payroll system.

The Kronos and OAKS systems involve more than data entry. The Clerk must tell the systems what to do. They enter 65-70 pay codes in the system. If an error occurs an employee may not get paid. If that occurs a check must be created manually, a costly process.

When creation of a PSMQ was contemplated a job analysis was done. That analysis supported creation of the PSMQ. It was reviewed and validated by the Department of Administrative Services. (DAS). The PSMQ was not done to harm members of the bargaining unit. In fact, bargaining unit members secured the positions.

It is not the case that the persons who conducted the job analysis were disposed to create the PSMQ. Three people were involved. They were management employees. That does not make them biased. In fact, the scores they developed differed from one another. There is no proof they acted in concert. Per the decision of Arbitrator Murphy in *Woodgeard* the Union must show the absence of a rational connection between the requirements established by the Employer and the duties of the position. The State asserts the Union has failed to do so. There is indeed a rational connection between ability to use the payroll system of the State and the account clerk positions at issue in this proceeding according to the Employer.

The State contends there are several sections of the Agreement that permit it to act as it did in this instance. Article 5, the management rights article, Article 17.04 references proficiency in the minimum qualifications required for the position, Article 18.02 which deals with the manner in which seniority and qualifications interact and Article 36.05 which requires the Employer to discuss with the Union changes in pay ranges and qualifications but does not reference PSMQ's. The State points out that there were no changes to the Account Clerk pay ranges or job specifications. The PSMQ was added. Thus, the State may act as it did in this instance it asserts.

As noted above, the Union has cited my holding in *Mychkovsky* in support of its position in this dispute. That proposition is misplaced according to the State. *Mychkovsky* is distinguishable from this proceeding. It dealt with Section 18.04, bumping rights, not PSMQ's. The disputed position did not have PSMQ's. Further, in *Mychkovsky*, I was concerned with a situation involving seniority. That is not the case here. Seniority is not an issue in this proceeding.

To the contrary, as seen by the State, *Mychkovsky* serves to bolster its position. In that holding I noted that when personnel movements occur there was bound to be some loss of efficiency. That loss was temporary. The State concedes this concept applies in this dispute as well. However, the payroll system of the State is complex and not quickly learned. Given its importance any learning time should be minimized, thus the significance of the PSMQ. In fact, prior to implementation of OAKS Account Clerk 2's were trained. Upon its activation difficulties arose. Further, following a layoff in 2008 trained Account

Clerks were displaced and less proficient replacements assumed their duties. Efficiency declined. That is a burden the State is not required to bear it contends.

In this situation the Union was not harmed. Account Clerk 2 tasks continue to be performed by bargaining unit members. Members of the bargaining unit retain their rights to bump and otherwise move into AC2 positions. No one was hurt by imposition of the PSMQ's. For all these reasons, the State contends the grievance should be denied.

DISCUSSION: It is trite to observe that the touchstone of any contract interpretation dispute is the contract. It is the contract that governs the authority of the Employer and the rights of the Union. Some agreements are more specific than others. Some permit greater discretion to the Employer than others. This dispute is governed in significant respect by Article 5, the Management Rights article of the Agreement. That Article provides in relevant part that the Employer retains authority to "3) determine the qualifications of employees covered by this Agreement." That phrase gives the State great discretion to select among employees, subject always to the standard of reasonableness.

The PSMQ at issue in this proceeding requires Account Clerk 2's to have six months experience in Workforce Management Systems processing payroll and to have six months experience in the PeopleSoft system used by the State. The Account Clerk 2 positions at issue process payroll at various institutions operated by the Department of Rehabilitation throughout the State. Needless to say, those are important and responsible positions. Employees depend upon accurate and timely completion of payroll to be paid properly. If errors occur a

paycheck must be issued manually. This is an expensive process. Thus the need for expertise.

In *Woodgeard* Arbitrator Murphy pointed out the theory of the Union was that the State had acted arbitrarily in establishing the PSMQ. In the dispute before him the question concerned whether or not the State could require licensure to perform a specific job. Arbitrator Murphy noted:

The question in this case is not whether the arbitrator or whether the Union would have agreed with the decision. The question rather is whether the Union showed the absence of any rational connection to the duties required to be performed in the job for which the Grievant had applied. The record amply demonstrates a rational connection between the requirement of these licenses to the job duties. These licenses demonstrate the knowledge and technical ability necessary to perform the job. (p.9).

The test of "rational connection" outlined by Arbitrator Murphy is met in this situation. It cannot be doubted that the ability to quickly perform the tasks necessary to process the payroll is rationally connected to the duties of the AC2's in the Department of Rehabilitation and Correction.

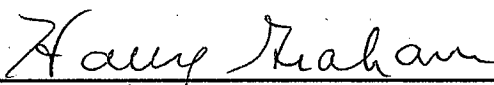
My decision in *Mychkovsky* is inapplicable to this dispute. It did not deal with PSMQ's. Rather, the crux of *Mychkovsky* was seniority and the exercise of bumping rights. In *Mychkovsky* I noted that any movement of personnel was bound to result in some loss of efficiency as employees became proficient in the new tasks to be performed. Given the importance of payroll to employees of the Department that loss of efficiency should be minimized. Establishment of the PSMQ's is a rational means to that end.

The Union has suggested that the job analysis in this situation was flawed as it was performed by management-level employees. No proof of that proposition was introduced. No witnesses were called, either from the bargaining unit or from among the evaluators. The proposition of the Union is speculative.

In this case there was no harm to the bargaining unit. The AC2 positions were filled by members of the Unit. There were no bargaining unit positions lost as a result of these moves. The integrity of the unit was not compromised. The State acted properly per its authority under Article 5. It acted reasonably considering the positions involved in issuance of the PSMQ and the specialized knowledge required to fill them. Thus, the grievance cannot be sustained.

AWARD: The grievance is denied.

Signed and dated this 20th day of June, 2009 in Solon, OH.



Harry Graham
Arbitrator