

O P I N I O N A N D A W A R D

OHIO HEALTH CARE EMPLOYEES UNION
District 1199, W.V., Ky., Oh.,
National Union of Hospital and Health
Care Employees, AFL-CIO

and

Date February 19, 1987

STATE OF OHIO
DEPARTMENT OF HUMAN SERVICES

ARBITRATOR: DONALD B. LEACH, appointed by the Office of
Collective Bargaining, Department of Administrative
Services, State of Ohio

APPEARANCES: FOR THE UNION:

Mr. Tom Woodruff, Union Representative, 1313 East
Broad Street, Columbus, Ohio 43205

FOR THE EMPLOYER:

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I S S U E

Did the Employer violate the Agreement when it failed to promote Grievant, to any of three vacant positions in the Department for which he had entered bids.

B A C K G R O U N D

On June 23, 1986, the Ohio Department of Human Services (referred to as Employer) posted three job vacancies for bid, described by number as positions PCN 50535.0, 50536.0 and 50533.0 in Medicaid Administration. Two job vacancy notices were posted, one pertaining to the second numbered position and the other to the first and third of them together. The closing date for bid consideration was July 7. There is no dispute but that Grievant entered appropriate bid forms for both posted vacancies within the bidding period.

Grievant learned by word of mouth later that he had not been awarded any one of them and filed his Grievance on or about August 21. It is as follows:

"Mgmt is in violation of the contract by not advising Mr. Southard of this denial for promotion in a timely fashion, and by not awarding the job according to Article 28:02 (positions PCN-50536.0, 50533.0, & 50535.0). Contract Article(s) and Section(s) including but not limited to Art:28:01 and 02. Resolution Requested that the agency notify all applicants of final decisions in a timely fashion as per Art 28:01 and that the class of applicants be made whole in every way, including the agency award the job according to Art 28:02."

On September 19, the Employer responded at the third step. The response conceded that it had failed to notify Grievant appropriately and undertook to notify in writing as a general policy. As to the substance of the Grievance, the response was as follows:

"Notwithstanding the failure to timely notify the applicant, he was interviewed for all three positions. Grievant was given the option of three individual interviews or a single joint interview with regard to the three positions and he chose to proceed with a joint interview. Following said interview each of the interviewers independently concluded that in their opinion [Grievant] failed to demonstrate that he possessed the qualifications, education or experience required to perform the job.

The plain language of Article 28.02. indicates that job vacancies shall be awarded "...considering the following criteria: qualifications, experience, education and work record." The vacancy posting sets forth in summary form the duties of the job and identifies state personnel qualifications. During the interview process, the

grievant was asked to explain or demonstrate how he believed that he was qualified for the position(s). The one major shortcoming in this area was the applicants inability to make a showing regarding the requirement of "one course in statistics (or one month experience); or the equivalent." In relation to the job duties, one must have the capability to "monitor reports to analyze performance of a program ..." and to "develop and revise policy...". This means that one need have the ability and understanding of statistical techniques used to analyze Medicaid programs and in addition to have obtained a knowledge of methodological and research design issues, one should have the ability to depict relevant relationships, express them using mathematical terms and evaluate them for mathematical solutions.

Although the interviewers recognized the grievant has a long tenure in the area of social services and Medicaid, those positions have primarily involved the implementation or interpretation of policy, rather than the analysis, evaluation, formulation or development of program and fiscal policy. The grievant lacks formal coursework in statistics and admitted so in the interview. Furthermore, he was unable to demonstrate that any of his qualifications, education or experience enabled him to justify an equivalent to the above required qualification.

In general, the grievant failed to demonstrate that he had the ability to deal with a large number of variables and determine a specific course of actions. In particular, he failed to demonstrate either verbally or in writing that by virtue of his qualifications, experience, education or work record that he could perform the fiscal and program evaluation necessary to initiate the program revision or development process. The grievant's response to job related questions was in parts unclear, and in response to at least one question, totally non-responsive. Finally, the grievant failed to demonstrate that he had the experience or the ability to conduct planning sessions on medical assistance programs and come through the process of program evaluation, problem identification and arrive at and implement solutions.

