

**IN THE MATTER OF AN ARBITRATION  
BETWEEN**

**Service Employees International Union,  
District 1199 AFL-CIO**

**And  
Union**

**DRC-2022-04223-12  
Arbitrator: Jerry B. Sellman  
Issue: Promotion  
Grievant: Erica Cruse**

**STATE OF OHIO  
DEPARTMENT OF REHABILITATION  
AND CORRECTION  
ADULT PAROLE AUTHORITY**

**Award Dated: October 20, 2023**

**Employer**

**APPEARANCES**

**FOR THE UNION:**

Jaclyn Tipton, Esq. – Attorney with Harshman & Wannemacher, Tipton, & Lipperman  
representing SEIU Local 1199

Josh Norris – Executive Vice President of SEIU Local 1199, Witness

Erica Cruse – Parol Officer with the State of Ohio Department of Rehabilitation and Correction,  
Grievant and Witness

**FOR THE EMPLOYER:**

Philip Rader, Esq. - Labor Relations Officer 3, Ohio Department of Rehabilitation and  
Correction, representing the State of Ohio Department of Rehabilitation and Correction Adult  
Parole Authority

Monika Hampton – Member of Interview Panel, Witness

Gina Seel - Personnel Director for the division within the Ohio Department of Rehabilitation and  
Corrections that covers the Adult Parole Authority, Witness

## **I. NATURE OF THE CASE**

Contract Interpretation: Review of Applications for Job; Use of Screening Tool Devised by Employer; Determining When A Less Senior Employee Is Significantly More Qualified For Posted Position; Duty of Employee to Provide Information on Application: This matter came for hearing before Arbitrator Jerry B. Sellman on August 24, 2023. The hearing was held at the Service Employees International Union, District 1199, offices located at 1395 Dublin Rd, Columbus, Ohio 43215. The proceeding arises pursuant to the provisions of the Labor Agreement (the “CBA” or the “Agreement”) between the State of Ohio (hereinafter the “Employer” or “Management”) and SEIU District 1199 (hereafter “SEIU” or the “Union”). This case concerns a grievance filed by Erica Cruse (hereinafter “Grievant”) alleging that the Employer violated Article 30.02 of the CBA when it promoted another employee to the position of Senior Parole Officer who had less seniority and was not otherwise “significantly more qualified.” In particular, Grievant argues that (1) the selection tool utilized by the Employer fails to adequately consider the five criteria in Section 30.02 of the CBA (qualifications, experience, education, active disciplinary record, and work record) rendering the scoring methodology arbitrary illogical; and (2) Grievant was underscored because the Employer failed to give consideration to trainings and certifications, which were identified in her application, but in the incorrect section of the application, and not verified at the interview stage of the application process. The Employer argues that the scoring methodology of the Screening Tool used in assessing the candidates does adequately weigh the applicant’s qualifications, experience, education, active disciplinary record, and work record as required by Article 30.02, and is not arbitrary or illogical; and (2) based upon the application and the materials submitted, Grievant lacked sufficient points to overcome points awarded the successful candidate.

At the beginning of the hearing, the Parties stipulated that the matter was properly before the Arbitrator for resolution. At the conclusion of the hearing, the parties requested permission to file post-hearing briefs, which were filed on September 22, 2023.

The issue in this proceeding as follows:

Did Management violate Article 30 of the Collective Bargaining Agreement by not selecting the Grievant for the Senior Parole Officer PN 200222555 on 12/28/2021? If not, what shall the remedy be?

