

In the Matter of the Arbitration
between: :
THE STATE of OHIO, Department of :
HEALTH :
and : Gr. No. G87-0728
OHIO HEALTH CARE EMPLOYEES : (Betty Humphrey)
UNION, District 1199 :

ARBITRATOR'S DECISION and AWARD

This matter was heard by me on July 14, 1987. The parties were afforded full opportunity to adduce evidence, cross-examine and to argue orally. They waived the filing of post-hearing briefs. At the conclusion of the hearing it was agreed that the record be kept open for the receipt by the arbitrator of the transcripts of the grievant at Franklin University and Columbus State Community College. These were received by me on July 24.

A grievance was filed on December 31, 1986 alleging that the grievant had been unjustly denied a promotion from the position of Health Planning Coordinator to Social Program Developer in violation of Section 28.02 of the collective bargaining agreement, and requesting that she be granted that promotion and be made whole for losses which she sustained as a result of the contract violation. The State denied the grievance on the ground that it had properly awarded the position to another applicant, one Victoria Crews, because she clearly had better qualifications.

Section 28.02 of the collective bargaining agreement reads as follows:

"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.

Within non-institutional agencies and within the Adult Parole Authority, step A above shall not apply."

The issues in this case are (1) whether, as claimed by the Union, the qualifications of the grievant and Crews were relatively equal, and (2) whether, if relatively equal, the grievant should have been awarded the job because of her greater state seniority.

Although at first blush the first paragraph of Sec. 28.02 appears to be unambiguous, it is, in fact, not a model of careful draftsmanship. Thus, after stating that the "criteria" to be considered are "qualifications, experience, education and work record", it then states that where "qualifications are relatively equal according to "the above criteria"--. Thus while "qualifications" is but one of the four criteria listed, it also

is used as comprising all four of the criteria. This interpretation is consistent with the listing of the position "qualifications" in the job posting: These include educational and experience prerequisites and knowledge of specific subjects. It seems to be clear, and I find, that the word "qualifications" as used in the third sentence of Section 28.02 means the totality of the applicant's knowledge, education and experience which are relevant to the functions of the position, plus the applicant's work record.

The critical question in this case is whether the qualifications of the grievant and Crews were relatively equal. The term "relatively equal" means "comparable", or that one is not materially or significantly superior to the other.

The contract provides that when qualifications are relatively equal the job must be awarded to the applicant with the greatest state seniority. In this case, the grievant had eighteen years and 310 days of state seniority while Crews had eighteen years and 35 days, a difference of about nine months. The State suggested that since the difference was relatively slight the seniority factor should not be given great weight, although it did not press the point. Under Section 28.02 no distinction may be made between slightly and substantially greater seniority. If the parties had intended such a distinction they would have expressed it in their agreement; it is not for an arbitrator to modify the clear and unambiguous language of the agreement. As written, greater State seniority means the same thing in this provision as it does in Sections 26.01 and in 27.02. It is determined by an employee's position on the State

seniority list. In any case, a difference of nine months, even between employees with eighteen years of service, is not a trivial one.

One other matter requires comment before I discuss the basic issue: At the hearing the State stated that its investigation had disclosed that the grievant made an untruthful statement on her application by representing that she had attained an Associate degree from Franklin University. She admitted that she had not taken a degree although she had taken enough courses to qualify for one, because she was working toward a bachelor's degree. Her transcripts from both Franklin University and Columbus State Community College indicate that her representations concerning the courses she had taken were entirely accurate. Indeed, she had actually taken more courses at Franklin and at Columbus State Community College (formerly T.C.I.) than she represented in her application. That she did not have a degree does not detract from the fact that she had done the course work that a degree would have represented. I find that her misstatement was a harmless one.

Both Crews and the grievant are obviously highly motivated individuals who deserve well at the hands of the State, not only because of their performance on the jobs they have held, but because of their persistent efforts to broaden their knowledge and to qualify for positions of greater responsibility. Both have risen through the ranks in the Department of Health by virtue of successive promotions, the grievant to the position of Health Plan Coordinator, which she achieved in 1979 and Crews to the

position of Cancer Program Coordinator, which she achieved in 1984. It is unfortunate that they had to be competitors for the position which is in issue here.

