

#938

ARBITRATION DECISION

September 5, 2006

In the Matter of:

Ohio Department of Public Safety,)
Emergency Management Agency)
and)
Ohio Civil Service Employees Association,)
AFSCME Local 11)

Case No. 15-00-050701-0068-01-14
Debra Hartman, Grievant

APPEARANCES

For the State:

Mary L. Brown, Advocate
Lieutenant Charles J. Linek, Human Resource Management
Matt Banal, Second Chair, Office of Collective Bargaining
Jesse Baker, Chief of Staff, Emergency Management Agency
Carl Edward Filer, Plans Branch Chief

For the Union:

William Anthony, Advocate
Debra Hartman, Grievant
Louella Jeter, Steward

Arbitrator:

Nels E. Nelson

BACKGROUND

The grievant is Debra Hartman. She was hired by the state in 1976 as a secretary in the governor's office. In 1982 the grievant moved to the Office of Budget and Management where she held a variety of positions until 1996 when she transferred to the Department of Administrative Services. In May 2003 her job at DAS was abolished and she was recalled to a position as a Training Officer in the Emergency Management Agency in the Department of Public Safety.

The events leading to the grievance began on May 4, 2005. On that date, a position as Planner 3 in the Emergency Management Agency was posted. The minimum qualifications listed for the job were:

Completion of undergraduate core program or 24 mos. exp. in assigned program area (e.g., engineering, landscape architecture, rehabilitation, mental health technology, transportation, physical, behavioral & social science, urban or community planning, natural resources, business or public administration); 9 mos. trg. or 9 mos. exp. in operational, mathematical, analytical or statistical research methods used in conducting & documenting research studies; 1 course or 3 mos. exp. in public relations; 1 course or 3 mos. exp. in budgeting; 1 course or 3 mos. exp. in technical writing or business communications. - OR 6 mos. exp. as Planner 2, 85312, in assigned program area.

The grievant submitted her application for the position on May 13, 2005.

The applications were screened for minimum qualifications by Jesse Baker, the Chief of Staff of the Emergency Management Agency, and Carl Filer, the Chief of the Plans Branch. They concluded that the grievant met the minimum qualifications for the position except for the requirement that the applicant have "9 mos. trg. or 9 mos. exp. in operational, mathematical, analytical or statistical research methods used in conducting & documenting research studies." On that basis, the grievant was eliminated and the position was awarded to another applicant.

The grievant was informed of her elimination on June 21, 2005, and the union filed a grievance on July 1, 2005. It charged that the state violated Article 2 and Article 17, Sections 17.04 and 17.05, of the collective bargaining agreement by not granting the grievant an interview and by not selecting her for the Planner 3 position. The union asked that the grievant be awarded the position and be made whole for any losses.

The third step grievance hearing took place on August 9, 2005. At that time, the union argued that the grievant met the minimum qualifications for the position and claimed that the grievant was not selected for the job because of her sex. The state responded that the grievant did not clearly indicate how she met the requirement for nine months training or experience in operational, mathematical, analytical, or statistical research methods and that the union did not provide any substantiation for its charge of sex discrimination.

The grievance was subsequently appealed to arbitration. The arbitration hearing was held on July 24, 2006. The parties written closing statements were received on August 17, 2006.

RELEVANT CONTRACT PROVISIONS

Article 2, Section 2.01, and Article 17, Sections 17.04 and 17.05

ISSUE

The parties agreed that the issue is:

Did the Employer violate the Collective Bargaining Agreement by not affording the grievant an opportunity to interview for the vacant Planner 3 position within the Department of Public Safety, Emergency Management Agency and/or when it did not award her the position? If so, what shall the remedy be?

UNION POSITION

The union argues that the information contained in the grievant's application for the Planner 3 position demonstrates that she met the minimum qualifications for the job. It observes that she has 28 years of unblemished state service. The union claims that the grievant's current job duties were and are similar to the duties of the Planner 3.

The union charges that the state violated Article 17, Sections 17.04 and 17.05, when it gave the position to an outside applicant. It states that the grievant's application showed that she had the necessary qualifications, experience, and education for the position. The union asserts that since the grievant was the most senior applicant, she should have been given the job.