### **ARTICLE 30** **Vacancies**

#### **30.02 Awarding the Job (Transfers and Promotions and Demotions)**

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Applications will be considered filed timely if they are received or postmarked no later than the closing date listed on the posting. Applicants must clearly demonstrate on the application how they possess the minimum qualifications for the position. Failure to do so will result in the application being screened out and rendered ineligible for further consideration. All eligible applications shall be reviewed considering the following criteria: qualifications, experience, education, active disciplinary record, and work record. For purposes of this Article, disciplinary record shall not include written reprimands. Employee diversity may be a factor in the selection. Any employee with an active discipline greater than a written reprimand shall have no right to grieve non-selection. The Employer maintains the right to use a selection device (e.g. structured interview, written test, physical ability, etc.) to measure the listed criteria. 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. The Union may challenge the validity of the test or instrument as part of a non-selection grievance.

## **II. SUMMARY OF THE TESTIMONY AND POSITION OF THE PARTIES**

The facts in this case are not materially in dispute. When a new or vacant position within the Adult Parole Authority arises, the Employer posts notice of the opening and applications are accepted online. Applicants fill in the requested information, an initial review of the applications is made by the HR Department to determine if the applicant(s) meet the minimum qualifications.

Management then assesses the applicants' education, qualifications, and experience by awarding points for education, training courses completed, trainings provided to fellow staff members, accolades, performance evaluations, committee participation, and performance at a structured interview. From the qualified applicants, the most senior employee is awarded the position unless total points awarded a junior employee result in one point more than the number of years that separate the junior applicant from the most senior applicant to be selected.

In the Fall of 2021, the Employer posted a position for Senior Parole Officer. Three applications were submitted timely, all three (3) applicants met minimum qualifications, and were afforded an interview in front of a three (3)- person panel on December 8, 2021. At the time of the interview, the Grievant had more seniority than the other two applicants; she had eleven (11) years of seniority within the agency, another applicant had six (6) years of seniority within the agency, and the selected applicant had three (3) years of seniority within the agency. Pursuant to Section 30.02 of the CBA, among those that are qualified, the job shall be awarded to the applicant with the most seniority, unless a junior employee is significantly more qualified based on the criteria listed in this Section (qualifications, experience, education, active disciplinary record, and work record). The Grievant was not selected for the position.

In order to determine the number of points to be awarded to each competing applicant for the position, Management used a Screening Tool, or sometimes referred to as the selection tool that it has used for many years, the most recent revision of which occurred in 2018. The screening tool includes an analysis of, and points awarded for, the categories mentioned above. Guidelines are given to selection panels to determine the number of points to be awarded for each category, as well as the number of points that can be awarded based upon responses to

questions in a structured interview. The instructions include established questions and answer keys for the interview.

Based upon scores utilizing the Screening Tool, Grievant was awarded 33 points, another candidate was awarded 37 points, and the successful candidate was awarded 48 points. While Grievant was the most senior applicant, the Screening Tool provides that an applicant can be considered “significantly more qualified” than an applicant with more seniority if the applicant scores one (1) point more than the most senior officer applicant for each year of seniority that separates them.<sup>1</sup> While Grievant had 8 more years of seniority than the successful candidate (11 vs. 3), the successful applicant was awarded 15 more points than the Grievant and, pursuant to the Screening Tool, was deemed significantly more qualified. The least senior candidate was awarded the job.

Grievant became aware that she was not selected for the position and requested information from the Employer to determine why. After receiving testing score information from the Employer, Grievant determined that points were not given for some of her awards and certifications, which she listed in her application, and points were not awarded for her relevant training. The Employer responded that points were not awarded in these categories because Grievant did not provide supporting verification of the awards, certifications, and trainings in the packet submitted to the interview panel. Grievant acknowledged that fact that the cited verification(s) was not provided, but she did provide the relevant information in her application. She referenced her awards, certifications, and trainings in her Work Experience section of the Application. The Employer indicated that such information should have been referenced in the Qualifications and Relevant Coursework section.

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<sup>1</sup> Item #12 of the “Instructions for Senior Parole Officer Screening Tool.”

Grievant also ascertained that the successful candidate scored additional points for her past performance evaluations. She acknowledged that while she met expectations on her annual evaluations and was awarded 1 point for each year, the successful candidate was rated by a different supervisor to have exceeded expectations and received 4 points for each of the last three years.