Having reviewed all relevant written documents and evaluated personally discussions with all relevant parties, the department has determined the above statement of facts to be the major consideration of this grievance.

Second, it is the finding of the department that lacked the qualifications, education and experience necessary

for these positions, and that in regards to the second portion of the grievant's claim, the alleged wrongful denial of promotion, no violation of the agreement occurred."

On September 18, written notifications of the rejection of Grievant's bids were sent in accordance with the Employer's undertaking at the 3rd Step hearing. As to PCN 50535.0 and 50536.0, the pertinent part of the letter is:

"We interviewed a number of people for this position and have selected the person who we felt was the best overall candidate. Although you were not selected for this particular position, we encourage your continued interest in job opportunities with this department."

As to PCN 50533.0, it is:

"We were looking for a very special combination of qualifications in this particular position and unfortunately none of the persons interviewed were exactly what we were looking for. Although you were not the one selected for this position, we encourage your continued interest in job opportunities with this department."

Grievant, currently assigned to the Employer's Bureau of Surveillance and Utilization Review of the Medicaid Program, has been employed by the Employer for about eight years. He had had a year and a half immediately prior employment in one County government and earlier employment in the State's Mental Health Department.

In his earlier employment with the Employer, Grievant was assigned to the WIN Program and made responsible for reviewing and analyzing several county budgets for that function, covering a district embracing several counties. The district to which he was assigned was allocated a predetermined fund for division among the counties in the district. Grievant worked with each of the counties, analyzed the needs of each statistically and monitored the performance of each. In that work, he traveled to the various counties, trained the personnel in each, and responded from time to time to questions of theirs and of members of the public. He also made speeches about the Program as called for.

In his current assignment, Grievant statistically analyzes Medicaid payments to providers of service to recipients, using a random sample method, adjusting the sample on occasion, in which latter case he is required to understand the statistical consequences of such changes. In those functions, his mathematical examples had been used by a professor from Ohio State University in his training classes with various employees of the Employer. The professor was used regularly by the Employer as an expert witness in legal proceedings and, in them, he relied on Grievant's statistical analyses, among other matters.

Grievant also trains others, revises computer data methods and is responsible for special tasks. In addition, he adds and subtracts providers from the computer list or is responsible for that function when it is actually done by others. Finally, he said he did all aspects of the job description applicable to his position.

Grievant's current position as Management Analyst 3 is described in the official Position Description as research and analysis of existing Bureau operations, systems and procedures in order to determine where improvements are needed; analyzing proposed programs and policies to determine feasibility of changes; effecting changes in the control file by means of computer input; preparation of reports based on changes and updates; dissemination of such reports and recommendations for improvements in them; research and analyses of data from case tracking systems for improvement of monitoring; assistance in development, maintenance and revision of parameters for determining case opening priorities, referrals and dispositions; analysis of case data status workload for forecasting needs of a wide variety of consumable office supplies; performance of related administrative duties connected with meetings, information dissemination, record maintenance, correspondence and reports. The minimum requirements of the position are knowledge of (1) management, (2) office practice and procedure, (3) government structure and process, (4) interviewing, (5) definition of problems, collection of data, establishment of facts and drawing of rated conclusions, (6) use of statistical analysis, (7) gathering, collating and classification of information according to established methods and (8) handling of sensitive inquiries and contacts with public and government officials.

Grievant's work had been evaluated in 1983, 1984 and 1985. Each evaluation showed that he was doing fine work, ranging between highly accurate and excellent in each of the ten categories in the evaluation form.

Grievant's immediate supervisor, Mr. Sturm, noted that, from some college courses he had had in statistics, he had found that Grievant used many of the methods taught. Even with the courses, he said, it would take an individual more than thirty days to learn thoroughly how to use such methods in the job. He said also that Grievant had made many useful recommendations, frequently excellent ones, and that he can and does make additions to the computer while it is on line. He expressed the opinion that Grievant could go much further with supervision and training.

