

**ARBITRATION DECISION NO.:**

593

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Transportation

**DATE OF ARBITRATION:**

October 25, 1995

**DATE OF DECISION:**

November 17, 1995

**GRIEVANT:**

Charles A. Bakle, Jr.

**OCB GRIEVANCE NO.:**

31-01-(94-11-29)-0053-01-07

31-01-(94-12-14)-0056-01-07

**ARBITRATOR:**

Nels E. Nelson

**FOR THE UNION:**

Bob J. Rowland, Staff Representative, Advocate

Bob Goheen, Staff Representative, Second Chair

**FOR THE EMPLOYER:**

Edward A. Flynn, Labor Relations Administrator, ODOT, Advocate

Lou Kitchen, Office of Collective Bargaining, Second Chair

**KEY WORDS:**

Job Requirements

Minimum Qualifications

Seniority

Major Worker Characteristics

Class Specification

**ARTICLES:**

Article 17 - Promotions, Transfers, and Relocations

§17.05 - Applications

§17.06 - Selection

Article 25 - Grievance Procedure

**FACTS:**

The grievant was employed by the Ohio Department of Transportation as a Materials Controller 2. When two Project Inspector 2 positions were posted, the grievant bid on the positions. However, despite his seniority, 2 other applicants with three and four years less seniority were awarded the positions.

When the grievant was notified of these actions, he filed identical grievances charging management with several violations of the collective bargaining agreement. He requested that he be placed in one of the Project Inspector 2 positions and that he be made whole for all lost wages and benefits.

#### **THE UNION'S POSITION:**

The Union argued that the grievant met the minimum qualifications for the Project Inspector 2 positions. The Union pointed out that the grievant has contact with Project Inspectors in his current job, has the required math courses and has a commercial drivers license. The Union also contested that not only did the grievant possess the Major Worker Characteristics, but he also has thorough knowledge of the manual used by Project Inspectors.

The Union charged that management took the easy way out in awarding the Project Inspector 2 position. The union advocate claimed that instead of considering the grievant's qualifications, management simply appointed two employees who already held the Project Inspector 1 classification. The Union noted that management has promoted a Materials Controller 1 to a Project Inspector 1 in the past.

#### **MANAGEMENT'S POSITION:**

Management argued that the Union failed to meet its burden of showing that the grievant met the minimum qualifications for the Project Inspector 2 position. Management contended that the grievant did not possess the twelve months of experience or training in State and Federal laws nor did he have twelve months experience or training in construction inspection practices, and both qualifications are needed to satisfy the minimum requirements.

Management asserted that the grievant did not demonstrate that he possessed the Major Worker Characteristics. In addition, the grievant only possessed a limited knowledge of the manual used by Project Inspectors. Management also argued that even if the Arbitrator concludes that the grievant meets the minimum qualifications, the Arbitrator's only authority is to place the grievant in a pool of applicants. The State still has the option of promoting a junior employee who is demonstrably superior.

#### **ARBITRATOR'S OPINION:**

The Arbitrator stated that there are three ways to qualify for the Project Inspector 2 position. First, an applicant who meets the minimum qualifications is eligible for the position. Second, an employee can qualify through twelve months experience as a Project Inspector 1. Third, the employee is acceptable if he or she shows "equivalent evidence of the Major Worker Characteristics for the position.

The Arbitrator concluded that the grievant met some of the qualifications for the position. Specifically, the grievant met the requisite public relations, math and commercial drivers licensing requirements. However, the Arbitrator determined that the grievant failed to meet the qualifications in two areas. First, the grievant did not have twelve months training or experience in the laws, rules and regulations governing construction project approval. Second, the grievant did not have twelve months training or experience in construction inspection practices.

The Arbitrator also concluded that the grievant never held the Project Inspector 1 classification. In addition, the grievant failed to demonstrate that he had the equivalent experience of the Major Worker Characteristics for a project Inspector 2. The grievant failed to demonstrate that he possessed the required knowledge of state and federal laws and of the regulations pertaining to project approval or construction inspection practices. Therefore, the Union did not meet its burden to show that the grievant was qualified for the Project Inspector 2 position.

#### **AWARD:**

The grievance was denied.

