

The State Contract Series

For use in understanding the state employees' contract

Article 17 - Promotions, Lateral Transfers, Permanent Transfers & Permanent Relocations



Posting

Management has the right to determine whether or not to fill a position. Once it determines to fill the position, however, the contract provides that the employer must next determine what type of posting it will use.

Listed below are the three types of postings the employer may use. Each posting will state which type of posting the vacancy is:

- Permanent Transfer Postings -- movement to vacancy within the agency and same classification from one county to another or one institution to another.
- Promotional Postings -- movement to a higher pay range (including lateral transfer applicants and demotions).
- Permanent Relocation Postings -- movement of employee/position to another work location within the same headquarter's county. Relocations do not constitute filling a vacancy

Any type of posting must include an accurate description of the responsibilities of the position and of the skills required to accomplish those responsibilities. Responsibilities and skills can be higher than those of the more general classification specification--according to the Ohio Revised Code--as long as they are relevant to the job. Once the job is posted, the standard is set. The posting must meet the qualifications of the position description. In analyzing whether or not a person is qualified for a position, the posting must be carefully examined.

Posting Period

The posting period is 10 days for permanent transfers and for promotions. For the permanent relocation postings, the posting period is three work days. The postings should be accessible to the bargaining unit. The postings cannot be taken down to circumvent the agreement. Thus, the agency can only withdraw the posting because it does not intend to fill the position due to a good business reason, budgetary constraints or a reorganization. If background checks are required for certain positions, management must list it in the posting.

What is a Vacancy?

A "vacancy" is a distinct set of duties that the employer intends to fill. A number of arbitration decisions (See Arbitration #297 and #242) indicate that a vacancy can exist even if a posting is not exhibited, as long as an individual is doing a distinct set of duties. This language does not include those positions identified through mutual agreement between the union and the agency as being subject to reorganization, changes in appointment category (type), or a movement that constitutes a demotion. (The language does, however, make clear that the permanent relocation of an employee through the 17.08 posting procedure does not constitute the filling of a vacancy. This is so because it is simply a redeployment of staff by seniority.) Additionally, the movement of an employee within the same facility does not constitute the filling of a vacancy, even if job duties are changed (if those duties are within the employee's classification specification).

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What is a Promotion?

A "promotion" is the movement of an employee to a posted vacancy in a classification with a higher pay range. A higher pay range is defined as a pay range in which the first or the last step has a higher rate of pay than the first or last step of the pay range to which the applicant is currently assigned. (Moving from a part-time position to a full-time position is not considered a promotion because the rate of pay doesn't change.) If the employer intends to fill the position by a promotion or lateral transfer, it will state on the posting that it is a "promotional posting". Lateral transfers are considered after it is determined that there are no qualified promotion applicants. Then demotion applicants are considered after lateral transfer applicants.

Selection Process for Promotions

This language relates to promotions, lateral transfers and, as a result of 1997 bargaining, demotions as well.

If the position is in a classification which is assigned pay range 1-7, 23-27 or lower, selection for promotion is based on seniority, provided the employee possesses and is proficient in the minimum qualifications set forth in the class specification and position description. The employer must select the most senior bidder unless it can show that a junior bidder is "demonstrably superior". Demonstrably superior has been defined by Arbitrator Graham (See Arbitration #382) to mean "substantially better". Specifically Arbitrator Graham says:

If neither the senior nor the junior applicant bring precisely the relevant qualifications to the position, the State must promote the more senior applicant unless it can show that the junior applicant has greater potential for success in the new position....that, is that the State must bear the burden of showing a junior employee promoted over a senior employee is greater in rank or quality. In order to do so, it must show there exists a "substantial difference" in favor of the junior over the senior bidder. This imprecise definition is more stringent than "relatively equal" but less demanding than "head and shoulders". Applicants for promotions for a position in a classification assigned to pay range 27 or lower grouped into five prioritized groups with the applicants in the first group having priority

over the second group. In the selection process, group two applicants have priority over group three applicants and so forth. All applicants must possess and be proficient in the minimum qualifications of the class spec and position description.

The groups (from 17.05 A) are as follows:

- (1) Employees in the office, institution or county.
- (2) Employees in the geographic district as defined in Appendix J and in the same job grouping in Appendix I.
- (3) Employees in the geographic district of the agency.
- (4) All other employees of the agency. (Non-selection is grievable.)
- (5) All other employees of the State. (Non-selection is not grievable.)

In positions in a classification assigned to pay range 28 and above other than Correction Officer or Correctional Sergeant/Counselor shall be reviewed statewide. The Employer may select from a Statewide pool. However grievance rights are still limited pursuant to 17.05 (a) (1) – (4).

If the position is in a classification which is assigned pay range twenty-eight (28) or higher, the job shall be awarded to an eligible bargaining unit employee on the basis of qualifications, experience, education and active discipline. When these factors are substantially equal, state seniority will be the determining factor (See Arbitration # 707 and #707A).

In Arbitration #405, the arbitrator decided that qualified employees of the state have a vested right to selection for promotions over outside applicants, even when those outside applicants may be demonstrably superior. Moreover, this same case determined that management cannot require the successful applicant to meet requirements beyond those contained in the class spec and position description.

Other arbitration decisions have clearly stated that the applicant must submit all the documents necessary to their application by the deadline. In fact, employees have lost promotions solely on the basis that they did not show to the employer that they met certain qualifications before the deadline for applications. In Arbitration #394, the employee's non-selection was upheld by the arbitrator because of such untimeliness.

An employee with an active suspension issued after May 15, 2015 cannot grieve a non-selection.