Grievant's first supervisor in the WIN Program, Ms. Patton, testified that Grievant had done the best work of any of the job applicants she had had contact with. She confirmed his description of the functions he performed in the WIN District. She said that he was the only one on the Staff who did not have a Master's Degree; that it took him a little longer to learn certain things, but that he then could do them as well as those who held such degree.

Among other things, it appeared in the course of the hearing that Grievant was also a practicing Minister.

The Job Vacancy Postings were substantially similar for all three positions. The one for PCN 50533.0 and 50535.0 described them as: development and revision of policy and procedure for medical assistance programs based on statutes, regulations and court decisions; writing program service coverage, limitations and reimbursement requirements; development of formats for or establishment of required audit trails, development of forms for new programs and modification of existing ones; monitoring reports to analyze performance of a program and to detect deficiencies, which analyses are useable in problem solving and decision making; consultation with and dissemination of interpretations of regulations; knowledge of other areas which relate to the programs of his bureau, including social service and public assistance availability, fair hearing procedures, quality of control systems, data services, claims processing and fiscal procedures; preparation of responses to proposed federal and state legislation and regulations, development of Departmental positions on them and recommendations for legislative change.

The Vacancy Notice for the two positions also included the functions of research of statutes and regulations of the State; and medical assistance policies and statutes of other states.

The Vacancy Notice for PCN 50536.0, however, did not include the last research requirement but substituted for it a requirement for translation of medical assistance regulations into administrative rules filed under the standards of the Ohio Administrative Code. In all other respects, the two Vacancy Notices were the same.

Both Vacancy Notices set out the qualifications for the job as: "6 courses in management/supervision (or 6 months experience); 3 courses in office practices and procedures (or 3 courses (?) (months) experience); 1 course in government (or 1 month experience); 1 course in statistics (or 1 month experience); or equivalent."

The requirement for office practice and procedure quoted above was stated in one as "3 courses experience" and the other as "3 months experience". The former appears to reflect a clerical error. (No mention of the difference was made at the hearing.)

As stated, Grievant bid on both Vacancy postings, submitting a written application on a form provided by the Employer, which summarized his three employment positions in reverse chronological order. Each description filled the space available on the form in very small but legible handwriting.

Under the Employer's procedure, applicants were interviewed by the supervisor or supervisors of the positions posted. In these vacancies, three supervisors were involved and all interviewed Grievant together after having offered him the opportunity for separate

interviews, which he declined. Before the interview, Grievant was asked to fill out a questionnaire, involving six or seven questions, depending on the questioner.

The interview lasted three quarters of an hour to an hour.

Each of the interviewers noted down his reactions to Grievant's interview, each acting separately and without discussion among them.

Each of the interviewers testified at the hearing, respectively, Mr. Friedman, Chief of Medicaid Policy and two of his subordinate supervisors, Ms. Schneider, Program Evaluation Administrator and Mr. Blazewicz, Administrator of the Policy Unit.

Mr. Jerome Friedman testified that the Vacancy posting job descriptions are a general summary of the detailed Position Descriptions. The basic needs of the job, he said, are a combination of factors requiring evaluation. He said that he was looking for a person who could implement new methods that become necessary under new laws, regulations, etc., such as payment levels for diagnosis and recalibration of such levels.

Mr. Friedman observed that Grievant did not explain as fully in the interview about his current job as he had done at the hearing.

Mr. Friedman said he had questioned Grievant on regression analysis methods and the Chi Square factor and had come to the conclusion that he was more acquainted with and did more accounting types work and auditing than the statistical and evaluative work required.

He concluded that Grievant didn't have fiscal and financial analysis skills.

On cross examination he said that two of the three jobs had not been filled. Apparently, there was some type of budgetary realignment. He said, also, that he interviewed only the Grievant, the other two interviewing only those apparently available for the respective positions each had open at that time, for which they conducted separate interviews, no other joint interviews having been held.

He concluded that Grievant lacked capacity to apply statistical methods to the work and so lacked statistical qualification. He acknowledged, however, that he wanted more from an applicant than the standards set by the Department of Administrative Service and that he doubted Grievant's capacity to complete the probationary period.