#### **TEXT OF THE OPINION:**

### ARBITRATION DECISION

November 17, 1995

In the Matter of:

State of Ohio,  
Department of Transportation

and

Ohio Civil Service Employees Association  
AFSCME Local 11

Case Nos. 31-01-(11/29/94)-53-01-07  
and 31-01-(12/14/94)-56-01-07  
Charles A. Bakle, Jr., Grievant

APPEARANCES

For the State:

Edward A. Flynn, Labor Relations Administrator, ODOT, Advocate  
Lou Kitchen, Office of Collective Bargaining, Second Chair  
Henry Horne, ODOT Management Representative  
Michael D. Bussa, ODOT Human Resources Specialist 2  
Bruce Merry, ODOT District Construction Administrator

For the Union:

Bob J. Rowland, Staff Representative, Advocate  
Bob Goheen, Staff Representative, Second Chair  
Charles A. Bakle Jr., Grievant

Arbitrator:

Nels E. Nelson

BACKGROUND

The grievant, Charles A. Bakle Jr., was hired by the Ohio Department of Transportation on August 17, 1987. He worked in the testing laboratory for two years, transferred to an asphalt plant for five years, and returned to the laboratory. At the time of the grievance the grievant was a Materials Controller 2.

In September 1994 management posted two Project Inspector 2 positions. The grievant, David Conover, and Walter Kauser bid on the positions. Conover has a seniority date of March 5, 1990 and Kauser has a seniority date of July 15, 1991. Both held the classification of Project Inspector 1 at the time of the posting.

Despite the grievant's greater seniority, Kauser was awarded a Project Inspector 2 position on November 13, 1994 and Conover was awarded the other position on November 27, 1994. When the grievant was

notified of these actions, he filed identical grievances charging management with several violations of the collective bargaining agreement. He requested that he be placed in one of the Project Inspector 2 positions and be made whole for lost wages and benefits.

Both grievances were processed under Article 25 of the collective bargaining agreement. They were denied at step three of the grievance procedure on January 30, 1995. The grievances were appealed to arbitration on May 16, 1995. The arbitration hearing was held on October 25, 1995.

### ISSUE

The issue as agreed to by the parties is as follows:

Did grievant meet the qualifications of Project Inspector 2, if so, what shall the remedy be?

### RELEVANT CONTRACT PROVISIONS

Article 17, Sections 17.05 and 17.06.

### UNION POSITION

The union argues that the grievant met the minimum qualifications for the Project Inspector 2 position. It points out that the grievant's experience includes several years of work in asphalt plants as well as in the laboratory. The union indicates that while working in the laboratory the grievant has contact with the Project Inspectors who sign in at the laboratory and check out equipment. It notes that the grievant had geometry and trigonometry courses in high school and college. The union reports that he has a commercial driver's license with an air brake endorsement.

The union contends that the grievant possessed the major worker characteristics required for the position. It states that he had courses in computer use, concrete and asphalt, and the operation of a nuclear gauge. The union claims that the grievant had the ability to read blue prints because of his experience in two organizations where he was involved with the construction of new buildings. It maintains that he repairs and maintains some of the equipment used by the Project Inspectors so that he should be considered capable of operating the equipment.

The union indicates that as a Materials Controller the grievant uses the department's Construction and Materials Specifications Manual. It states that the manual is considered the bible for both the Materials Controllers and the Project Inspectors. The union stresses that the grievant has used the manual since he was hired in 1987.

The union charges that management took the easy way out in awarding the Project Inspector 2 positions. It claims that rather than considering the grievant's qualifications, it simply appointed two employees who held the Project Inspector 1 classification. The union notes, however, that in 1985 management promoted a Materials Controller 1 who was working in the laboratory to the Project Inspector 1 classification in construction.

The union asks the Arbitrator to sustain the grievance and award the grievant one of the two Project Inspector 2 positions and make him whole for any lost wages and benefits.

### MANAGEMENT POSITION

Management argues that the union failed to meet its burden of showing that the grievant met the minimum qualifications for the Project Inspector 2 position. It contends that he did not have twelve months of experience or training in state and federal laws, rules and regulations regarding construction project approval nor did he have twelve months experience or training in construction inspection practices. Management emphasizes that both of these requirements must be met to satisfy the minimum qualifications.

Management maintains that the grievant did not demonstrate that he possessed the major worker

characteristics for the positions. It claims that he did not know how construction plans are put together or understand the relationship between specifications and plans. Management notes that while the grievant did operate a nuclear gauge, it was a different type than the ones used by the Project Inspectors.

Management asserts that the grievant did not perform the tasks listed under job duties on the class specification for Project Inspector 2. It states that he did not inspect drainage, water works, or roadways. Management indicates that the grievant was not familiar with blueprints. It acknowledges that the grievant used the Construction and Materials Specifications Manual but stresses that as a Materials Controller he was concerned only with the materials section of the book which is only 200 of the 700 pages in the book.

