ARBITRATION DECISION NO.:
428

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Department of Transportation
District 12
Cuyahoga County

DATE OF ARBITRATION:
March 18, 1992

DATE OF DECISION:
April 1, 1992

GRIEVANT:
Ronald Vick

OCB GRIEVANCE NO.:
31-12-(90-05-03)-0031-01-06

ARBITRATOR:
Harry Graham

FOR THE UNION:
Steve Lieber

FOR THE EMPLOYER:
John Tornes

KEY WORDS:
Promotion
Minimum Qualifications
Interim Appointment

ARTICLES:
Article 17-Promotions and
Transfers
§17.02-Promotional
Probationary Period
§17.05-Applications

FACTS:

The grievant had been employed by the Department of Transportation since February 1972. Most recently the grievant was classified as an Auto Mechanic 2. He had been assigned to an Auto Mechanic 3 position on an interim basis from June 4, 1989 until September 16, 1989. The Auto Mechanic 3 position became vacant in January 1990 and the grievant submitted an application but was not selected despite having sixteen years more seniority than the selected applicant. The applicant grieved his non-selection for

the Auto Mechanic 3 position.

UNION'S POSITION:

The grievant was harmed by being placed in the Auto Mechanic 3 position while his facility was in the process of moving. The grievant's poor performance was caused by this move, not an inability to perform the work. The grievant should be given an opportunity to serve a probationary period for which the previous interim appointment cannot substitute. Because the grievant met the minimum qualifications for the Classification Specification, his seniority dictates that he be awarded the position. Additionally, the grievant has fifteen years seniority over the selected applicant and has received satisfactory ratings over the length of his service with the State.

EMPLOYER'S POSITION:

Article 17 requires that applicants be qualified and proficient in the requirements of the Position Description for which they apply. The Auto Mechanic 3 position is a lead worker position. The fact that the grievant was able to perform Auto Mechanic 2 duties does not mean that he is qualified and proficient in the requirements for the Auto Mechanic 3 position. He failed to demonstrate that he was able to perform the position's duties while he was assigned those duties on an interim basis. While he did not serve a probationary period, it would be useless to appoint the grievant to a probationary period after it has already been shown that he is not proficient in the job's requirements. The employer provided assistance to the grievant while he was assigned on an interim basis but he did not improve in the lead worker elements of the job.

ARBITRATOR'S OPINION:

The grievant meets the minimum qualifications for the position and has considerable seniority over the selected applicant, however the grievant is not proficient in the lead worker requirements of the Position Description. The contract requires possession of the minimum qualifications on the Classification Specification and proficiency in the minimum qualifications on the Position Description. It has been shown that the grievant had been assigned to the position on an interim basis and even with instruction was unable to successfully carry out the lead worker aspects of the Auto Mechanic 3 position. While that period cannot be considered as a probationary period, no good purpose would be served by permitting the grievant to attempt to perform the position again. No bad faith was proven because the grievant's interim position ended months prior to the position posting. Additionally, no animosity toward the grievant was proven at arbitration. Therefore, the employer was found to have made a good faith decision that the grievant was not proficient in the minimum qualifications found in the Position Description.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

In the Matter of Arbitration
Between

OCSEA/AFSCME Local 11

and

The State of Ohio, Department
of Transportation

Case Number:
31-12-(5-3-90)-31-01-06

Before:
Harry Graham

Appearances:

For OCSEA/AFSCME Local 11:
Steve Lieber
Staff Representative
OCSEA/AFSCME Local 11
1680 Watermark Dr.
Columbus, OH. 43215

For Ohio Department of Transportation:
John Tornes
Ohio Department of Transportation
25 South High St.
Columbus, OH. 43215

Introduction:

Pursuant to the procedures of the parties a hearing was held in this matter on March 18, 1992 before Harry Graham. At the close of the oral hearing the parties presented closing arguments. The record in this dispute was closed at the conclusion of the oral arguments.

Issue:

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

Did the Employer violate the Collective Bargaining Agreement when it failed to promote the Grievant to Auto Mechanic 3?
If so, what shall the remedy be?

Background:

There is no dispute over the events that prompt this proceeding. The Grievant, Ronald Vick was initially hired by the State on February 22, 1972. For much of his career with the State he was classified as an Auto Mechanic 2 and employed at various sites in Cuyahoga County.

