

IN THE MATTER OF ARBITRATION

BETWEEN

STATE OF OHIO – OHIO DEPARTMENT OF TRANSPORTATION
CENTRAL OFFICE

AND

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
LOCAL 11
AFSCME. AFL-CIO

Arbitration Date: January 29, 2010 & March 3, 2010

Grievant Lucille Micatrotto: #31-13(7-28-2008)-0022-01-09
and #31-13 (03-31-09)-0006-01-09

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

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Columbus, Ohio 43223

Advocate for the Union:

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OCSEA-OFFICE OF
GENERAL COUNSEL

I. HEARING

The hearing was held at the Ohio Civil Service Employees Association Union hall on January 29, 2010. The hearing commenced at 9:15 A.M. The joint issue before the arbitrator is:

“Based upon the grievant’s application, does the grievant meet the minimum qualifications for the position at issue pursuant to 18.12 of the collective bargaining agreement?”

Testifying for the Ohio Department of Transportation, (“the Employer”) were Latisha Hazell, Senior Analyst Human Capital and Scott Fulks, Training Supervisor.

Testifying for the Ohio Civil Service Employees Association, Local 11 AFSCME (“the Union”) were Patty Rich, Grievance Manager, Lucille M. Micatrotto, the Grievant and Bruce Wyngaard, OCSEA Operations Director.

The hearing was recessed at 1:20 P.M. The recess was due to the absence of a Union witness because of a death in the family. The hearing reconvened March 3, 2010 at 9:00 A.M. As this is an issue case, the Union presented its case first.

II. STATEMENT OF THE CASE

On July 28, 2008 Lucille M. Micatrotto filed a grievance. The Grievant asserts:

“ODOT Management issued a job abolishment notice for her position as an ODOT Training Officer. The abolishment/layoff was effective March, 2008. Grievant was placed on the layoff/recall list with biding rights outside her geographical area. In July, 2008 ODOT management posted a Training Officer position in District 3 - Ashland County.

Grievant submitted an application on July 8, 2008.

The posted Training Officer position ended on July 13, 2008 at 5:00 P.M. As of today’s

date, Grievant has not been awarded the vacant Training Officer position in District 3”

The Grievant sought the following remedy:

“Award Grievant the vacant Training Officer Position in ODOT District 3, Ashland County. Provide Grievant all necessary transitional training required without malice, prejudice, intimidation, harassment and/or discrimination. Make Grievant Whole.”

The matter is properly before the Arbitrator.

III THE UNION'S CASE

The Union's first witness was Patty Rich. Ms. Rich is the Union Grievance Manager in the Office of the General Counsel. She has held this position for five (5) years. Prior to this Ms. Rich was the Arbitration Coordinator. Ms. Rich testified she has worked with the Department of Administrative Services Labor-Management on Classifications. She has worked on Classifications for seventeen (17) years.

Ms. Rich testified she reviews Articles 17 and 18 of the Collective Bargaining Agreement and reviews all applications to see if candidates meet Minimum Qualifications. She attends Department of Administrative Services (“DAS”) Training and has done joint efforts with the State on testing. Ms. Rich testified that testing is reserved for promotion.

Ms. Rich read Joint Exhibit E which is the Training Officer Posting. The Minimum Qualifications are on page 2 of 3 of this exhibit. Ms. Rich testified that the Position Specific Minimum Qualifications (PSMQ) were a Class A CDL with tanker endorsement. She also testified “DAS” has to approve “PSMQs”.

Ms. Rich then turned to Joint Exhibit K and said this was a re-posting of the Training

Officer position. Ms. Rich testified that this posting said that there would be an assessment and

that this is not a PSMQ.

Ms. Rich then read Joint Exhibit I which is Grievant's application with attachment and compared this with Joint Exhibit K. Ms. Rich then testified that the Grievant met the Minimum Qualifications. Ms. Rich testified that the PSMQ says Class A CDL with tanker endorsement and that the Grievant has this license. Ms. Rich further testified that each Minimum Qualification has an option. She said the Grievant meets the position description as she had the job for ten (10) years and this only requires eighteen (18) months. Ms. Rich said the Grievant is qualified and no test is required. Ms. Rich also said a person can't get a CDL without knowing how to run equipment.