The union contends that the grievant satisfied the major characteristics for the Planner 3 position. It points out that the Class Specification states that the major characteristics for the Planner 3 position include the "ability to define problems, collect data, establish facts & draw valid conclusions; write meaningful, concise & accurate reports; write complex reports & position papers." The union claims that the grievant's application established that she met these requirements and that it provided further proof through the exhibits it offered at the arbitration hearing.

The union maintains that the grievant demonstrated that she possessed the "9 months training or 9 months experience in operational, mathematical, analytical or statistical research methods used in conducting and documenting research studies." It states that the employer knew the type of work the grievant was doing as a Training Officer and that the work she was doing satisfied the minimum qualifications for Planner 3.

The union states that Baker knew that the grievant met the qualifications for the Planner 3 job. It reports that Baker testified that a Planner 3 “needs to be able to compile data from past disasters, potential hazards/disasters and must go through data from different sources and ... be able to analyze data from surveys, people and other sources, write plans, do additional research, conduct interviews, have knowledge in budgeting, seeing if a county has enough money to do a plan, etc” (Union Written Closing Statement, page 2). The union claims that Baker knew that work the grievant did as a Training Officer for the Emergency Management Agency included most, if not all, of the same skill set as that of a Planner 3.

The union challenges Baker’s testimony that Patrick Sheehan, an outside applicant who was awarded another Planner 3 position, met the minimum qualifications but the grievant did not. It points out that Baker claimed that Sheehan met the minimum qualifications because he had two years experience in budgeting for his father’s business and because he was an Account Examiner 3. The union observes that these experiences were not clearly or specifically detailed in Sheehan’s application. It further claims that Baker dismissed the business management, project management, business finance, business economics, technical writing, accounting, bookkeeping, and business communications courses the grievant took but attached a lot of weight to the courses taken by Sheehan.

The union argues that the grievant met the requirements for the Planner 3 that were described by Filer. It claims that he stated that a Planner 3 “must know how to determine risk, must be able to up-date, re-look at risks, hazards, or whatever could do harm, ... must know how to do GAP analysis, ... meet with local FEMA or EMA

personnel to determine what is a standard response and compare it against data that was collected” (Union Written Closing Statement, page 3). The union insists that the grievant showed that she could do all of these things and that it was clearly stated on her application. It adds that “if they truly had reservations, they should have ... given her an interview” (Ibid.).

The union acknowledges that the exhibits it offered at the arbitration hearing were not attached to the grievant’s application. It maintains, however, that “the employer was aware of the caliber of work the grievant performed” (Union Written Closing Statement, page 4). The union emphasizes that the work the grievant did was “similar to some if not most of the duties of a Planner 3” (Ibid.).

The union concludes that after hearing the testimony of Baker and Filer regarding the type of work a Planner 3 really does and comparing it to the work the grievant has done, the only reasonable conclusion is that the grievant met the minimum qualifications for the Planner 3 position. It asks the Arbitrator to sustain the grievance and place the grievant in the Planner 3 job with full back pay and benefits and no probationary period.

STATE POSITION

The state argues that it did not violate Article 2 by not granting the grievant an interview. It observes that Article 2, Section 2.01, bars discrimination based on race, sex, creed, color, religion, age, national origin, political affiliation, disability, sexual orientation, or veteran status. The state indicates that under this provision the union has the burden of proving that the grievant was discriminated against. It stresses that simply stating that she was a victim of discrimination is not sufficient.

The state rejects the grievant’s claim that she was discriminated against due to her

sex and age. It points out that 42 of 102 positions in the Emergency Management Agency are held by women. The state notes that the majority of the 42 women have been promoted at least twice. It stresses that three of the top five leadership positions in the agency are held by women.

The state challenges the union's contention that the grievant's evaluation is evidence of discrimination. It observes that the grievant acknowledges that the evaluation submitted at the hearing in support of this charge is not in her personnel file. The state also notes that although the grievant did not agree with the evaluation, she did not appeal it as provided for in Article 22 of the contract.