Grievant believed that if she had been awarded points for her training and certifications and awards, notwithstanding the unfairness of the evaluation point system, she would have been awarded the position. Grievant thereafter filed a Grievance on March 4, 2022, challenging the number of points she was given in the process.

#### The Position of the Union

The Union argues that Grievant was demonstrably the most qualified candidate yet denied the Senior Officer Parole Officer Position because (1) the scoring methodology of the Screening Tool used in assessing the candidates does not adequately weigh the applicant's qualifications, experience, education, active disciplinary record, and work record as required by Article 30.02, and is therefore arbitrary, illogical, and not compliant with the Agreement; and (2) even using Management's Screening Tools, Grievant was underscored because the Employer failed to give consideration to certifications and trainings, which were identified, but in the incorrect section of the application, and while she did not submit verification of the awards, certifications, and trainings at the interview stage of the application process, she was not required to do so.

The Union takes the position that Grievant should be awarded the Senior Parole Officer Position because she has the most seniority of all the candidates by a wide margin, and the scoring methodology of the Screening Tool used in assessing the candidates is arbitrary,

illogical, and not compliant with the Agreement for it does not adequately weigh the applicant's qualifications, experience, education, active disciplinary record, and work record as required by Article 30.02. While the Union has agreed that a junior employee who is significantly more qualified based on the listed criteria (examination of qualifications, experience, education, active disciplinary record, and work record) can be awarded a position over a more senior employee, the scoring system unilaterally developed by the Employer in the Screening Tool clearly demonstrates in this case that the points awarded in specific categories are unreasonable in the way they are weighted. The Union was not consulted in the formation of the scoring tool. As such, to date, the Union has received no explanation as to why certain qualifications/experiences/certifications were worth four points, while others were worth two, one, or even zero.

As to qualifications, there was a pre-approved list that Management created in 2018. This list divided training specialties into "Tier I" and "Tier II". Trainings in Tier I were given four points; trainings in Tier II were given two points. Anything not on the list was not awarded any points. There was no explanation or reason as to why some were weighted higher than others. At the hearing, Management witnesses confirmed that this was not an exhaustive list of trainings and that other trainings could, in fact, be useful in the position of senior parole officer, although under the scoring methodology, no points would be given for them.

Regarding certifications, only those listed as approved certifications were eligible for points. The list included some certifications that few applicants would possess and were of dubious applicability, such as Certified Marriage Counselor. Conversely, there were also certifications that all parole officers were required to have, such as ORAs. All certifications on the list, regardless of how common or useful they were, received only one point.

In assessing experience, none of Grievant's relevant work experience prior to being employed by the Adult Parole Authority was considered, specifically her nearly five years as a Juvenile Probation Officer. This gave her experience supervising her own caseload and working with outside agencies. The skills learned in that position undoubtedly transferred to her job as a parole officer.

The scoring tool applied to an applicant's work record relied heavily on evaluations from the previous three years. Evaluations of "meets expectations" received zero points, while "exceeds expectations" received four points. Grievant met expectations overall every year, while the junior employee awarded the job received two years of "exceeds expectations." There is no explanation why there was such a great disparity between the value for "meets" vs. "exceeds" expectations, particularly for one category. Giving heavy weight to evaluations is particularly troublesome, as evaluations are inherently subjective. Different managers evaluated the Grievant and the other candidates. What "meets" the expectations of one manager may well "exceed" the expectations of another. There is no way to know how both candidates would have been evaluated had they been evaluated by the same person. Moreover, even though Grievant received summative ratings of "meets expectations", she did exceed expectations in some categories. In each of the evaluations provided, she received a rating of "exceeds expectations" in "Working with Computers" and in 2021 and 2022 she received a rating of "exceeds expectations" in training. These evaluations demonstrate that Grievant was more than adequate in fulfilling the duties of her job, yet she received zero points regarding these evaluations.