On Cross-Examination Ms. Rich referred to Article 18.12 of the Contract. She checked the position description and said the subject matter of training is in Joint Exhibit E which gives job duties. Ms. Rich testified that Grievant's file doesn't show equipment experience, just a CDL and that she has never applied for a CDL. Ms. Rich said she knows from reading, not having one. Ms. Rich testified that the Federal Government lets the States administer the CDL program; and that an applicant must pass a test to get a CDL.

Ms. Rich was then asked if she knew what "KSA" stood for and she said knowledge, skills and abilities. Ms. Rich was referred to Joint Exhibit F the right hand side. She was asked what the asterisk meant under the MAC heading. She said things learned after the start of a job.

Ms. Rich then read Joint Exhibit H which defines standard and complex equipment. The equipment is listed in the Position Description, Joint Exhibit F.

On Re-Direct Ms. Rich was referred to Joint Exhibit E. She said Job Duties are not

Minimum Qualifications. Ms. Rich said the Position Description not signed but it should be. She

then said MACs are not Qualifications. Ms Rich read Joint Exhibits F and K and said Major Worker Characteristics do not say anything about complex equipment. Ms. Rich said concerning lay-off and bumping, if you meet the Minimum Qualifications you get the job.

On Cross-Examination again Ms. Rich said this is not a bumping case but is a case under Article 18.12 of the Contract and you have to meet Minimum Qualifications.

On Re-Direct Examination Ms. Rich testified that the Position Description in Joint Exhibit F has no Minimum Qualifications.

The Union's next witness was Lucille Micatrotto, the Grievant. The Grievant is currently an Account Clerk I and has been so for one and a half years. Prior to this the Grievant was the District 12 Training Officer. She got this position in November 1998 and was laid off from the Training Officer Job March 16, 2008.

The Grievant applied for the Training Officer Job in Joint Exhibit E. Grievant bid on this job because of lay off. She said Contract Article 18.12 lets her do it. The Grievant said she met the Minimum Qualifications.

The Grievant was then referred to Joint Exhibit G, page 5 of 11. This Exhibit is the Trainer Classification for all Agencies. Page 5 lists the qualifications and Grievant said she met these too.

The Grievant was referred back to Joint Exhibit K, the Job re-posting. This has a PSMQ. The Grievant testified she has a Class A CDL with tanker endorsement. She said she was told to get one by a Supervisor and she got it in March, 2003. The Grievant testified she was being moved out into the field to train highway technicians.

The Grievant testified that to get a CDL you must watch a video of equipment; learn

safety techniques; do work sheets to self test; read a booklet about the vehicle; and drive the vehicle. There is a written test at the Bureau of Motor Vehicles and a driving test given by the Ohio Highway Patrol. The Grievant said she can drive a high tonnage 18 wheeler. She passed the test the first time.

The Grievant then read Joint Exhibit I. This is her submission for the job. She said she sent an E-Mail to Central Office. The Grievant read page 4 of this Exhibit and said she attached PDs. She testified she thought she should have the job. The Grievant said she had a conversation with Latisha Hazell to be sure she got it.

The Grievant was given Exhibit Union 1 and said it relates her conversation with Latisha. She testified that it was a pleasant conversation and Latisha agreed that the Grievant met Minimum Qualifications. The Grievant asked why her application would be put in with the others as the other applicants were seeking promotions.

The Grievant said Latisha replied "Outside her geographic location". The Grievant said Article 18.12 covers that and Latisha said she would check it with Labor Relations.

The Grievant then read the part of Exhibit Union - 1 which is the Michael Bussa E - Mail. Mr. Bussa said "You will be considered but you have to show proficiency. She turns to page 3 of Exhibit Union - 1 which said she was still interested and she waited to be contacted. Latisha contacted her and said the Grievant had to be tested. The Grievant then contacted Lynn Kemp at the Union, and Lynn checked with the Union leadership.