He said he had not checked with Grievant's supervisor as to Grievant's work in the job he was holding at that time. Moreover, he said that, from Grievant's testimony, it appeared that

Grievant did more statistical type of work than he has believed from the interview.

Mr. Friedman's written evaluation of Grievant is as follows:

"Applicant lacks sufficient skills in fiscal/financial analysis necessary for this position."

Ms. Saundra Schneider, one of the interviewers as a supervisor, established that she had a Ph.D degree in Political Science and currently taught part time at Ohio State University.

In her questions at the interview, she established that Grievant was not acquainted with regression analysis or the Chi Square Factor in statistical methods.

On cross examination, she said that a person willing to learn and to apply himself could learn the two methods quickly, in fact, within two or three months.

Ms. Schneider summarized her evaluation of Grievant as follows:

"The applicant does not have the methodological and statistical training or background which is required for the position. The position requires that one have a thorough understanding of statistical procedures and that one be able to select and apply all aspects of the procedure to the policy problem under examination. Based upon the applicant's previous experience and training, he does not have the level of expertise needed for the position."

Mr. Frank Blazewicz, the third interviewer, testified as to the wide range of interests outside his unit that those in his unit were required to consider and to deal with.

In his view, Grievant did not have the ability to adjust to the manifold pressures involved.

In his view also, Grievant failed to respond to some of the questions but that he gave answers in a professional manner. Among other things causing him doubt about Grievant was that the latter had felt full support of his work by his supervisor was essential for him, although from Mr. Blazewicz's viewpoint, that could not be assured him. He noted, however, that he had not really noticed the point until later.

He said that statistical analysis was not as much needed in his unit as in the others. Essential qualities required, however, were a devotion to the public good and recognition of

alternative approaches to a problem with the ability to make recommendations of feasible solutions.

He had reviewed Grievant's work record, unlike the others, and had found it to have been a good one. He also acknowledged that, in his opinion, Grievant did meet the qualifications of the job description.

He said he had interviewed thirteen or fourteen applicants, boiled them down to three or four and finally hired one, who had worked as an assistant to a School Board member and therefore was acquainted with controversial issues as she had also learned earlier in the EPA Department. Moreover, she had had considerable experience in consensus building.

On cross examination, he said that he was primarily interested in a person with background in choosing between methods for achieving policy objectives.

His comments about the interview are:

"The applicant did not provide a criteria or philosophy that would guide him in allocating scarce resources among services covered by Medicaid or services for which Medicaid coverage is being sought. A significant portion of the position's duties involve program evaluation and resource allocation and a general framework for performing these tasks is an essential ingredient to performing the job."

Other witnesses for each party testified but primarily on procedural matters. One point of controversy concerned the Employer's acknowledgement at the 3rd Step meeting that Grievant met the qualifications for the job. One Union witness testified to that effect. The Employer chairman at that Step in effect denied having so stated. The Grievant, himself, indicated that he had no recollection on the matter.

C O N T R A C T P R O V I S I O N S

ARTICLE 28 -VACANCIES

§28.01 Job Vacancies

***When a vacancy is created by an incumbent employee leaving the position, and that incumbent is above the entry level position in the classification series, the job shall be posted at the level in the classification series of the leaving employee, provided the duties

and responsibilities remain the same. After the employees have had the opportunity to bid for lateral transfers or for promotions, the position can be reduced in the classification series.

A job vacancy shall be posted for a minimum of seven (7) days on designated bulletin boards within the agency at the facility where the vacancy exists. Applicants will be notified within thirty (30) days after the final filing date of the status of their application.***

§28.02 Awarding the Job (Transfers and Promotions)
Applications will be considered filed timely if they are received or postmarked no later than the closing date listed on the posting. All timely filed applications shall be reviewed considering the following criteria: qualifications, experience, education and work record. Where applicants' qualifications are relatively equal according to the above criteria, the job shall be awarded to the applicant with the greatest state seniority.