Awards and accolades, which are inherent evidence of excellent job performance, were considered, but they were only assigned one point each. This was regardless of the type of award/accolade and regardless of whether it came from the Adult Parole Authority or an external



agency. Grievant submitted evidence of four awards/accolades. However, the four awards together were only awarded the same number of points as one “exceeds expectations” evaluation for one year.

These examples clearly illustrate that the Employer has not examined the true value of any of the qualifying considerations that would be awarded points in this process, has not explored the benefit toward the performance of the job in question. The employer has simply assigned an arbitrary number of points to each of a laundry list of skills and qualifications and called it a day. This haphazard system does not meet the burden established by the language in Section 30.02 to measure and score candidates objectively.

Even by applying the arbitrary points assigned under the flawed tool utilized by the Employer, Grievant was significantly under scored and should have been awarded more points than received to merit the promotion. In the application section titled “Summary of Qualifications and Relevant Coursework,” Grievant articulated that she was ORAs Certified, as well as a facilitator for Thinking For a Change and Victim Awareness. Per the Employer’s list of approved certifications. ORAs certification is worth one point. Both Thinking for a Change facilitator and Victim Awareness facilitator are Tier I trainings, and therefore worth four points. As such, looking at only the first paragraph of Grievant’s application, she was underscored by 9 points.

Under the title “Job Duties” in Grievant’s application, for her current job she states that she is First Aid and CPR certified and a facilitator for Arrest, Search, Seizure, and Transportation. She also articulated that she was a 2013 Protégé for PACE and a mentor for PACE in 2017. Under the Employer’s list approved certifications, First Aid/CPR is worth one point and Arrest, Search, Seizure, and Transportation is a Tier II training specialty worth two

points. PACE mentor/coordinator is a Tier I training specialty and worth four points. In this category, Grievant was underscored by up to seven points.

In the above two instances, Grievant was underscored by as many as 16 points. With the additional 16 points, Ms. Cruse would have scored 49 points; one point more than the junior employee awarded the position without even needing to factor in years of seniority.

The Employer's argument that Certifications were not scored because they were set forth in the wrong section of the application should be rejected. Excluding a candidate's qualifications merely because they were written in the "wrong" application section does not comport with the requirements in the CBA. The application is supposed to find the most qualified candidate, based on the five enumerated criteria. The CBA does not allow evidence of a candidate's qualifications to be disregarded based on where they are written.

Secondly, the Employer's argument that Grievant was not given the appropriately earned points for her qualifications/certifications/trainings because she did not provide independent verification of her qualifications/certifications/trainings at the time of her interview should be rejected. No part of the application requires submission of independent verification. The application states "You may be required to demonstrate how you meet the minimum qualifications." Additionally, while Section III(A) of the Instructions for Senior Parole Officer Scoring Tool states that supporting documentation must be presented at the time of the interview in order to receive credit, Grievant was not given a copy of the Instructions prior to the interview and was not asked for any document verification at the interview. Notwithstanding this, Grievant's certifications and training are a part of her employee record, and they could have been referred to by the Employer in place of any independent verification.

When weighing the five qualifications listed in the CBA, Grievant's qualifications are unmatched. At the time of the posting, Grievant had been successfully performing the job of parole officer for 11 years. She had amassed significant trainings and certifications, including many that the Employer claims they are specifically looking for in a senior parole officer. She had been qualified as a Victim Awareness facilitator for nearly a decade. She had participated in multiple mentorship and professional programs, including being involved in the PACE program. Grievant had nearly quadruple the successful candidate's years of experience as a parole officer. She also has relevant work experience that she obtained prior to becoming a parole officer. By virtue of her experience, Grievant has a wide knowledge base from which to draw and is ready to handle any situation which may arise as Senior Parole Officer.

Grievant had an edge regarding her education. She has a related bachelor's degree (psychology), while the candidate awarded the job only had a related associate degree (legal assistant). Both degrees are undoubtedly useful in the field, however Grievant has the more advanced degree, and she must be considered more qualified in that area.