The Grievant then read page 4 of Union Exhibit 1 which was her E - Mail saying the job was hers. Latisha said no assessment, no job. She then turns to page 4 of Joint Exhibit B. This is

the Step 3 response which says the job will be re-posted.

The Grievant is next given Union Exhibit 2 which are E-Mails on the second posting. The Grievant indicates she is still interested. Latisha calls to schedule testing and the Grievant asked for an E-Mail on information. Latisha sent the E-Mail and the Grievant responds by E-Mail saying she is not coming to the assessment. She says she is on lay-off and Article 18.12 rules.

On Cross-Examination, the Grievant said she is familiar with the duties of the position. She said she has not attended at Regional Training sites. The Grievant testified she is aware there are five (5) equipment training sites. The Highway Technicians went to Ashland for equipment training.

The Grievant was asked about CDL training and she replied, "you start with a large dump truck and a large trailer". The Grievant read Joint Exhibit F, the Position Description. She said as a Training Officer she gave test; walk around Safety; checked to see that hoses were in proper order; checked fluids, tires and brakes. She also checked to see that all wiring was connected.

The Grievant then read Joint Exhibit H and said she has not operated equipment since she got her CDL. This Exhibit shows equipment to be used and she said she has not used a chipper. The Grievant said she had done concrete and asphalt work.

The Grievant then read Joint Exhibit P which is a list of equipment. She testified she has had a course in load securement. She also said she has done some flagging and had been an Engineering Clerk. The Grievant said District 12 uses the penguin system on snow and ice trucks. The Grievant said she has a little experience with skid steer loaders.

The Grievant said her prior experience included training four hundred eighty (480) employees. She trained in lifting, diversity, sexual harassment, mentor classes, and incident

management. The Grievant said she did On the Job Training (OJT).

The Grievant was given Exhibit Management 1. This is a document from the Training Record System set up by Central Office. The Grievant testified that for the first couple of years the District kept the records. She said not all of her training was in the record. The Grievant then testified that Management Exhibit 1 does show training that she has had; but that her record is not complete. She also testified that her only equipment training was for her CDL.

The Grievant then read Management Exhibit 2. This is an E-Mail concerning the Grievant sent by Bonita G. Teeuwen, P.E., Deputy Director, District 12 to Lynn Kemp. The Grievant said she had met with Bonnie to get a chance to get familiar with the equipment. District 12 said there was no opportunity to do that.

The Grievant was then given Union Exhibit 1. Part of this Exhibit is an E-Mail from Mr. Bussa telling the Grievant she must show proficiency.

The Grievant then read Joint Exhibit B which is her grievance. She said she filed the grievance prior to the Notice from Bonnie. The grievance asks for transitional training. The Grievant said she could start training as soon as she got the new job. The Grievant said ODOT uses the tag team method.

The Grievant observed training at District 12. "Jim" was the other District 12 Training Officer and he got more field training. She said she went out with "Jim" in November, 2002. A new Supervisor put Grievant in the field. The Supervisor told her to get a Class A CDL with a tanker endorsement, and gave her a goal sheet. The Grievant was advised she would train.

On Re-Direct the Grievant said she needs to correct her statement. She never drove a skid steer, she drove a fork lift. The Grievant then read page 2 of Union Exhibit 1. This is where Mr.

Bussa says she is required to serve a trial period. She also read Article 6 (B) of the Contract

which says serve a trial period. The Grievant then read Joint Exhibit F and said she had never seen this Position Description until the Arbitration.

The Union's last witness was Bruce Wyngaard. Mr. Wyngaard has been with the OCSEA for twenty-two (22) years. His first job was as Director of Arbitration. He reviewed grievances to decide which ones would go to Arbitration. Mr. Wyngaard also developed strategy and improving problem solving.

Mr. Wyngaard testified that State contract negotiations are done by Senior Staff such as Operations Director and Chief Counsel. He is now Operations Director and is responsible for selected agencies. Mr. Wyngaard testified he administers collective bargaining agreements and also reviews laws and participates in political programs.

