

BEFORE THE ARBITRATOR

In the Matter of:

STATE OF OHIO, DEPARTMENT
OF REHABILITATION AND
CORRECTIONS

Grievance Nos. 87-821 & 87-822

and

OHIO HEALTH CARE EMPLOYEES
UNION, DISTRICT 1199

OPINION AND AWARD

This grievance arises by reason of the Employer's failure to promote the grievant to the position of Chaplain III.

RELEVANT CONTRACT PROVISIONS

§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.

This agreement supercedes Ohio Civil Service Laws and Rules regarding eligibility lists for promotions.

STATEMENT OF FACTS

The State of Ohio ("Employer") and Ohio Health Care Employees Union, District 1199 ("Union") are parties to a collective bargaining agreement effective June 12, 1986 through June 11, 1989 which covers, among others, certain employees working for the Ohio Department of Rehabilitation and Corrections ("DRC"). Among the employees in the bargaining unit is the grievant, Jerry Ferguson, who is employed as a Social Worker III at the Southern Ohio Correctional Facility ("SOCF") in Lucasville, Ohio.

In March, April and May of 1987 the grievant timely filed applications for three vacant Chaplain III positions within the DRC, two of which were at the Chillicothe Correctional Institution and the other at the SOCF. When the Employer posted these vacancies there were no formal minimum qualifications in existence for the position of Chaplain III. For reasons that are immaterial to the instant case, the previously established qualifications for a number of state government positions, including Chaplain III in the bargaining unit, had at that time been judicially determined to be invalid. Thus, at the time the vacancies in question were posted, the Employer was engaged in the necessarily time consuming process of developing revised qualifications for these positions.

Applications for each of the vacant Chaplain III positions were screened by a Chaplain Screening Committee. This Committee is made up as follows:

1. The superintendent of the institution where the vacancy exists.
2. The personnel officer of that institution.
3. The Employer's Deputy Superintendent of Programs.
4. The Employer's Administrator of Religious Services.
5. A minority pastor from the community.
6. One chaplain in state service other than the DRC.
7. Two chaplains from the DRC.
8. One representative from the Ohio Council of Churches.

As a result of each committees' evaluation of the applicants, the grievant was not granted an interview and was not selected to fill any of the vacant Chaplain III positions. The grievant timely filed two grievances challenging the Employer's failure to promote him to any of these vacancies, which were consolidated into a single set of proceedings. When the matter remained unresolved throughout the various steps of the contractual grievance procedure, the Union processed it to arbitration, and the parties have stipulated that the case is properly before the Arbitrator.

Other relevant facts were elicited in detail during the hearing. It is undisputed that the grievant is an ordained minister for the Free Will Baptist Church. The Union established that in the twenty-three years since his ordination the grievant has been the pastor of several churches, including some which he himself established for the Free Will Baptist Church. Throughout these years the grievant has worked

with admirable devotion to serve the spiritual and other needs of his community. It would be impractical to recite there the numerous pastoral accomplishments of the grievant. It suffices to say that in his work as a minister the grievant has gained substantial experience in a number of areas relevant to the position of chaplain, including religious rites and sacramental observations, religious education, pastoral counseling, working with and directing volunteers, working with community groups, all types of counseling, etc. In the course of his work as a licensed social worker for the Employer the grievant has, of course, gained much experience in working with inmate populations. The grievant has a Bachelor's Degree in religious education from the Ohio College of Theology and a Masters Degree in sociology from the Florida State Christian College. Finally, the grievant testified that he served as an interim chaplain at another state correctional institution for different periods totaling about six weeks from 1968 to 1973.