When the five criteria are weighed together, Grievant is subjectively and objectively the better candidate for the position. This is not meant to disparage the other candidates, only to recognize the vast array of qualifications Grievant spent over a decade obtaining. The Grievance should be sustained, and the Grievant be awarded the Senior Parole Officer position and given all backpay and any other benefits she would have received if she were awarded the position after the posting closed on 12/28/21.

#### Position of the Employer

The Employer argues that its decision to award the promotion to a significantly more qualified junior employee is supported through documentation, contractual rights, and prior

arbitration decisions. Specifically, it argues that (1) the scoring methodology of the Screening Tool used in assessing the candidates does adequately weigh the applicant's qualifications, experience, education, active disciplinary record, and work record as required by Article 30.02, and is not arbitrary or illogical; and (2) based upon the application and the materials submitted, Grievant lacked sufficient points to overcome the scoring of the successful candidate.

The Screening tool used by Management to select a Senior Parole Officer, as well as employees in other State Agencies, has been in place for many years, the most recent revision having been made in 2018. While seniority is the predominant factor in awarding job openings, the parties to the CBA have agreed that a junior employee can be awarded a position over a senior employee if that employee is significantly more qualified. A Screening Tool was devised to effectively evaluate and select candidates for job positions on an unbiased basis. If the Union believed the methodology used in the screening tool was arbitrary, biased, or contrary to the intent of the language in Article 30.02, it could have discussed its concerns or attempted to alter the methodology in Labor Management meetings over the years. It also could have brought up the issue in contract negotiations, which it did not do.

The points established by Management to be awarded for training, certifications, work experience, evaluations, awards, and accolades, were determined at a level it determined was appropriate for the specific job. As an example, the Union complained that points awarded for Tier I and Tier II level training was arbitrary, and some types of training were not even on the list. To the contrary, Management determined that some types of training were more pertinent to the type of job offered and merited more points. Here, the job of a Senior Parole Officer is a lead worker and responsible for instructing other employees. As such, beyond having taken a series of classes to be able to instruct, applicants must demonstrate they have actually instructed classes

within two (2) years of the interview. It is not arbitrary to award more points to staff who have demonstrated an ability to lead and instruct groups and classes as well as having participated on committees. Regarding points awarded for certain certifications and licensures, those listed are deemed by Management to strengthen a lead worker's ability to support the operation of the agency and develop staff under their charge. The approved lists used in awarding points have remained unchanged since March 2018, and the Union has had countless opportunities to discuss the list through Labor Management meetings. A clear nexus exists between these licensures, certifications, and trainings, and the duties of a Senior Parole Officer, and the points awarded for each of these categories.

Management requires applicants to submit completed trainings that take place within the last two years of the application and verification of the training at the interview stage. While trainings completed more than two years before the application process may be relevant, Management awards points only for current, up-to-date training. Further, verification is required to be presented at the time of the interview before the interview committee. Grievant argued that she was unaware of the requirement, and no notice was given to her, but one Management witness, who has interviewed several employees, testified that she is unaware of anybody reporting for Senior Parole Officer interviews without supporting documentation.

Management does not award points outside the Agency and outside the parameters of the CBA. The Union argues that this is unfair, particularly where the prior experience of Grievant as a Juvenile Parol Officer was applicable to the job. Management has taken the position that when there is an internal agency posting, the selection process should only consider internal experience with the Ohio Department of Rehabilitation and Corrections. This is not a new position taken by

Management. Here, none of the applicants were given points for prior employment outside the agency, even though such would have even boosted the points awarded the successful candidate.