Mr. Wyngaard is still Senior Staff and does contract negotiations. His first contract negotiation was in 1989 and he has been involved in every one since 1989.

Mr. Wyngaard said he negotiated Article 18 of the contract in 1992. In 1992 there were major lay-offs. The State had budget problems and institutions were closed. He said members could displace in a wide geographic area. Mr. Wyngaard testified that a paper lay-off procedure was devised and members were advised of their options.

Mr. Wyngaard was then shown Exhibit Union 3. Mr. Wyngaard testified that this is a Union Publication sent to members for ratification of the 1994 contract. The bold print indicates the changes from the previous contract.

Mr. Wyngaard then reviewed Joint Exhibit S on page 10. He testified that the language is the same as in Exhibit Union 3. He further testified that the purpose of this was to let members

return to their original location. The previous contract language did not let employees come back

to their original location.

IV. THE EMPLOYER'S CASE

The Employer's first witness was Latisha Hazell. Ms. Hazell is now with the Department of Commerce but was employed at ODOT as a Senior Analyst Human Capital. She said her past jobs were reviewing applications.

Ms. Hazell said Class specifications are a broad description for a bunch of positions. The Position Description is specific job duties. She then read Joint Exhibit E which is the Job Posting for the Training Officer. It is a Central Office Position. Ms. Hazell said the Minimum Qualifications come from the Class Specs. She then read Joint Exhibit G page 5 and said this has the same Minimum Qualifications.

Ms. Hazell then went back to Joint Exhibit E. This calls for 18 months experience which has to be in major job duties which are Equipment Operator Training. She then read Joint Exhibit E and said Job Duties tells subject matter.

Ms. Hazell then read Joint Exhibit F the Position Description. She said she has done H R and Quality. Ms. Hazell said she has seen other Position Description for Training Officers similar to this.

Ms. Hazell testified she is familiar with "KSAs" and these are minimum acceptable things required. These show in Joint Exhibit F. Ms. Hazell reads the knowledge section in the MACs on the right hand side of the Exhibit. She also reads skills on the same page. Ms. Hazell said the employee has to have these to start the job.

Ms. Hazell then reviewed Joint Exhibit I which is the Grievant's application. She said she

knew the Grievant was laid off. Ms. Hazell read Union Exhibit 1 and said she recalled a

telephone call and that it was a general call to get information. The Job was posted July 3. She said Joint Exhibit I was the application sent in by the Grievant. Ms. Hazell testified the E-Mail of July 10 was still in the Posting period. She said she doesn't screen applications as they come in.

Ms. Hazell then read Article 18.12 of the Contract. She reviewed the Grievant's application. Ms. Hazell read Joint Exhibit I, the Grievant's application and said the Grievant was not qualified. The application doesn't mention Equipment Operation, OSHA, or the preparation of instructional materials. Ms. Hazell said she scheduled Grievant for an assessment to show she could handle equipment.

Ms. Hazell read Management Exhibit 3, the Position Description for Training Officer and compared it to Joint Exhibit F and said the descriptions are different. Ms. Hazell said the Grievant failed to show for the assessment. She then read Joint Exhibit K which is the Re-Post for this job. Ms. Hazell testified this was done to let Grievant qualify for this position. This posting said assessment required. Ms. Hazell scheduled an assessment but the Grievant failed to appear.

Ms. Hazell read Joint Exhibit N which shows Steve Lindo promoted to the Job. She also testified that Joint Exhibit M was Steve Lindo's application.

On Cross-Examination Ms. Hazell read Joint Exhibit E which is the first posting of the Job. She said the Job Duties are Minimum Qualifications. Ms. Hazell then read Joint Exhibit F and said this is a State Standard document. She also said she doesn't know if the Union has inped into this document.

Ms. Hazell was then given Union Exhibit 1 and said Grievant mentioned Article 18.12 of

the Contract but said she doesn't make those decisions. Ms. Hazell testified she would talk to

Labor Relations. Ms. Hazell then went to Joint Exhibit E and said the Qualifications and Specific Minimum Qualifications make no reference to Equipment Operation. The Grievant did have a CDL.