The position at issue is that of Social Program Developer in the Bureau on Alcohol Abuse and Alcoholism Recovery and it was described as follows in the posting:

Develops and implements grants management process and establishes goals, objectives and guidelines for regional and local alcoholism programs relative to special populations and to other human service areas. Serves as coordinator for women's projects pursuant to the Federal Adm. Block Grant set aside provision. Provides technical consultation for women's programs and special populations and advises such programs on planning and development, expanding funding resources, fiscal management, options to grant programs, coordination of services, establishing project goals and objectives, community organization, program evaluation, public relations and community awareness. Interprets national and state alcoholism laws, policies and procedures to other state departments and programs and to regional and local alcoholism agencies. Works independently, developing state networks, staffing committees and raising awareness of statewide population needs. Delivers speeches regarding services, policies, program plans or special population issues. Researches literature (legislation, reports, studies, and publications, etc.) to maintain current knowledge of developments in the alcoholism field. Trains, teaches facilitates skill development of regional and local alcoholism programs staff, community groups, agency boards and institutions with respect to women and other special population areas. Travel required.

It is, of course, necessary to compare the educational and experience qualifications of the grievant and Victoria Crews in order to determine whether the State's preference for Crews was justified.

The grievant was a full-time student at Franklin University from 1978 to 1980 where she took ten courses, her

major being Business Administration and her minor Social Science. She was a full-time student at Columbus Technical Institute from 1980 to 1982, majoring in Business Administration and minoring in Human Behavior. She took additional courses at Franklin University in 1971 and 1972, and at Columbus Business University in 1973 in Office Practice and Procedure and Business Administration. Her course work covered various aspects of management, economics, communication skills, finance, mathematics, supervisory and executive development, personnel administration, data processing, psychology, sociology and political science, among others.

Since 1979 she has been a Health Planning Coordinator in the Division of Women, Infants and Children (DWIC). The job description as set out in Union Exhibit 5 sets out duties of that job in order of their importance as follows:

- (1). Advises local agencies regarding the DWIC program and reviews and evaluates local projects and clinic systems as it relates to the Automated Data Processing (ADP) unit. Assists and advises local agencies on clinic schedules which are consistent with the ADP system. Participates in management evaluation of local projects. (25%)

- (2). Trains all assigned local clinic coordinators in methods of implementation, and maintenance of ongoing food delivery systems in new and existing WIC projects. Makes detailed presentations of the Ohio food delivery systems including narratives and visual aids. (25%)

- (3). Other duties in relation to the ADP system. (15%)

- (4). Analyzes and evaluates reports covering the implementation of the ADP system. (25%)

- (5). Updates and maintains the DWIC Dairy Coupon Automated

Data Processing Manuals.

It is evident that this position description is heavily weighted with data processing responsibilities. The usual working title of the position is ADP Training Coordinator. During the last few years her division has been transferred to Data Services but her job has remained unchanged.

Supplementing the job description, the grievant states (Union Exhibit 2) that she set up the WIC food delivery program in 80 counties, advised local health agencies regarding the program, reviewed and evaluated local projects and clinic health systems, coordinated agreements between WIC, local projects and clinics and vendors, assisted and advised local projects and clinics in organization planning and scheduling to meet State and U.S.D.A. standards and regulations, which included program evaluation and reviewing grants and grant proposals, trained all assigned local clinic coordinators in developing, maintaining and administering food delivery systems.

In addition to her experience at WIC, the grievant was employed in the Franklin County Welfare Department for about seven and one-half years. All the positions she held there dealt with budget management and as Senior Budget Clerk she prepared specific budgets for each community and supervised budget expenditures. From 1975 to 1979 she was an Examiner in the Bill Payment Unit in the Bureau of Crippled Children's Services, her duty being to determine the eligibility of providers for payment under Title V.

She spent six months in 1972 as a volunteer at a drug rehabilitation center where she assisted in the writing of grant proposals for submission to the county,

The Union introduced a letter from Roma J. Blunt, the first Chief of DWIC in which she expressed the opinion that the grievant would be more than qualified to serve in any capacity in which an administrator was required to follow specific guidelines and to process certain technical skills associated with data collection, processing and work flow. This letter, being hearsay, was admitted into the record only because it had been submitted during the processing of the grievance, but it is of no value on the issue of the relative qualifications of the grievant and Crews. If Blunt's testimony was considered important she should have been called as a witness.

