

ARBITRATION DECISION NO:

680

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Health

DATE OF ARBITRATION:

June ? 1998

DATE OF DECISION:

July 6, 1998

GRIEVANT:

Joe Yurth

OCB GRIEVANCE NO.:

14 00 (96 04 19) 0028 01 09

ARBITRATOR:

Harry Graham

FOR THE UNION:

John Porter

FOR THE EMPLOYER:

Debra Payne

KEY WORDS:

Minimum Qualifications

Promotion

Seniority

ARTICLES:

Article 17 – Promotions, Transfers and Relocations

§17.02, - Definitions

§17.05 – Selection

FACTS:

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The grievant was a Public Inquiries Assistant I in the Ohio Department of Health (ODH) when on February 28, 1996, the Employer posted a pay range vacancy for an Inventory Control Specialist 2. The grievant applied for this position, but the Employer awarded the job to another applicant, C. C allegedly possessed the requisite skills in electronic inventory management which the grievant lacked.

However, the grievant had more seniority than C. Furthermore, the grievant had many years of electronic data operation. Therefore, he met the minimum qualifications. Moreover, the Employer treated the applications of C and the grievant differently; for example, the Employer notarized C's application after the

deadline for its receipt, but never notarized the grievant's application. The grievant thought that the Employer improperly awarded the Inventory Control Specialist 2 position to C.

UNION'S POSITION:

The Union relied primarily on Article 17 of the Collective Bargaining Agreement (CBA). Section 17.06 provides that the Agency shall award open positions to the most senior employee. It also states that the Agency shall give preference to bidders for whom the position represents a promotion over those who would receive a lateral transfer.

Then, the Union argued that the Employer treated C's application irregularly which gave C an unjust advantage in the selection. C had previously unsuccessfully applied for the position. The Employer informed C that it would keep her application for up to six months, but retained it for one year. When the vacancy at issue opened, C's personnel officer recalled C's application and submitted it on C's behalf. The Union claimed that the State showed favoritism to secure the vacancy for C. Furthermore, the Union argued that the State showed favoritism by notarizing C's application after the deadline.

In sum, the Union argued that the grievant met the minimum qualifications, and that he was also the most senior qualified applicant. Also, the State should have awarded the position to the grievant because the position represented a promotion to him but only a lateral transfer to C.

EMPLOYER'S POSITION:

The State first argued that the grievant did not meet the minimum qualifications. He is proficient with a computer, but he was not proficient in inventory control. Furthermore, he had never engaged in electronic inventory control. On the other hand, C did possess inventory control skills when she applied for the position.

Second, the State claimed that it did not demonstrate an element of improper preference. It had denied C's initial application in 1995. The State again denied the application in 1996. C met the minimum qualifications when she won the position.

ARBITRATOR'S OPINION:

First, the Arbitrator determined that the State had failed to prove that the grievant did not meet the minimum qualifications. He had many years of experience with electronic data operation.

Next, the Arbitrator emphasized that Section 17.02 of the CBA clearly states how to fill a vacant position. A promotion is above a lateral transfer. In this instance, because the job represented a promotion for the grievant, the State should have given him preference over C, who would only receive a lateral transfer.

Finally, the Arbitrator agreed with the Union that the State irregularly processed the applications: "Either the Employer has procedures and follows them consistently or it does not." First, the Employer notarized C's application even though it was late. Second, although the State had said it would only retain C's application for six months, it held onto it for a year. Then, the personnel officer submitted it on C's behalf. The personnel officer was the same person who informed the grievant of the rejection of his application.

AWARD:

The grievant was awarded the Inventory Control Specialist 2 position. He was to receive the difference in straight time earnings between what he earned and what he would have earned had he been originally awarded the position. He was not reimbursed for a bus pass that he would not have had to purchase had he

properly been awarded the job.

TEXT OF THE OPINION:

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In the Matter of Arbitration

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Between

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Case Number:

14 00 960419 0028 01 09

OCSEA/AFSCME Local 11

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and

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Before: Harry Graham

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The State of Ohio, Department of Health

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Appearances:

For OCSEA/AFSCME Local 11:

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OCSEA/AFSCME Local 11
1680 Watermark Dr.
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For Department of Health:

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Department of Health
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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 statements were filed in this matter. Receipt of the statements was acknowledged by the Arbitrator on June 16, 1998 and the record in this case was closed. Issue: At the hearing the parties agreed on the issue in dispute between them. That issue is:

Was the Grievant, Joe Yurth, improperly turned down for a

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promotion? If so, what shall the remedy be?