Ms. Hazell was then referred to page 3 of Union Exhibit 2. She said the assessment was needed to show proficiency in the operating of equipment. Ms. Hazell said the Job was Re-posted to give Grievant a chance. She said also others could apply. Ms. Hazell said the Grievant sent the same application for the 2nd posting. She read Union Exhibit 2 where Mr. Bussa said "You do not need to send another application" under Article 18.12 of the Contract. She also said the successful applicant was a promotion.

Ms. Hazell was then asked to compare Joint Exhibit M, Steve Lindo's application with Joint Exhibit E, the Job Posting. She was asked to compare Minimum Qualifications. Ms. Hazell said you have to look at the entire application.

On Re-Direct Ms. Hazell said she separates bargaining Unit applications from the others and then reviews them. She said there was a written exam and a demonstration on the equipment. Mr. Lindo did the entire process and was required to show proficiency in operating equipment. She also testified that Grievant could have revised her application for the second Posting.

The Employer's next witness was Scott Fulks. Mr. Fulks is the ODOT Training Supervisor and has been with ODOT for 28 years. Mr. Fulks has been a highway worker, a Permit Tech, a Transportation Manager 1,2,& 3; an LRO and now Training Supervisor. He oversees Equipment Training Statewide.

Mr. Fulks said the RETs have site responsibility. They are responsible for inventory and

equipment. Mr. Fulks testified that the Training Officers assist the RETs. The Training Officers

teach Courses, Course Development and are considered Subject Matter Experts. Mr. Fulks testified that the Training Officers provide training on all types of heavy equipment.

Mr. Fulks read Joint Exhibit P and said these are Equipment Course Offerings. His staff does this training. Mr. Fulks said seven weeks per year training is offered to Cities and Counties.

Mr. Fulks testified that training begins in the class room and then moves to Pre-Trip inspections. All equipment is different. The next step is skills training which consists of 2 students, 1 Instructor and 1 piece of equipment. Mr. Fulks says he is very safety conscious as the students haven't developed skills yet. Students have a CDL Training Center for District 12 in Ashland. Mr. Fulks testified that this is a hard area to train in as there is more traffic, more snow, and a large urban sprawl.

Mr. Fulks then read Joint Exhibit F, the Position Description. He testified you have to be proficient to teach. You have to learn basic skills and still do OJT at the home garage.

Mr. Fulks was then shown Joint Exhibit I, the Grievants application. He testified the Grievant has no equipment experience. He was then shown Joint Exhibit B, the grievance. Mr. Fulks testified that Grievant asked for transitional training and that is not provided. He testified that applicants have to come with that skill.

Mr. Fulks then read Joint Exhibit O which is Steve Lindo's work history. All work the Employee does is tracked. PETG and LTTG training is given. He said Mr. Lindo started January 4 and taught his first class on January 17. Mr. Fulks testified that most of the heavy equipment classes are taught from the Spring to the Fall. He also said a CDL is for trucks over 26,000 pounds and only for trucks.

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There was no Cross-Examination of Mr. Fulks.

The Parties then stipulated to Joint Exhibit S, and Joint Exhibit T. The Parties agreed to add Joint Exhibit U by stipulation and the hearing was concluded at 10:18 A.M.

V. OPINION AND AWARD

This case has been well presented by the parties; both on the two hearing days and in their written Closing Arguments.

The Union quotes Article 18.12 of the Collective Bargaining Agreement (“CBA”) in pertinent part, stating “Among such employees submitting application who meet the minimum qualifications as stated in the Position Description and Classification Specification the most senior shall be awarded the Vacancy”.

The Union argues the Classification Specification for the Training Officer (J-G) contains the exact same minimum qualifications as listed on the postings for the Ashland County Training Officer at issue.

The Union says on the Classification Specification there is no Position Specific Minimum Qualification (PSMQ) listed. The only minimum qualification listed on the Position Description is a PSMQ - Class A CDL with tanker endorsement - without airbrake restriction.