Job vacancies shall be awarded in the following sequential manner:

- A. The job shall first be awarded to an applicant working at the facility where the vacancy exists in accordance with the above criteria;
- B. If no selection is made from A above, the job shall be awarded to an applicant working in the agency where the vacancy exists in accordance with the above criteria;
- C. If no selection is made from B above, the job shall be awarded to an applicant working in the bargaining unit in accordance with the above criteria;
- D. If no selection is made from C above, the job may be awarded by hiring a new employee.

§28.03 Probationary Period

Any employee awarded a promotion by this process will serve a probationary period of 180 days. A longer probationary period may be served by the employee if mutually agreed to by the agency and the Union. The agency's decision to return an employee whose performance is unsatisfactory to the position in the classification held immediately prior to promotion shall be grievable. The appointing authority shall, upon the employee's request, return the employee to a position in the classification held immediately prior to the promotion if there is a position available within the facility or when such a position becomes available. Such request must be made during the probationary period. If an employee is returned to a position in the classification title held prior to the promotion, the employee shall

receive the same salary received prior to the promotion except for changes in pay rate that may have occurred or any step increase to which the employee would have been entitled in the lower classification title.

ARTICLE 32 - CAREER ADVANCEMENT

The employer and the union recognize the problems created by the lack of career advancement opportunities and promotion through the classification series, and jointly agree to work through the Professional Committees to enhance career advancement and promotional opportunities. The parties agree that the concept of career ladders is important in recruiting and retaining professional staff, and in the delivery of services to the citizens of the State.

C O N T E N T I O N S O F T H E P A R T I E S

UNION POSITION

The evidence showed that the Agreement had been violated by the Employer. The purpose of the job bidding procedure in the Agreement is the assurance of fair consideration for promotion. Bid consideration must be fair and be based on objective and demonstrable facts.

In this case, the interviewers' reasons varied for their denial of the Grievant's bid. In fact, the Employer filled the job in the same manner it had used before the Agreement became effective, i. e., by interviewing everyone who expressed interest, inside and outside the Department, and choosing the one the interviewers preferred. The evaluation of Grievant ranged from (1) lack of statistical background to (2) lack of background in the statistical methods that can be learned in two or three months and certainly within the probationary period and then to (3) lack of experience in dealing with diverse forces and adjusting to them.

In fact, Grievant had all of the qualifications the Employer requires in its Vacancy posting notice.

Instead of choosing a qualified person from within the Department as the Agreement requires, the Employer hired a person never before employed in the Department.

It must be noted also that one of the Employer witnesses admitted that he hadn't realized until the hearing that Grievant had all the statistical knowledge he actually has. Only

one of the interviewers took the trouble to investigate Grievant's work record and ability by inquiry addressed to the records or to Grievant's current supervisor.

Grievant should be made whole during the period he was improperly denied the promotion and should be placed in the job he bid.

EMPLOYER POSITION

The Agreement does not refer to "job" but to "position", an entirely different thing. A "job" covers many "positions". Thus, different standards apply to different positions. Grievant was not qualified for the positions open.

While Grievant does have the minimum qualifications for the classification, he doesn't have them for the position.

The Employer didn't focus on the position alone but on all factors of the position. Grievant was a technician and was not a program developer, the positions involved here.

Finally, it must be noted that the award of a bid for a position does not depend on qualification alone but on other factors which the Agreement recites as applicable. The Employer did consider all of the contractually required factors and arrived at a proper conclusion. Accordingly, the Grievance should be denied.

D I S C U S S I O N

The issue here, as noted at the outset, is compliance with the Agreement. That sets out separate sets of requirements in bid consideration, which must be considered alone and then brought together.

The Agreement requires in Article 28 criteria for promotion through the bidding procedures, as (1) qualification, (2) experience, (3) education and (4) work record. The four are subsequently referred to collectively as "qualifications". (See last sentence, first paragraph of 28.02) and where the collective "qualifications" are relatively equal, the job is to be awarded to the applicant with the greatest seniority. That much of the provision seems to be unambiguously clear and intended by the parties to be followed and complied with.

Grievant was the only bidder for any of the three job openings who was employed in the Department.