Background: There is no dispute over the events prompting this proceeding. The Grievant, Joe Yurth, is classified as a Public Inquiries Assistant in the Ohio Department of Health. At the time this dispute arose that was his classification as well. In February, 1996 the Employer posted for a vacancy as an Inventory Control Specialist 2 in Columbus, OH. The posting commenced on February 28 and closed on March 12, 1996. Among those who applied for the position was the Grievant, Joe Yurth. He was not awarded the vacancy. It was given to another bidder, Carolyn Wade. It was the opinion of the Employer that the Grievant did not possess the requisite skills in electronic inventory management. Those skills were possessed by Ms. Wade in its view.

In order to protest the award of the Inventory Control Specialist 2 to Ms. Wade a grievance was properly filed. It was processed through the procedure of the parties without resolution and they agree it is before the Arbitrator for determination on its merits. Position of the Union: When the Inventory Control Specialist position came to be posted there were three applicants for the vacancy. These were Marlene Mix, Joe Yurth and Carolyn Wade. Ms. Mix was the most senior. She was followed in seniority by Yurth and Wade. Mr. Yurth carries a seniority

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date of July, 1986. Ms. Wade came to be employed by the State in April, 1991.

Article 17, Section 17.06 of the 1994 1997 Agreement sets forth the agreement of the parties with respect to promotions. It provides that positions are to be awarded to the most senior qualified employee "unless the Agency can show that a junior employee is demonstrably superior to the senior employee." In addition, bidders for whom a vacancy represents a promotion are to receive preference over those for whom the position represents a lateral transfer. In this situation the Grievant was both senior to Ms. Wade and the position represented a promotion for him. It was a lateral transfer for Ms. Wade.

In the opinion of the Union the Grievant met the minimum qualifications for the Inventory Control Specialist 2 position. He has performed that sort of work during his career. Admittedly, he did not use electronic data processing technology when he did inventory control work. In his current position as a Public Inquiries Assistant in the Department of Health he uses electronic data processing equipment daily. His duties encompass more than data entry. He has tracked, inventoried in the Union's view, publication stocks and tracked telephone inquiries. His tasks are not so different from those performed by the Inventory Control Specialist as

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to indicate he cannot perform the duties associated with the position.

As the Union views the record there are irregularities associated with the application of the successful applicant, Ms. Wade. Joint Exhibit 5 in this dispute is the application of Ms. Wade (previously Ryder). In fact, she had applied for the position previously and been turned down. The State had, according to its opening statement, retained her application. Then, the personnel officer at the time, Brent Harder (who is no longer in the employ of the State) recalled it and submitted it on her behalf for this vacancy. In Joint Exhibit 5 is found a letter from Mr. Harder to Ms. Wade dated April 24, 1996. It indicates her application for Inventory Control Clerk was rejected. The application would be retained for six months. That application was for the initial Inventory Control Clerk vacancy which occurred in January, 1995. The Union suggests that by retaining it

submitting it on his own initiative Mr. Harder acted improperly. In essence, the Union charges favoritism was involved on behalf of the State to secure the vacancy for the Grievant. Further, the application form utilized by the State must be notarized. The "Deadline" for March 12, 1996. (Jt. Ex. 2). Ms. Wade's notarized on March 20, 1996. It was late **4**

according to the Union.

After the application was submitted Ms. Wade was interviewed. She was initially rejected. Then she was accepted. The reason advanced for her initial rejection at the hearing was that she could not lift 35 pounds regularly. Then, she was given the position and her lifting ability was monitored during the probationary period. It proved to be satisfactory. The same could have been done for the Grievant with respect to his inventory management skills. It was not.

As the Grievant was the senior qualified applicant and the vacancy represented a promotion for him the Union asserts the Grievance should be granted. It seeks a remedy consisting of appropriate back pay plus \$50.00 per month payment. This sum represents compensation for a bus pass purchased by Mr. Yurth that he would not have had to purchase had he been properly awarded the job.

Position of the Employer: The State views this as a simple dispute. In its opinion the successful applicant, Ms. Wade, met the minimum qualifications for the position. Mr. Yurth did not. The State acknowledges that Mr. Yurth is proficient with the computer. He is not proficient in inventory control in the State's view. He never has engaged in electronic inventory control. His daily work with the computer is in data recording and data entry. It is not and has not been **5**

inventory control. As he does not meet the minimum qualifications associated with the position the State asserts it acted properly in selecting Ms. Wade for the position.