The Grievant's arguments that the amount of points awarded for annual performance evaluations is too subjective and are weighted too heavily should be rejected. While Grievant argued some managers rate some employees harder than others, no comparators were given to show she had been rated more harshly than others based on similar performance. No documentation has been provided to demonstrate those managers who rated her routinely rate their employees lower than other managers. Grievant admitted on direct examination she knew performance evaluations were utilized in the scoring process. The Union has also been aware of this. Section 36.02 of the CBA gives her a contractual right to challenge her evaluations if she disagreed with them. The Grievant provided no evidence that she challenged her evaluations to support her claim of disproportionate ratings. Moreover, all employees are afforded the opportunity to make comments about their evaluations at the time the evaluation is conducted. The Grievant made no comments on her evaluation disputing or questioning her rating(s). In judging work records, Management is not unreasonable in awarding more points to an employee who "exceeds expectations" over an employee who does his/her job well and "meets expectations."

Based upon the application and the materials submitted, Grievant lacked sufficient points to overcome the scoring of the successful candidate. The successful candidate was significantly more qualified based upon the awarded points. As the threshold for defining "significantly more qualified" has not been established through contract negotiation or Labor Management discussions, Management has developed a clearly defined, repeatable and objective threshold in the screening instructions. These instructions state: "A junior employee must score one (1) point

more than the total number of years of seniority that separates them from a senior employee.”

In this case, the Grievant had eleven (11) years of seniority and the selected applicant had three (3). The selected applicant would need nine (9) points more than the Grievant to be considered significantly more qualified (eight (8) years difference in seniority, plus one (1)). The selected applicant earned forty-eight (48) points and the Grievant earned thirty-three (33) points, a difference of fifteen (15) points.

In the absence of firm contractual language, we can look to prior rulings for guidance on thresholds. One such ruling discusses a practice of competitive ranges of 10% of the top applicants’ score. Arbitrator Buettner, in non-selection grievance, DOH-2021-00291-11(2022), upheld Management’s right to use this approach in selecting junior employees over senior employees. Arbitrator Buettner ruled a more senior employee who scores lower than a junior employee should be awarded the position if their score falls in the competitive range. In his denial of the grievance, Arbitrator Buettner ruled a competitive range of approximately 10% is appropriate and denied the grievance because the Grievant, and more senior applicant in that case, did not score within 10% of the selected applicant’s score. The Union, by their own testimony, is aware of Arbitrator Buettner’s ruling, as well as Management’s current threshold, and has made no attempt to discuss a different threshold with Management.

The selected applicant was appropriately awarded the position consistent with arbitral precedent that generally considers anything over 10% to be significantly more qualified. In fact, using this approach, since the selected candidate earned forty-eight (48) points, any candidate with more seniority would have needed to score at least forty-three (43) points under this established precedent ( $48 - 4.8 = 43.2$ ). Management’s approach of providing a point for each year of seniority is more favorable to the Grievant in terms of scoring. However, under either

approach the selected candidate was correctly chosen for the Senior Parole Office position. Interestingly enough, in applying Mr. Buettner's analysis, the Grievant would not have scored enough points to overcome even the 3rd applicant (who scored 37 points), had the selected applicant not applied.

Management has the right to require applicants to provide verification of trainings and certifications completed to receive points as stated above. Management notes, however, that even in the absence of that requirement, Grievant would not have prevailed in this case. The Table below illustrates that if a redistribution of points was awarded to Grievant for the trainings and certifications all employees are required to maintain as Parole Officers, and the other applicants were also awarded points for First Aid/CPR or Search/Seizure training as no verification was provided, the following would result:

	Score	First Aid/CPR	ORAS	Search/Seizure	New Score
<b>Grievant</b>	33	1point	1 pt	2 pts	37
<b>Selected Applicant</b>	48	1 point	N/A	2 pts	51
<b>3<sup>rd</sup> Applicant</b>	37	1 point	N/A	2 pts	40

Awarding additional points to Grievant for mandatory trainings (despite failing to provide verification) as argued by the Union does not bring her within the nine (9) point difference as required by the selection tool.