The Union argues through the testimony of Ms. Patty Rich that it has no input into Position Descriptions. The Union further argues that MAC’s (minimum acceptable characteristics) are not minimum qualifications. The Union also argues that Article 18.12 of the “CBA” is to cover PSMQs that would be listed on the Classification and Position Description.

The Union relies on Ms. Patty Rich’s testimony that Grievant met the minimum

qualifications and the PSMQs. The Union says it only recognizes the minimum qualifications in

the Classification Specification.

The Union asserts that the Grievant was not required to be assessed, pointing out that this question is not part of the joint issue. The Union discusses this issue as there was considerable time spent during the hearings on this question.

The Union points out that assessments / testing appear in Article 17 of the CBA and that Article 18.12 of the CBA says “Notwithstanding the provisions of Article 17...”

The Union offers authority for its position citing “Black’s Law Dictionary” and “Labor and Employment Arbitration”.

The Union contends that the Employer conceded the question of qualifications by Mr. Bussa’s E - Mail telling Grievant she would be considered, ODOT simply wanted to test her. The Union also points out that Grievant sent an E - Mail to Ms. Hazel “as acknowledged by your office, I meet both minimum and specific minimum qualifications for the posted position”. The Union says the Employer never contradicted this statement. The Union also argues that the Step 3 response gave no indication Grievant did not meet the minimum qualifications.

The Union then says it reviewed the application of the successful candidate and fail to see how he is qualified.

The testimony from Bruce Wyngaard showed the purpose of Article 18.12 of the “CBA” was to expand rights of laid - off employees to return to their original positions and pay ranges. The Negotiations notes show extensive discussion about testing and assessments relating to Article 17 of the “CBA” but as to Article 18 the question was never addressed by the Union.

The Union discounts the testimony of Steve Fulks as to the Grievant meeting minimum

qualifications.

The Union's final argument is that Article 6.01B allows for a trial period in this situation. The Union cites Arbitrator Harry Graham's decision in Mychovsky where Arbitrator Graham says "of necessity there occurs some learning period, even if not formally set forth in the agreement".

The Employer in its argument says the Grievant meets several of the requirements of Article 18.12 of the "CBA" but fails to show that she is qualified.

The Employer argues that positions within a classification have varying duties and successful applicants must demonstrate they meet the minimum qualifications for the particular position for which they are applying. The Employer argues other provisions of the "CBA" support its argument. Section 6.011 (B) of the "CBA" Lateral Transfer within the Same Classification reads, "Where a single classification involves work which varies substantially among different positions with the classification, the Employer may require employees who are laterally transferred to serve a trial period equal to one-half of the regular probationary period". Section 18.11 Recall an employee who is laid off "shall be recalled to a position provided the affected employee is qualified to perform the duties". Section 18.13 Re-employment "provided the employee is qualified to perform the duties".

The Employer then cites the Mychkovsky case as authority for its position. The Employer quotes Arbitrator Graham as saying there is "of necessity" "some learning period". The Employer acknowledges this but argues Scott Fulks says there is not enough time to teach Grievant how to proficiently operate the equipment. The Employer cites Arbitrator Graham's ruling that "in determining whether or not a person is qualified, attention must be devoted to whether or not the

senior employee possesses a background of education, experience and adaptability as to give a neutral reviewer reasonable confidence that the senior bidder will be able to competently perform the requisite duties within a reasonable period of time". Scott Fulks testified Grievant would not be able to efficiently or proficiently operate a piece of equipment to teach others.

The Employer argues that Grievant had no equipment training other than operating a fork lift once and drove a truck to get her CDL. The Employer then argues Article 17.04 of the "CBA" which requires transferring employees to "specify on the application how they possess the minimum qualifications for the position". The Employer cites Ms. Hazell's testimony that a Training Officer and a Training Officer in Computer Applications have different duties.

The Employer says the testimony of Bruce Wyngaard said the purpose of Article 18.12 of the "CBA" was to expand recall and re-employment rights and allow institutional employees ... to return to their home institution or closer to home.