During the course of Mr. Vick's tenure with the State the Department also had in its employ Andrew Light who was classified as an Auto Mechanic 3. Mr. Light worked at the Burton Yard which is located in Geauga County. During 1989 Mr. Light was on a lengthy Worker's Compensation leave. As his replacement, Mr. Vick assumed Mr. Light's duties. As was Mr. Light, he was classified as an Auto Mechanic 3. That classification was on an interim basis. He served in that classification from June 4, 1989 to September 16, 1989 when he was removed from the classification and assumed his Auto Mechanic 2 position once again. He remained at the Burton Yard. On December 11, 1989 Mr. Light resigned his position as an Auto Mechanic 3 and on January 25, 1990 the Employer posted for the vacant Auto Mechanic 3 position in Burton. The Grievant applied for the vacancy as did three other bidders. One of the bidders, Robert Hallbom, was awarded the position. Mr. Hallbom carries a seniority date of January 19, 1988. He has sixteen years less state service than does the Grievant, Mr. Vick.

In order to protest what he regarded to be a violation of the Collective Bargaining Agreement Mr. Vick filed a grievance. That grievance was denied at each step of the procedure and the parties agree that it is now properly before the Arbitrator for determination on its merits.

Position of the Union:

The Union points out that during the time Mr. Vick served as a Mechanic 3 at Burton the facility was in an unsettled state. Operations were being moved from the existing building to a new building that had been recently constructed on the site. As a result, support services such as proper electrical and air lines had not been made available for mechanics. Consequently, it was not possible for them to perform all aspects of their work as well as is normally the case.

When the Grievant held the Mechanic 3 position in the Summer of 1989 it was as an interim employee. In no way did he serve a probationary period. At Article 17, Section 17.02 the Agreement provides that the employee is to serve a probationary period upon promotion. The Grievant was not promoted in the Summer of 1989. He was filling in for the absent Mr. Light. Any attempt to deny Mr. Vick an opportunity to fill the Mechanic 3 vacancy at Burton is improper in the Union's view as the Agreement calls for a probationary period, not service as an interim employee. This is especially the case when the conditions under which Mr. Vick worked at Burton were abnormal.

In this situation the Grievant met the minimum qualifications for the vacant position. Mr. Vick has received good performance evaluations during the entire course of his employment with the State. On September 1, 1989 Keith Miller and Vincent Armenti recommended that Mr. Vick be removed from the Mechanic 3 position and restored to the Mechanic 2 position he had formerly held. In 1986 Mr. Miller had conducted Mr. Vick's formal performance evaluation. Mr. Vick was highly rated by Mr. Miller. He had commented that Mr. Vick was "an asset to Dist. 12 and to the State." In light of the rating that had been given to Mr. Vick by Mr. Miller, the Union asserts that his recommendation that Mr. Vick not be given the position permanently be discounted.

The Agreement at Article 17 refers to applicants for promotion being required to posses the "minimum qualifications" for the position to which the seek promotion. In this case, Mr. Vick met the minimum qualifications in the Union's view. Examination of the Classification Specification, (Joint Exhibit 3) for the Auto Mechanic 3 vacancy indicates that it requires completion of an associate core program in auto mechanics and 12 months experience in auto repair and maintenance. Obviously Mr. Vick met that qualification. Other minimum qualifications, preceded by the word "or" on the classification specification include 36 months experience in automotive repair and maintenance. No matter what standard Mr. Vick is held to, he more than meets it. There can be no doubt that by virtue of his experience and satisfactory ratings, Mr. Vick met the minimum qualifications for the position. He cannot be denied it the Union asserts.

Position of the Employer:

As does the Union, the State relies upon Article 17 in defense of its action in this situation. Not only must applicants for promotion possess the minimum qualifications for the position upon which they are bidding, they must be "proficient" in them as well. While the Union focuses upon the Classification Specification, the State calls attention to the Position Description. Joint Exhibit 4, the Position Description, provides that the Auto Mechanic 3 will perform duties associated with a "lead mechanic." The person in that classification is to schedule repair assignments. He is to schedule routine maintenance, check parts inventories and order parts. These tasks are in addition to performing work on vehicles themselves. The Auto Mechanic 3 is truly a lead worker in that he carries with him an aspect of supervision. Mr. Vick had filled the Auto Mechanic 3 position on an interim basis during the summer of 1989. Management was dissatisfied with the lead worker aspects of his performance. In the opinion of his supervisors, he was too much of a hands on mechanic and not enough of a supervisor. The Employer grants that Mr. Vick possessed the Minimum Qualifications for the Auto Mechanic 3 vacancy as reflected on the Classification Specification. He lacked the supervisory skills reflected on the position description.

When Mr. Vick served as an interim Auto Mechanic 3 he was supervised by various people. Keith Miller, who had supervised him in prior years and rated him highly, was Mr. Vick's supervisor for a short time at Burton. In his view, Mr. Vick did not carry out the supervisory parts of his job well. Other mechanics reported not being assigned to work. Parts were often not ordered correctly. Mr. Vick did a good job as a mechanic, performing well in the mechanical aspects of his position. He did not do well in the supervisory aspects of the Mechanic 3 job. Consequently, Mr. Miller recommended that he not continue in that position

at the end of the Summer of 1989. That view was seconded by Mr. Miller's colleague, Vincent Armenti. As the Maintenance Superintendent in Geauga County he was knowledgeable about Vick's performance. In his view, Mr. Vick needed assistance with the supervisory and parts ordering aspects of the Mechanic position. In fact, assistance was provided. Two clerks were assigned to help with the parts ordering. An Equipment Supervisor, Mark Svoboda, trained Mr. Vick in the specifics of the parts ordering process. Nonetheless, Mr. Vick did not improve his performance in the supervisory aspects of the Auto Mechanic 3 position.