The Union represents health care employees in different Departments of the State Government, several of which are covered by the same Agreement. The word "agency", which is used in 28.02, almost certainly means Department in light of the contractual background, coverage and the phrasing describing the priority of classes of bidders for priority of consideration. Thus, the Agreement prescribes certain grades or classes of applicants, prescribing priority of consideration among them, first being those in the facility, second in the agency or department, third in the bargaining unit and then fourth outsiders or new hires.

The word "job" has been used above in referring to the object of a bid. The Employer points out correctly that that object is characterized in the Agreement as a "position" and that there are many positions within a job category.

While the Employer accurately describes the point and the differences in the meanings of the two words, the qualifications as established by the Personnel Division of the Department of Administrative Services appear to be the same for all positions in a job type. Those stated in the Vacancy notices, for example, for all three positions open set out the same set of qualifications, (except for the obviously clerical error, noted above, in one of the notices). Thus, the set of qualifications established by proper legal authority for all three open positions may be taken as those contained in the Vacancy notices.

That set of qualifications is not necessarily synonymous with the collective qualifications referred to in the Agreement. As to the first element of the contractual collective qualifications, however, there is no reason to believe that something different is contemplated than those set out on the Vacancy notice. Indeed, no other explanation has even been suggested to indicate that qualification number one in the collective term qualification means anything different in a contractual sense. In other words, the collective term "qualifications" in the Agreement is made up of the four elements prescribed therein, of which the element "qualification" is one; it is the latter that, as far as anyone has suggested and as well as it can be understood in normal parlance, means the qualification prescribed by Administrative Services and summarized in the Vacancy notices.

The qualifications collectively listed on the Vacancy notices are several: (a) management/supervision, (b) office practices and procedures, (c) knowledge of statistics. All are described alternatively as courses in the subjects or experience, one course being equal to one month of experience. In terms of experience, the applicant should have had (a) six months in management/supervision, (b) three months in office practices and procedures, (c) one month in

Government and in statistics. Those requirements closely parallel those of the job Grievant holds currently.

There is nothing in them, individually or collectively, that implies expertise. A few months of experience does not endow anyone with expertise, not even in unskilled work.

As to Grievant, the evidence established that he had experience in supervising others, in office practices and procedures, in government and in statistics, periods of experience far beyond the minima required in the Vacancy notices. Grievant was not fully informed in all aspects of any one of the areas but he certainly had had experience in them and, in many cases, quite detailed experience. It follows necessarily that Grievant did meet the first criterion of the contractually collective qualifications for the position.

The second criterion in the Agreement is "experience". There is no implication or argument that experience in this case requires more than the experience required under the first criterion, "qualification", since the first "qualification" is described in terms of experience. If more is required, it is satisfied by the observation made above that Grievant's was far longer in each category than the prescribed minimum.

The third criterion is "education". Grievant has not had much formal education in terms of college courses. He has taken a few short courses after high school, not college type, on some subjects. It is possible that one with greater college training would rank above him in that particular. There is nothing in the established guidelines for these positions, however, that indicates a need for college training of an intensity that imparts more knowledge than does the experience he has had. Again, that contractual requirement involves something of a circuitous character when applied here, although, of course, that wouldn't necessarily be true for all positions or for comparative purposes as between two bidders in the same class. It can only be concluded that Grievant possessed the minimal educational background to meet the requirements of the three positions.

The fourth and final criterion of the Agreement is "work record". Here the only formal evaluations of Grievant's work, covering the last three years, and the testimony of his current supervisor and a former one all demonstrate an excellent work record. On that criterion, there can be no question of Grievant's compliance.

The foregoing demonstrates that Grievant satisfied the collective qualifications for the positions involved.

As noted above, the Agreement provides in 28.02 that "job vacancies" shall be awarded in the following sequential manner by bids, of (a) those within the facility, (b) those within the agency or Department, (c) those in the bargaining unit, and (d) by a newly employed person.

Grievant falls within classes (a) and (b) and was the only bidder in either to apply for any one of the open positions. While seniority must be considered as between two competitive bidders of equal qualification, that would appear to come into play only where the two fall into the same class.