The state dismisses the union's claim that the grievant received discipline that is evidence of harassment. It indicates that while the grievant initially testified that she received written warnings, on cross examination it became clear that she was not disciplined but received two non-disciplinary counselings.

The state also questions the grievant's testimony that she was off work two weeks for stress. It states that her doctor's note and the Family Medical Leave Act certification form do not show that she was off due to stress. The state reports that the forms indicate that she "needs to be off for medical reasons" and that she had "fatigue, anxiety, insomnia, and headaches."

The state argues that it did not violate Article 17 when it did not grant the grievant an interview for the Planner 3 vacancy. It points out that this provision states that applicants must "possess and be proficient in the minimum qualifications contained in the classification specification and the position description." The state notes that the minimum qualifications for the Planner 3 job are:

Completion of undergraduate core program or 24 months experience in assigned program area; 9 months training or 9 months experience in operational, mathematical, analytical or statistical research methods used in conducting and documenting research studies; 1 course or 3 months experience in public relations; 1 course or 3 months experience in budgeting; 1 course or 3 months experience in technical writing or business communications; or 6 months experience as Planner 2, 85312, in assigned program area; or Equivalent of Minimum Class Qualifications for employment noted above.

It reports that the major work characteristics for the position require “knowledge of operational, mathematical, analytical &/or statistical research techniques used in problem solving and decision-making.”

The state rejects the union’s claim that the grievant’s training regarding the use of several data collection and spreadsheet software applications are research methods. It acknowledges that spreadsheets are useful in research but insists that they are not by themselves research methods. The state maintains that research methods require an individual to understand the assumptions behind data collection procedures, statistical inference, and probability theory. It asserts that “the mere collection and dispersal of raw data as a ‘research study’ is not an example of research methods” (State Written Closing, page 4).

The state contends that the grievant failed to show on her application and résumé what research methods she used to conduct the research studies she did. It acknowledges that she claimed on her application that she had “25 years experience in training and operational, mathematical, analytical or statistical research methods” but indicates that she did not demonstrate on her application and résumé the type of research methods she used or document how many research studies she had conducted. The state stresses that it “is not a mind reader” (State Written Closing Statement, page 5).

The state disputes the union's claim that the Central Accounting System (CAS) is an operational, mathematical, analytical, or statistical method used in conducting research. It recognizes that the grievant testified that "Pam" from the DAS told her that CAS would satisfy the minimum qualifications at issue. The state emphasizes, however, that the union failed to call "Pam" to testify and did not provide any document to show that CAS was an operational, mathematical, analytical, or statistical research method.

The state claims that the grievant's application and résumé were not sufficient to support the claim that she had 25 years experience in doing research studies. It recognizes that the grievant testified that she wrote training procedures for two data bases at the Department of Public Safety; that she analyzed software, developed written documentation, and provided help desk support at the DAS; and that she analyzed and recommended CAS reports to state agencies and wrote manuals for CAS at the Office of Management and Budget. The state asserts, however, that these activities are not the same as the minimum qualifications listed on the job vacancy.

The state challenges the grievant's suggestion that Rich Nagel, a Human Resources Administrator 1, told her that she met the minimum qualifications for the Planner 3 position. It acknowledges that she asked him to review her application before she submitted it but notes that on cross examination the grievant admitted that Nagel did not say that she met the minimum qualifications. The state observes that the grievant conceded that Nagel told her that he could not say whether she met the minimum qualifications.

The state argues that the Arbitrator should not consider the exhibits submitted at the hearing by the union but should focus on the application and résumé that the grievant

submitted when she applied for the vacancy. It points out that in OCSEA and Bureau of Workers Compensation, Grievance #34-04-199107908-0117-01-09, Arbitrator Harry Graham stated the “the Employer should not be expected to go beyond what is contained in the application.” The state notes that in District 1199 and Bureau of Workers Compensation, Grievance Nos. 34-02-19910313-0047-02-12, 34-02-19910313-0048-02-12, and 34-02-19910321-0055-02-12, Arbitrator Margaret Nancy Johnson held:

In evaluating the applications of the grievants, the Arbitrator is restricted to considering the information known to the Agency at the time of the bid. In the opinion of the Arbitrator it would be inappropriate to render an arbitral decision on employee qualifications based on information not available to the Agency at the time of decision making.

