**OCB AWARD NUMBER: 2701**

SUBJECT: Arb Summary # 2701

TO: All Advocates

FROM: Allie Harris

OCB GRIEVANCE NUMBER: DOH-2021-00291-11

DEPARTMENT: Ohio Department of Health

UNION: SEIU District 1199 WV/KY/OH

ARBITRATOR: Jack Buettner

GRIEVANT NAME: Molly Kelly

MANAGEMENT ADVOCATE: Debra Payne

UNION ADVOCATE: Joshua Norris

OCB REPRESENTATIVE: Marisah Ali

ARBITRATION DATE: July 27, 2022

DECISION DATE: November 1, 2022

DECISION: DENIED

CONTRACT SECTIONS 30

OCB/BNA RESEARCH CODES: 117.201 – Seniority; 117.2054 – Seniority-Accretion to state service

KEYWORD SEARCH TERMS: seniority, Enhanced Screening Process

**HOLDING:** Based on the Enhanced Screening Process used by Employer, Arbitrator found that Employer did not violate Article 30 of the CBA. **Grievance DENIED.**

**Facts:** Grievant is a Registered Nurse employed by the Ohio Department of Health (ODH) as a Public Health Consultant. She has been employed by ODH since February 28, 2010. The selected candidate is an Adolescent Health/Youth Homelessness Coordinator and has been employed by ODH since August 26, 2013. Both Grievant and the selected candidate are members of SEIU District 1199. Grievant has a state seniority date of October 27, 2008, and the selected candidate has state seniority date of August 26, 2013. Both Grievant and the selected candidate scored a 71 on the Assessment Grid. The selected candidate’s final selection result was higher than Grievant’s. Grievant alleges that Employer violated the terms of Article 30 of the Collective Bargaining Agreement (CBA) when they awarded the position to the least senior applicant instead of the most senior qualified applicant.

**The Union argued:** Union contends that seniority should have been the deciding factor when selecting between the two candidates for the position in question. The CBA allows Employer to circumvent seniority only when a junior candidate is proved to be significantly more qualified than the senior qualified applicant. Union contends that Employer did not prove the selected candidate was significantly more qualified than Grievant. Union argues that the Assessment Grid was an objective measurement, while the Structured Interview Process was a subjective tool. Union contends that the Interview was not properly evaluated and thus Employer failed to meet their burden of establishing that the candidate was significantly more qualified for the position.

**The Employer argued:** Employer contends they did not violate the collective bargaining agreement by selecting a less senior candidate for the position of Health Services Policy Analyst. Article 30 of the CBA states “Among those that are qualified the job shall be awarded to the applicant with the most state seniority unless a junior employee is significantly more qualified based on the listed criteria.” Employer contends the selected candidate was significantly better qualified than Grievant because the selected candidate’s work included more data driven work including utilizing quantitative and qualitative data from multiple sources, developing methodologies, preparing statistical and analytical reports and conducting analytical studies. Employer further contends that the interview and selection process was fair, objective, and consistent. ODH used the Enhanced Screening Process (ESP), which is an objective method of evaluation.

**The Arbitrator found:** Arbitrator disagrees with Union assertion that Employer was not supposed to be seeking the most qualified candidate for the position. Article 30 allows Employer to look further into the qualifications of each applicant before making a final determination. Arbitrator also found the ESP fair. Arbitrator found that because Grievant scored lower than the selected candidate on the ESP, Grievant was less qualified than the selected candidate and lacked some of the technical skills and knowledge referenced in the benchmarks. This did not fall within the competitive range. Therefore, the grievance is **DENIED.**