The Agreement requires that the job must be awarded to an applicant in the class who meets the qualifications under the circumstances already discussed. If a senior individual or one with greater collective qualifications is in a lower class, it would appear almost impossible for that seniority or qualification ranking to override the higher class applicant. Otherwise, violence would be done to the clear phrasing of the various provisions.

It should be noted that one in a preferred class does not warrant award of the position or job just because he or she bid for it, even though it is the only bid in that class. Such bidder would have to have the required collective qualifications to warrant consideration of his or her bid. If those qualifications are possessed by the bidder, however, the language requires that the job be awarded to him or her. Where two or more in the same class, however, place bids, comparison of collective qualifications is in order and perhaps seniority.

It has been established that Grievant possessed more than the minimum collective qualifications for the positions or jobs and that he was the only bidder in the two highest classes. On the face of the matter, he should have been awarded one of the positions.

The interviewers, supervisors of the posted positions, testified somewhat differently concerning Grievant. One thought he lacked sufficient statistical knowledge but admitted that Grievant had more knowledge than he had gathered at the interview. One said that he believed the Grievant met the qualifications for the job. He was also the only one who checked Grievant's work record independently. The third felt that Grievant lacked statistical knowledge of regression analysis and the Chi Square factor, although stating that they could be learned by one who applied himself, within two or three months, a period less than the probationary period. Their views individually and collectively cannot be accepted as showing lack of the collective qualifications by Grievant. All indicated, expressly in some cases, that they were really looking for someone with greater qualifications than those called for in the Vacancy notices.

Such finding might be inferred as reflection on their good faith. It was obvious in each case, however, that each had charge of an important and taxing function of the Employer. It is to be expected that each would search for what might be a rare individual to work in such area, rare in desire, knowledge, aptitude, etc., rather than in generic qualifications. That was made clear by one of the interviewers, and was no doubt shared by the others.

In another perspective, they were each confronting the problem of supervisors in every large organization, public or private, where salary levels are regulated in another line of supervision, for reasonable comparability and fairness within organizational echelons. In that respect, those here have a somewhat frustrating problem that, however, is shared by many others. Their opinions or the bases for them, were not reviewed, apparently, to determine whether or not they complied with the Agreement. No fault may properly attach to any of the three.

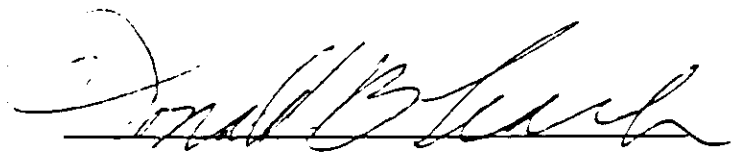
In light of the foregoing, it must be found that the Employer did violate the Agreement when it denied Grievant's bid for any of the openings posted for bid. Since it violated the Agreement at the time it rejected Grievant's bids, he must be paid for any loss of earnings beginning when his bid was rejected. In the circumstances here, where procedures were not fully worked out under a first time collective bargaining agreement, the date of the violation may be taken as the date the Grievance was filed.

It appeared at the hearing that two of the three positions had never been filled, probably as a result of budget reallocation. The Grievant is entitled to promotion. If the two are no longer available, then he must be promoted to the one that continues, even though it is now filled by an individual hired from outside State government. The Employer may decide the particular course it prefers to follow depending on the status of the unfilled jobs. If they are not available for Grievant, then he must be placed in the third.

A W A R D

1. Grievance, filed August 21, 1986, by Grievant, is hereby upheld.
2. The Employer, Ohio Department of Human Services, shall place Grievant in one of the three positions for which he filed bids, i. e., PCN 50533.0, 50535.0 or 50536.0.
3. Grievant shall be placed, as described in paragraph 2 of this Award, no later than two weeks following the date of this Opinion and Award.

4. The Employer shall pay Grievant for the period starting August 21, 1986 and ending the day before he is placed in the new position as prescribed in paragraphs 2 and 3 of this Award, an amount equal to the difference in wages or salary he actually received and the wages or salary he would have received had he been promoted to one of the three positions numbered in paragraph 2 of this Award.

A handwritten signature in cursive script, reading "Donald B. Leach", written over a horizontal line.

Donald B. Leach