Grievant, as well as all the other candidates, was not given any points for trainings that were more than two year's old, which Management has consistently applied to all candidates, so that the training received is current and applicable to the position sought.

Management has demonstrated applicants were scored consistently in a non-arbitrary manner based on a well-established, long-standing criteria.



### **III. DISCUSSION AND OPINION**

In order to determine whether the Employer violated Article 30 of the Collective Bargaining Agreement by not selecting the Grievant for the Senior Parole Officer PN 200222555 on 12/28/2021, two fundamental questions must be answered: first, whether the scoring methodology of the Screening Tool used in assessing the candidates complies with Article 30.02 to access the applicant's qualifications, experience, education, active disciplinary record, and work record; and secondly, if the Screening Tool is compliant with the CBA provision(s), whether Grievant was underscored because the Employer failed to give consideration to certifications and trainings, which were identified, but in the incorrect section of the application, and failed to award points for prior training, because the training was outside a prior two- year period or lacked verification documentation that was not provided at the time of the interview.

Grievant's challenge to the methodology of awarding points in using the Screening Tool, which the Employer devised over the years, cannot be sustained for several reasons. First, the specific language contained in Section 30.02 does not require that the Employer "adequately weigh" the listed criteria, as argued by Grievant, but that "eligible applications shall be reviewed considering the following criteria..." This language permits Management wide latitude in determining what factors within each category to consider and what weight is to be given to each category based upon the job position available. Further, Section 30.02 gives the Employer the right "to use a selection device (e.g., structured interview, written test, physical ability, etc.) to measure the listed criteria." Under both of these provisions, the lack of specific language defining how much weight is to be given to each of the categories of qualifications, experience, education, active disciplinary record, and work record, and what methodology a selection device is to deploy, results in giving the Employer broad latitude in determining both. While the Union

does not give up its right to argue that the selection process is arbitrary or illogical, it has a high burden to demonstrate that the Employer is abusing its discretion in the review process. It has not met that burden in this case. If the Employer decides that a “exceeds expectations” work record merits many more points than a “meets expectations” work record, or that one type of training is to be awarded more points than another, or that prior outside agency experience is not to be awarded points in the consideration of all qualified candidates, it has the discretion to make that decision under this language, as long as all candidates are similarly scored.

A second reason the Union’s challenge to the Screening Tool fails, is that its use has existed for many years (since 2001) mostly without objection; arbitration decisions have upheld the Employer’s use of the methodology used in it;<sup>2</sup> and the Union has not submitted any evidence that it brought up suggested changes to the method of scoring or attempted to bargain for more restrictions in the collective bargaining process. Absent negotiating different language in the CBA, the Union must discuss suggested changes or modification to the points awarded for various categories to arrive at a mutually acceptable selection process that works for the bargaining-unit employees and the Employer. If the Employer rejects reasonable suggestions, the Union would have at least a basis to argue that the methodology is arbitrary. Here such evidence is lacking. Since one bargaining-unit employee will inevitably be chosen over others, the Union could often find itself on the horns of a dilemma in challenging the Employer’s screening tool. Since both the Employer and the Union favor selection of a senior employee, both recognize that some process needs to be deployed to determine when a junior employee applicant is significantly more qualified. While the Union’s Executive Vice President avers that it is

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<sup>2</sup> *Toledo Mental Health Center and SEIU 1199*, Grievance No. 23-17-931005-1006-02-10/12, (1994, Bowers); *The Health Care and Social Service Union, SEIU 1199 and State of Ohio, Office of Collective Bargaining*, Case No.: 16-00-960520-0016-02-12 (1998, Weisheit); *The State of Ohio Department Of Health and SEIU District 1199*, Case No.: DOH-2021-00291-11, (2022, Buettner).

glaringly obvious that the Grievant is not only more senior, but significantly more qualified than both of the other candidates, the same application of the Screening Tool to all candidates results in a different outcome. Different emphasis was given by the Employer for each criteria than anticipated by Grievant and the Union. That does not make the process arbitrary.