Ms. Wade did possess inventory control skills when she applied for the position. She had performed such tasks in prior years for employers other than the State.

There is no element of improper preference in this situation. Her initial application for the position was denied in 1995. It was denied again in 1996. Only at the urging of the Departmental Personnel office was she given a trial period to determine whether or not the 35 pound lifting requirement could be met. As it was, and as Ms. Wade met the minimum qualifications for the position the State asserts she was properly given the position. Consequently, it urges the grievance be denied.

Discussion: Section 17.02 of the Agreement establishes a hierarchy of circumstances which must be followed when the Employer is filling a vacant position. A promotion is above a lateral transfer. That is, employees for whom a movement represents promotion are given preference over those for whom a move represents a lateral transfer. In this instance, the Grievant, Mr. Yurth, ranks above Ms. Wade. The disputed vacancy represents a promotion for him, a lateral transfer for her.

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On the posting is listed a requirement that applicants have 18 months training or experience in inventory control. That is possessed by Ms. Wade. Her application shows 15 years of inventory control experience. On his application the Grievant filed a supplemental page captioned "Additional Information for Section II" itemizing what he considered to be "direct inventory control experience." Many years of experience are set forth by the Grievant in what he considered to be inventory control. On that sheet the Grievant indicated that prior to employment with the State he "Posted daily sheet and plate steel production," he performed "routing," and "order pulling." On her application Ms. Wade's supplemental information shows that while working for Cello Poly Corp. she was classified as a "Bookkeeper and Personnel." She "monitored inventory; matched packing slips to invoices to verify correct pricing and inventory received; posted incoming order on computer against current inventory,..." and performed several other tasks related to inventory control. The description of her duties set forth by Ms. Wade shows that she was first and foremost engaged in processing accounts payable and receivable. She "entered data into computer." So too has the Grievant. Other duties performed by Ms. Wade related to the personnel function. Certainly Ms. Wade performed inventory tasks while at Cello Poly from June,

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1982 to March, 1991. That is not the test. The State must show that the Grievant does not meet the minimum qualifications for the position. Given his many years of experience with electronic data operation the State has not done so.

The Contract at Section 17.03 provides that employees who are promoted are to serve a probationary period. That period is designed for the Employer to determine the suitability of an employee for the new position. In essence, it is a trial period. In this situation such a trial period is particularly useful as it will provide the employee an opportunity to demonstrate his abilities and an opportunity for the Employer to evaluate them.

Section 17.05 of the Agreement indicates that the concept of "minimum qualifications" is to be used when determining upon either promotion or transfer. The posting refers to 18 months of training or experience in inventory control and 3 courses or 9 months of experience in electronic data processing related to inventory control. The Grievant entered his present position in December 1991. He testified without rebuttal that he electronically tracks literature stock maintained by the Department so that it may be reordered in timely fashion. This is akin to inventory control. So too is the collection of past due accounts performed by the

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Grievant. That is, he must track records and act on his findings when certain circumstances are met.

In his current position the Grievant utilizes D Base. In his prior position with the State he utilized VAX and D Base. Ability to use VAX was given great weight by the Employer at the hearing. Both the Grievant and the incumbent, Ms. Wade, can use that program.

The posting indicates that among the additional minimum qualifications sought by the State was

experience in vaccine storage and handling. Neither candidate brought that experience to their application.

There is a certain irregularity in the processing of the applications of both Mr. Yurth and Ms. Wade that is remarkable. Ms. Wade's application is notarized after the "Deadline" for its receipt. Mr. Yurth's application is not notarized at all. As I noted on page 7 of the Lynn Ogden decision, "Either the Employer has procedures and follows them consistently or it does not." The Employer has a procedure requiring notarization of applications. It does not follow it in the Department of Health.

Of more concern in this situation is irregularity attendant upon the application of Ms. Wade. She was originally rejected for the position. Her application was retained by the Employer for a year. The State indicated on

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Joint 5 the initial application would be retained for six months. It was submitted on Ms. Wade's behalf by the personnel officer. He was the person who informed Mr. Yurth of the rejection of his application. This sequence of events calls into question the integrity of the selection process in this situation.

Award: The grievance is sustained. The Grievant is to be awarded the Inventory Control Specialist 2 position in dispute in this proceeding. He is to receive the difference in straight time earnings between what he earned and what he earned had he been awarded the position back to the date it was filled by the incumbent. No bus pass payments are awarded.

Signed and dated this 6th day of July, 1998 at Solon, OH.

Harry Graham
Arbitrator

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