Management argues that the Arbitrator cannot place the grievant in a Project Inspector 2 position even if he concludes that he met the minimum qualifications for the positions. It contends that the Arbitrator can only place the grievant in the pool of qualified applicants. Management emphasis that under Section 17.06 of Article 17 it can promote a less senior employee provided the junior employee is "demonstrably superior" to the senior employee. It cites the decision of Arbitrator Harry Graham in OCSEA/AFSCME Local 11 and The State of Ohio, Bureau of Motor Vehicles, Case No. 15-02-(91-07-22)-0056-01-09 in support of this contention.

Management asks the Arbitrator to deny the grievance.

### ANALYSIS

The instant dispute involves a very frequent issue in arbitration. The grievant bid on an opening in a higher classification. He felt he was qualified for the job but management determined that he did not meet the minimum qualifications. When the grievant failed to be promoted, he filed a grievance.

Article 17 of the collective bargaining agreement governs promotions. Section 17.05(A) indicates that the qualified applicants for promotion are the bidders "who possess and are proficient in the minimum qualifications contained in the classification specification and position description." Section 17.06 requires that "the job...be awarded to the qualified employee with the most State seniority unless the Agency can show that a junior employee is demonstrably superior to the senior employee."

The classification specification for Project Inspector 2 sets forth three ways to qualify for the position. First, it lists the minimum class qualifications for the job. Second, the classification specification indicates that an employee can qualify through twelve months experience as a Project Inspector 1. Third, an employee is acceptable if he or she shows "equivalent evidence of the Major Worker Characteristics [for the position]."

The minimum Class Qualifications for Projector Inspector 2 are as follows:

"12 mos. trg. or 12 mos. exp. in state & federal laws, rules & regulations regarding construction project approval; 12 mos. trg. or 12 mos. exp. in construction inspection practices; 6 mos. trg. or 6 mos. exp. in public relations; 1 course or 3 mos. exp. in geometry; 1 course or 3 mos. exp. in trigonometry; valid driver's license."

The grievant does meet some of the minimum class qualifications. His experience as the president of the Eagle No. 372 and as Grand Knight of the Knights of Columbus No. 1039, his unsuccessful campaign for county auditor, and the positions held in a number of civic organizations would appear to satisfy the requirement for six months of public relations experience. In addition, the grievant has completed courses in geometry and trigonometry and has a commercial driver's license with an air brake endorsement.

However, the grievant clearly does not meet the qualifications in two areas. First, he does not have twelve months of training or experience in the laws, rules, and regulations governing construction project approval. The knowledge of the grievant with respect to the requirements for the approval of materials does not satisfy this requirement. Second, he does not have twelve months of training or experience in construction inspection practices. His experience with materials testing is not the same as experience with project approval. The position description for Project Inspector 2 indicates that activities of this type accounts for 60 percent of the job duties.

The second way to satisfy the minimum class qualifications is twelve months experience as a Project Inspector 1. At the time the jobs were awarded to less senior bidders, the grievant was a Materials Controller 2. He had never held the Project Inspector 1 classification nor was there any indication that he had ever performed such work.

The final way to meet the minimum class qualifications for Project Inspector 2 is to provide "equivalent evidence of the Major Worker Characteristics" listed on the classification specification for the position. They are as follows:

"Knowledge of geometry; trigonometry; construction safety practices; public relations; employee training & development [developed after employment]; state & federal laws, rules & regulations regarding construction project approval; construction inspection practices. Skill in operating construction test equipment. Ability to deal with problems involving several variables in familiar context; maintain accurate records; understand manuals 7 projects; demonstrate strength to lift up to 70 pounds."

Again, the grievant meets some but not all of the requirements. His education indicates that he would be able to handle problems that involve several variables; as a Materials Controller 2 he maintains and operates at least some of the testing equipment; and his employment in the department has always required him to maintain records, to use technical manuals, and to work with other employees. However, the grievant does not have the required knowledge of state and federal laws and regulations pertaining to project approval or construction inspection practices.

The union charged that management took the easy way out by selecting Conover and Kauser for the positions at issue. To a certain extent this allegation would appear to be true because both Conover and Kauser had at least twelve months of experience in the Project Inspector 1 classification. However, the controlling factor is that the grievant did not "possess...the minimum qualifications contained in the classification specification and position description."

The union could not meet its burden to show that the grievant was qualified for the position of Project Inspector 2. The grievance, therefore, must be denied.

#### AWARD

The grievance is denied.

Nels E. Nelson  
Arbitrator  
November 17, 1995  
Russell Township  
Geauga County, Ohio