A Word about Affirmative Action

Affirmative action can be used as a criteria for demonstrably superior. This requires management to provide statistical proof of the need for a particular gender or person of color to fill the position for affirmative action reasons. It is the position of the union that affirmative action can only be one criteria among others to meet the demonstrably superior standard. Other such criteria, which may be considered, are performance evaluations, absenteeism, testing results, skills, abilities, and experience, where the employer can show such a criteria is relevant to the posted position. In Arbitration #583, Arbitrator Graham says:

'Under the holding in Castle and Thomas (Arbitration #382) there is a presumption that the senior applicant is entitled to the position unless, to use the term of Arbitrator Rivera in Hade (Arbitration #541), something intervenes to "trump" his vastly superior seniority credit. Arbitrator Graham also makes reference to Arbitrator Rivera in Hade, and repeats that "Between two equally proficient candidates, affirmative action makes one candidate 'head and shoulders' over the other." He further finds that before affirmative action considerations are reached, the candidates must be determined to be "equally proficient" in other criteria.

What is a Lateral Transfer?

A "lateral transfer" is an employee requested movement to a posted vacancy within the same agency which is paid at the same pay range as the employee's current range. Lateral transfers can be from one classification to another or within the same classification so long as they are in the same pay range, agency, and the employee

possesses and is proficient in the minimum qualifications.

Lateral transfers are to be considered after promotional bidders have been considered. Where an agency has determined that a vacancy is other than statewide, consideration of requests for lateral transfers may be limited to institution, facility or geographic area where the vacancy was posted.

Special Restrictions for Lateral Transfers in Institutions

In institutions, no more than 30% of the employees may make lateral transfers out from one institution to another in a calendar year. This means that no more than 30% of the employees in an institution may laterally transfer from that institution in one calendar year. However, in Corrections, each newly activated institution can be required to fill up to 25% of their posted positions with lateral transfers from other institutions during the first 12 months providing there are sufficient applications. After the first year in these institutions, the process returns to that in other institutions.

What is a Permanent Transfer?

Permanent transfers were created under the 1992 contract. This gives management the ability to reorganize staff to meet the new mission of the agency with existing staff and without the necessity in some instances to lay off employees. A "permanent transfer" is the movement of an employee in the same classification to a posted vacancy within the same agency from one county to another or from one institution to another. The agency may determine to fill a position by the permanent transfer method, and the posting will state that it is for permanent transfer applicants only. The agency will post the position only in areas where there is an excess of employees in the posted classification.

Selection is by seniority among those agency employees who possess and are proficient in the minimum qualifications of the class spec and position description. Again, job groupings and the demonstrably superior

standard do not play a role in the selection of applicants for permanent transfers. If no one bids on the permanent transfer, the employer cannot involuntarily move employees from one

county or institution to another county or institution.

What is a Permanent Relocation?

A "permanent relocation" is the movement of an employee and his/her position to another location within the same headquarters county (the county in which the employee is employed). For operational needs, the employer may determine to re-deploy the staff by a permanent relocation. Operational needs dictated by a change in programs mandated by the legislature, a change in technology or changes in agency goals should be the basis of management's decision. The employer has the right to determine if there is an excess in staff in a particular area. The union does not have the ability to challenge management's evaluation of whether an excess exists.

When the employer desires to utilize the permanent relocation procedure, it will canvass the areas of excess employees by posting the opening for three workdays. The agency will relocate the senior bidder from an area of excess who possesses and is proficient in the minimum qualifications of the position description. If no one bids for the and is proficient in the minimum qualifications. In such cases of involuntary permanent relocation, the agency may move the least senior employee who possesses and is proficient in the minimum qualifications. The employee will retain preferential rights to return to the previous work site for one year, should a vacancy occur in his/her former work site in his/her position. The promotional selection process does not apply to permanent transfers.

Permanent relocations do not apply to the movement of a person and his/her position from one location in a building or complex of buildings to another location in the building or complex of buildings. For example, if someone was working for Deputy Director A on the 3rd floor and is reassigned to work for Deputy Director B on the 2nd floor this does not require the employer to use the

permanent relocation procedure. Even if the person is moved to another building within a complex of buildings, the employer does not

have to use the permanent relocation procedure.

However, in those instances where there are two distinct separate locations separated by a distance within a county, if the employer

wants to move a person and his/her position to another distinct location within the county, the employer must use the permanent relocation procedure.

Note: Permanent relocations cannot be done in institutions because pick a post agreements provide the vehicle to move institutional employees. Also, in ODJFS and ODOT, the employer must use the provisions of the agency specific agreement when there is a fluctuation in workload. ODOT agency specifics limit 17.09 protections in ODOT, with respect to permanent relocations.

What is An Inter-Agency Transfer?

This transfer describes employee movement to a vacancy in another agency to a higher/lower or same pay range. Employees requesting these types of transfers (approval is at management's discretion) retain step placement rights as if the transfer took place within the agency and the employee is permitted to transfer leave balances.

Testing

Civil Service exams administered by DAS may be given. In addition, there may be proficiency testing to determine whether the candidate meets minimum qualifications. Proficiency tests may also be used to rate candidates for selection per the criteria in Article 17.05. Note: Civil Service examinations are a prohibited subjected of bargaining.

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Items Needed for Evaluating an "Article 17" Grievance

The following tools are needed for review when deciding whether or not there is a potential grievance:

- the posting -- all types
- interview notes
- applications of grievant & selected candidate
- qualifications of those who were selected
- classification specification
- position description
- test scores and examination conditions
- table of organization

- seniority list
- relevant finding of Ohio Civil Rights Commission and/or Federal EEO
- personnel action
- past employment history of involved parties including, in state government and outside state government, information on work assignments and duties
- copies of test

References

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Arbitration 242; 297; 382; 394; 405;541; 583; 707; 707A, 937

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