Since the Union did not meet its burden to demonstrate that the methodology used in awarding points was in violation of Section 30.02, Grievant's assertion that additional points should have been awarded in certain categories and, if they had, she would have been the successful candidate, needs to be reviewed. Consideration of this argument must be analyzed by examining several factors: (1) information that was placed in the wrong section of the application; (2) failure to produce verification of training at the time of the interview; (3) time periods placed on certain qualifications/experiences/certifications/trainings; and (4) experience not considered relevant by the Employer.

Grievant has a valid argument that points should not be excluded from the screening tool process because required information appeared in the incorrect section. The problem with applying this argument to the process, is that the initial application is reviewed for the minimum qualifications, which Grievant met, but points are awarded for the Approved Certifications and Approved Training Specialties by her interviewer(s), and the interviewer relies on the verification documentation provided at the interview step. It appears from the evidence provided the Arbitrator, that even if the required information appeared in the correct section of the Application, it would not have been awarded points because documentation needed to be provided at the interview process. Because there is a relevant period established for training to take place under the screening process, verification of the training needs to be presented to determine when it took place.

Grievant's failure to produce written verification of training at the time of the interview is problematic because an interviewer, who is responsible for awarding points for awards/certifications/trainings, is relying on documents submitted to determine if the certifications and trainings qualify on the approved list and are secured within the relevant time period. I believe the testimony of Grievant was credible that the Application indicated that written verification "may" be required, and she was not given a copy of the *Instructions for Senior Parol Officer Screening Tool*, which did indicate that supporting documentation for training in the last two years must be presented at the time of the interview. However, as indicated by Arbitrator Pincus years ago in *State of Ohio, Ohio Department of Rehabilitation and Correction and Civil Service Employees Association, AFSCME, Local 11*, GRIEVANCE NO.: 27-23-(04-08-19)-1291-01-03, (Pinkus 2006), "[t]he Employer should not be expected to go beyond what is contained in the application materials. If the Employer sought-out information outside the four corners of any application and attached material, it could be charged with discrimination or giving certain individuals unfair preference." Unfortunately, Grievant should have asked someone in Management about what was needed at the interview process. The interviewer was basically confined to the information provided and applied the same standard to all applicants.

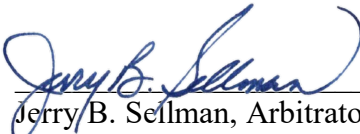
The evidence reflects that consideration of certain criteria was to include time limits. As an example, trainings were considered in the last two years and evaluations were considered over the last three years of completion. Grievant was not awarded points because she did not present verification documentation at the interview, but she would not have received points for many of the trainings because they were more than two years prior to the application.

Grievant had prior experience as a Juvenile Parol Officer, but that experience was not within the Adult Parole Authority Agency. Since the Screening Tool only included work experience within the Agency, Grievant received no consideration for this experience. The position taken by the Employer was consistent with Arbitrator Weisheit's arbitration decision in *SEIU 1199 and State of Ohio, Office of Collective Bargaining*, Case No.: 16-00-960520-0016-02-12 (1998, Weisheit), wherein he held that a prior employment record is relevant to a new hire, but not for transfer or promotion after a probationary period. He found that this was particularly true when an applicant has been an employee for a sufficient period of time in which firsthand assessment can be attained regarding knowledge and abilities. Here, as pointed out by the Employer, none of the applicants' outside the agency work experience was considered.

While Grievant is a demonstrated capable, talented, and senior employee, the Screening Tool did not result in sufficient points for her to be awarded the posted position. Since it cannot be concluded that the methodology used in the Screening Tool is illogical, arbitrary, or unreasonable, and the application of methodology was consistent in evaluating Grievant's application with others as analyzed above, the Grievance must be denied.

#### **IV. AWARD**

For the foregoing reasons and conclusions, the Grievance is denied.

  
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Jerry B. Sellman, Arbitrator