The state rejects the union’s charge that the screeners should have used their knowledge of the grievant’s abilities in reviewing her application. It points out that the application states that the applicant is to “describe briefly the experience, education, training and other factors that qualify you for the position for which you are applying.” It stresses that “the screeners were charged with reviewing the application for minimum qualifications utilizing only the material submitted” (State Written Closing Statement, page 7).

The state discounts the union’s claims regarding the Planner 3 position awarded to Sheehan. It maintains that they are not relevant because the grievant did not bid on the job. The state also rejects the union’s assertion that the grievant was more qualified than Sheehan. It points out that Sheehan took courses in Economic Statistics, Operations Management, and Marketing Research. The state insists that the grievant’s course in Business Economics is a business course rather than a statistics course. It further notes that Sheehan had two years experience in analyzing and determining retail trends while

running a family business with annual sales in excess of \$5 million.

The state concludes that the union failed to meet its burden of proving that it violated Article 2 or Article 17 of the contract. It asks the Arbitrator to deny the grievance in its entirety.

ANALYSIS

The issue before the Arbitrator is whether the state violated Articles 2 or 17 of the contract when it failed to interview the grievant or award her the Planner 3 position she sought. Article 17 governs the application and selection process. It requires individuals who apply for a position to meet the minimum qualifications for the position contained in the classification specification and position description.

When the grievant applied for the Planner 3 job, she submitted the Ohio Civil Service Application. It included a summary of her qualifications along with the details of her experience, education, and training. She also attached a copy of her résumé to her application.

The applications for the position were screened by Baker and Filer. They concluded that while the grievant generally met the requirements for the position, she failed to demonstrate the knowledge of operational, mathematical, analytical, and/or statistical research methods required for the position. On that basis, the grievant was not offered an interview and the position was awarded to another applicant.

The Arbitrator very carefully reviewed the grievant's application and résumé. While the grievant claimed to have the necessary background in research methods in her summary of her qualifications, the information contained in her application and résumé did not support her claim. She had extensive experience with a variety of computer

software, the Central Accounting System, budgets, and in many other areas during her employment with the state but she failed to show any experience with operational, mathematical, analytical, or statistical research methods.

The grievant's education also does not demonstrate the required knowledge of research methods. She had a number computer science and business courses but no courses in statistics or research methods. Leaving aside the issue of the relevance of Sheehan's application for another Planner 3 position, he had courses in economic statistics and marketing research methods plus an array of business courses.

The Arbitrator recognizes that the union submitted numerous documents at the hearing to support the grievant's claim that she met the research methods requirement for the job. The Arbitrator, however, cannot consider those items. Common sense alone dictates that employees who bid on a job must submit with their application whatever is necessary to establish their qualifications for the job. This is recognized by Arbitrators Graham and Johnson in the cases cited by the state and reflects an established principle for the union and the state.

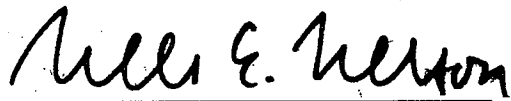
The Arbitrator must reject the grievant's claim that when the state denied her an interview for the Planner 3 position and awarded it to someone else, it engaged in sex and/or age discrimination in violation of Article 2 of the contract. The union was not able to offer any evidence in support of this allegation. Furthermore, the state points out that a large portion of the employees in the Emergency Management Agency are women and that three of the top five leadership positions are held by women. This is not consistent with the grievant's claim that she was the victim of sex discrimination.

While the Arbitrator is impressed by the grievant's experience and expertise as

well as her long service with the state, he cannot sustain her grievance. She failed to show that she satisfied the minimum qualifications for the Planner 3 position when she applied on May 13, 2005.

AWARD

The grievance is denied.



Nels E. Nelson
Arbitrator

September 5, 2006
Russell Township
Geauga County, Ohio