The Employer then argues that the Grievant must be qualified and the only tool available is the application. The front page of the posting CJE&KS has job duties taken from the Position Description. The essential job duty is the proficient operation of basic, standard and complex equipment. The Employer says the testimony of Ms. Hazell is convincing that Grievant was not qualified. Ms. Hazell's testimony, in summary, is that Grievant did not indicate which courses she had taken at Cleveland State. There is also no mention of other required skills such as public speaking. The Grievant's application did not indicate she met the minimum qualifications. The Grievant in her testimony focused on her CDL and not other qualifications.

The Employer says the Union's argument that holding a position in the Classification means you are qualified fails because Article 18.12 of the "CBA" also refers to "the Position

Description". The minimum qualifications are in the Position Description. A Position Description contains job duties and it contains minimum acceptable characteristics "MACs".

The Employer says the contract doesn't say employees must meet "PSMQs" it states the applicant must meet minimum qualifications "as stated in the position description".

The Employer also points out that the qualifications in the position description at issue are different from the qualifications of Grievant's previously held Training Officer positions. The qualifications for the position itself are in the MACs. The Employer cites a decision by Arbitrator Anna DuVal Smith in the DeJesus decision. "An inescapable conclusion is that the operative document is the Position Description". Arbitrator Smith went on to rule "She (DeJesus) must also possess the minimum acceptable characteristics on the "Position Description".

The Employer then argues that the Grievant's Position Description from her former Training Officer position are not similar to those required for the job at issue here.

The Employer also points out that neither the Grievant's application nor her testimony mention any knowledge of Safety regarding OSHA's standards or any ability to operate basic, standard and complex equipment.

The Employer then points out the successful applicant had considerable qualifications including the Air Force's Heavy Equipment Academy.

The Employer then makes a historical survey of the evolution of Article 17 of the ""CBA"" concerning qualifications.

Because this is a case of first impression on Article 18.12 of the ""CBA"" the Arbitrator has set forth here not only the facts presented but also the arguments of the parties.

The stipulated issue is “whether the Grievant’s application demonstrated that she met the minimum qualifications for the position of Training Officer in the Equipment Training Program pursuant to Article 18.12 of the “CBA””.

The Arbitrator finds that the Grievant did not meet the minimum qualifications and the grievance is denied.

The Union has made a maximum effort on behalf of the Grievant. The Union however has not shown sufficient evidence to meet its burden.

The Union argues that it has input into the Classification Specifications but not any input into the Position Description. Therefore the Union argues that the Classification Specification is decisive. However, Article 18.12 of the “CBA” includes the Position Description as part of the criteria.

The Union contends that the Grievant met the Minimum Qualifications because she had a CDL. Unfortunately for the Grievant this was not the only requirement.

The Employer points out that the Grievant’s application and her attached Position Descriptions did not show she was qualified. The Arbitrator agrees with this.

The Union argues that a Training Officer is a Training Officer. This is not necessarily correct. The Employer’s evidence proves this point.

The Union contends the Grievant was mis-lead by the Employer telling her she would be considered when it should have told her to re-do her application. The fact is that ODOT went to considerable effort to assist Grievant. The Union is absolutely correct that Article 18.12 of the “CBA” does not require assessment / testing.

On the other hand ODOT posted this job twice to see if Grievant could operate heavy

equipment.

The Union also argues against the use of "MAC's" as Minimum Qualifications. The Arbitrator agrees with Arbitrator Smith that they are a requirement. The other problem is that the Position Description indicates that 75% of the job is related to the operation of heavy equipment.

The parties to this Arbitration, and their advocates are experienced and very capable. As part of this proceeding there has been evidence and argument about matters they felt were important.

The Employer argued the import of Article 17 of the ""CBA"". The Union is correct that Article 18.12 of the ""CBA"" precludes the use of Article 17. The Union is also correct, as indicated above, that Article 18.12 does not require assessment / testing.

The Union also questioned the qualifications of the successful applicant. The Arbitrator has reviewed his application and finds he is qualified.

Grievance Denied.

Entered at Ironton, Ohio this 9th day of April 2010.

Craig A. Allen, Arbitrator