The Employer insists it had ample opportunity to observe Mr. Vick in action as an Auto Mechanic 3 during the summer of 1989. Mr. Vick did not serve a probationary period as specified by the Agreement. Nonetheless, the Employer was well aware of his strengths and weaknesses for the Auto Mechanic 3 position. As that was the case, it was a waste of time and energy for all concerned to put Mr. Vick into a probationary period when it was obvious to the Employer that he would not successfully complete it. Section 17.05 of the Agreement indicates that the applicant for a promotion must meet the minimum qualifications and be "proficient." The Employer knew Mr. Vick was not proficient. Hence, he was not given an opportunity to fill the vacancy on a probationary basis. As that is the case, to have provided Mr. Vick the probationary period would have been a waste of time and energy for all concerned. In the view of the Employer, the grievance should be denied.

Discussion:

The contractual test for eligibility for promotion is set forth in Section 17.05 of the Agreement. It provides that bidders in the various classes, A, B, C, D, E, and F are to be considered from among those "who possess and are proficient in the minimum qualifications contained in the class specification and the position description." The bidder must meet the tests of possession and proficiency in the minimum qualifications.

There is no question that the Grievant meets the minimum qualifications set forth on the classification specification. By virtue of his experience he far exceeds the minimum qualifications on that document. Further, no question was raised at the hearing but that Mr. Vick is an excellent vehicle mechanic. Clearly, he has performed the mechanical tasks associated with the Mechanic 2 position acceptably for many years and also meets the minimum qualifications set forth on the classification specification. He was also the most senior bidder for the vacancy for the Mechanic 3 at Burton Yard. These factors weigh in his favor. Set against them is language in the Agreement which provides that bidders must be "proficient in the minimum qualifications contained (on) . . . the position description." That is, the test goes beyond possession of the minimum qualifications on the classification specification. The bidder must also be proficient in the minimum qualifications found on the position description. Based upon the record and testimony at the hearing it is obvious that the State's managerial officials, Messrs. Miller, Armenti and Svoboda, do not believe that he does so. It cannot be plausibly argued that they stacked the deck or set up the Grievant to not receive the Mechanic 3 position as they recommended that he be removed from his interim service in that classification well before the vacancy in question in this proceeding arose. Nor was there any animosity or hostility shown between any of the management representatives and the Grievant. If anything, the record is to the contrary. Mr. Vick's evaluations are good. This includes those given by Mr. Miller, one of the management witnesses who testified to Mr. Vick's shortcomings as a Mechanic 3.

The Union is correct to point to the unusual set of circumstances surrounding this dispute. Mr. Vick served a three month appointment as an interim Mechanic 3. He did not serve a probationary period in the position. In these circumstances it is unreasonable for the Union to argue that as Mr. Vick's service was as an interim employee, not a probationary employee, that the Agreement has been violated. That argument raises form over substance. It asks the Arbitrator to cast a blind eye on the reality of the fact that Mr. Vick had served three months as a Mechanic 3 and that his performance in the lead worker aspects of the position had been found wanting. Based upon the testimony of the management officials as well as the documentary evidence (eg. Joint Exhibit 16) it must be concluded that the Grievant did not meet the contractual standard of "proficiency" in the minimum qualifications contained on the position description.

In this case there is no evidence of bad faith or improper motive. To the contrary, the evidence indicates that the Employer made a good faith judgment based upon the evidence available to it. That evidence was both documentary and personal knowledge of relevant supervisors. To hold that the Grievant had a right to a

probationary trial period in the face of the evidence that he had not performed satisfactorily in a three month interim appointment shortly prior to the vacancy is a time wasting exercise.

The holding in this case must be viewed as being specific only to the facts before the Arbitrator. Obviously that is the case for each promotion dispute that is contested. That the Employer prevails in this situation should not be viewed as granting license to put employees in interim positions which represent promotions, conclude they are unsatisfactory and then fail to promote them if a vacancy arises. The facts surrounding the vacancy at Burton Yard are unusual. The award in this case must not be interpreted as providing a loophole in the Agreement for the Employer to structure the promotional process so as to prematurely disqualify applicants for promotion.

Award:

The grievance is denied.

Signed and dated this 1st day of April, 1992 at South Russell, OH.

HARRY GRAHAM
Arbitrator