Victoria Crews' resume shows that she was a Social Program Coordinator since May, 1986 in the Cancer Unit, Division of Chronic Diseases of the Department of Health. As such she developed and implemented cancer public education programs and materials for special groups, i.e. minority, women and elderly, provided technical assistance to local agencies and groups in planning and developing cancer programs, gathered data, prepared pamphlets and articles for the cancer newsletter. From 1982-1984, as Program Specialist in the cancer unit, she assisted in the coordination and implementation of a variety of statewide activities relating to the cancer program, gathered data regarding cancer and smoking legislation and organized and maintained a clearinghouse for technical and lay cancer/smoking materials. From 1978 to 1982, as an Administrative Manager, she reviewed state and federal budgets, coordinated with the program chiefs in developing policies and procedures in preparation for federal and state grants. From 1974 to 1978 she

was a Fiscal Manager in the Ohio Cancer Screening Program, in connection with which she exercised fiscal and administrative control in 20 counties involved in the program, gathered data and compiled statistics for periodic reports to the N.C.I., assisted in writing federal grant proposals and prepared policies and procedures for the 20 counties. From 1972 to 1974, as an Administrative Specialist, she was responsible for the Ohio Rheumatic Fever Prophylaxis Drug Program.

Her educational background shows numerous courses, spanning the last twenty years, in Social Science, Business Administration, various aspects of Management, Communication and Advanced Writing, among others, and an Associate Degree in Business Administration from Franklin University.

The State contends that the grievant's application was not accompanied by a resume while the grievant insists that it was. It would be strange if the grievant, an experienced applicant for promotional positions, failed to submit a resume with her application. It also seems to be strange, if a resume had not been submitted, that she was not asked to submit one. However, it is not necessary to resolve this conflict since her resume was submitted and considered at Step 2 of the grievance procedure.

The Union implied, although it offered no proof, that the Health Department was biased against the grievant because she was an activist or perhaps for other reasons, pointing to the fact that she was promoted to her present position only after she filed an EEOC complaint. She also testified that she

has repeatedly been denied tuition reimbursement or the privilege of attending training sessions. In the absence of proof, and none was offered, these allegations cannot be given any weight. Moreover, it was not claimed in the grievance nor in processing of it, nor at the hearing that Article 6 of the contract had been violated.

Accordingly, the sole issue is whether on the basis of the data that was before the Department when the selection was made (and for this purpose I include the grievant's resume) it was justified in concluding that the qualifications of Crews were significantly superior to those of the grievant. At Step 2 of the grievance procedure the State summarized the basis of its decision as follow:

"The grievant did have experience with one portion of a larger grant project, i.e. the WIC Program. That experience is related to the data processing of the food delivery program and appears to be clerical rather than administrative or routinely consultative in nature. She did not have the strong fiscal or grants management experience of the selected applicant.

The selected applicant had experience in several programs serving women and minorities with the Division of Chronic Diseases in which she developed and implemented programs, performed budget reviews and served as fiscal manager for a federal grant project, among other duties. The relevance of that experience made her qualifications greater than the grievant's.

At Step 3 the Chief of Personnel Service listed the qualifications of Crews in considerable detail and dismissed those of the grievant in one sentence:

"Ms. Humphrey has served for the past eight years as an ADP staff person within WIC".

While his summarization of the grievant's experience hardly

does her justice, the entire record in this case does not convince me that the conclusion which he reached was unreasonable or unfair. There is ample evidence in this record to warrant the determination that Crews' experience was more formidable and more relevant than that of the grievant and that, for that reason, her qualifications were not relatively equal to those of the grievant but were superior.

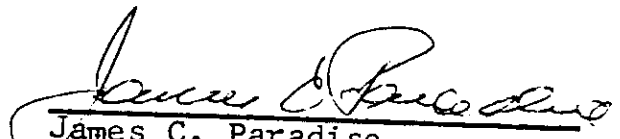
Some comment is in order on the selection process. The Union complains that the process used in this case was not calculated to assure an objective result. It is true that no selection process other than one which consists of a written test calling for true or false answers to fairly formulated questions, or mathematical tests or tests of measureable speed or strength, can guarantee complete objectivity. A process which consists of interviews and the evaluation of experience, as did the instant one, is bound to involve some subjective judgments, conscious or otherwise. In this case some effort was made to avoid favoritism by addressing the same questions to each of the applicants, but of course, the evaluation of the answers to the questions was inevitably subjective. In addition, the applicants were first interviewed by a representative of the Personnel Department and were then interviewed by the Director of the program affected. It was testified that the reports of these interviews were available but neither of the parties showed any interest in putting them into the record. There were also some procedural foul-ups in the selection process but I find them to have been of no significance since the issue of

the relative qualifications of these two applicants is before me on the record in this proceeding. While the process can certainly stand improvement, the contract does not call for any particular selection process and the one used here was permissible under the contract. If it results in an unjustified selection the grievance procedure provides a review mechanism.

AWARD

The grievance is denied.

Dated at Cincinnati, Ohio
August 10, 1987


James C. Paradise
Arbitrator