David Roger Schwarz, the DRC's Administrator of Religious Services, explained how the Chaplain III positions in question were filled. Schwarz testified that the above described Chaplain Screening Committees have been used by the Employer to fill chaplain positions in the DRC for fourteen years. According to Schwarz, these committees evaluate applications for chaplain vacancies pursuant to criteria established by the Employer in conjunction with chaplains already in state service, the Ohio Council of Churches, theological seminaries and other groups. Among these criteria, Schwarz explained, is the requirement that applicants have certain clinical pastoral education ("CPE") obtained from the Association for Clinical Pastoral Education, Inc. or similar organization. As described by the Association's 1978-1988 Directory:

CPE is theological and professional education for ministry. In CPE theological students, ordained clergy, members of religious orders, and qualified laypeople minister to people in crisis situations while being supervised. Out of intense involvement with supervisors, other students, people in crisis, and other professionals CPE students are challenged to improve the quality of their pastoral relationships. Through pastoral practice, written case studies and verbatims, individual supervision, seminar participation, and relevant reading students are encouraged to develop genuine caring pastoral relationships. Through viewing complicated life situations from different viewpoints students are able to gain new insights and understandings about the human situation. Theological reflection is important in CPE as pastoral people seek ways to integrate theology with life experience.

Schwarz related that since the 1940's CPE training has been an "industry Standard" qualification for institutional chaplains of all types across the nation. He explained that Employer's Chaplain Screening Committees have considered clinical pastoral education to be a minimum qualification for chaplains since 1974, and testified that the association of chaplains in state service, which includes bargaining unit members, has successfully sought to have CPE explicitly included among the recently established minimum qualifications for chaplains. Schwarz testified that the primary difference between a parish minister and an institutional chaplain is that the former deals almost exclusively with individuals of their own faith tradition while the latter deals with people from a wide range of religious denominations, and that this important difference is why CPE is required of the State's chaplains.

Schwarz further stated that when the Chaplain Screening Committee evaluated applications for the three chaplains positions at issue in this case, it numerically classified the applicants according to how well they meet the above-described criteria, and the highest applicants were given an interview. The Employer's decisions in filling the vacancies were based upon the recommendations of the Committee.

POSITIONS OF THE PARTIES

Union Argument

The Union contends that the grievant is qualified to fill the position of Chaplain III. It asserts that the grievant's education, his twenty-three years of experience as a minister with the Free Will Baptist Church, his community activities and his qualifications as a social worker for the Employer all give him the qualifications to be a chaplain for the Employer. The Union points out that much of the grievant's pastoral experience has included work with people of various faiths in institutional and group settings. The Union argues that at the time the grievant applied for the positions in question there were no formal qualifications posted. Because the grievant was the only applicant for the chaplain positions currently working for the Department of Rehabilitation and Corrections, the Union contends, the fact that he is at least minimally qualified should have won him one of the positions pursuant to the provisions of §28.02 of the contract.

Employer Argument

The Employer argues that the fact that at the time in question there were no formal qualifications for the position of Chaplain III does not mean that management could not insist on certain minimum qualifications for the position. It contends that management, guided by several interested groups from both inside and outside state employment, properly evaluated applicants for the chaplain positions at issue using a set of criteria which has been used to fill state chaplain positions since 1974. The Employer asserts that the requirement of clinical pastoral education was reasonably included among the minimum qualifications for the Chaplain III job and that

the grievant was properly determined to lack said minimum qualifications for the position.

DISCUSSION

It is undisputed that this controversy arose under an unusual set of circumstances, to-wit: there were no established formal minimum qualifications posted for the three Chaplain III vacancies in question. For reasons too involved to detail here, a number of bargaining unit positions were without formal minimum qualifications for an extended period of time. In the interim, the Employer had vacancies, such as these chaplain positions, that it had to fill. The instant dispute concerns the manner in which the Employer filled the Chaplain III vacancies under these circumstances.

Article 28 of the collective bargaining agreement contains an unusual modified seniority clause. Pursuant to §28.02, job vacancies are to be awarded in the following sequential manner: First, to the qualified applicant working at the facility where the vacancy exists. If no such applicant qualifies, then the job is awarded to the qualified applicant working in the state agency where the vacancy exists. If no such applicant qualifies, then the job is awarded to the qualified applicant working in the contractual bargaining unit (which encompasses a number of state agencies). If no such applicant qualifies, then a new employee qualified for the job may be hired. In determining applicant's suitability for a particular job, the Employer must review qualifications, experience, education and work record. Finally, where applicants within a given category of priority have relatively equal qualifications, the job is awarded to the applicant with the greatest state seniority.

The record establishes that the grievant was the only applicant for the chaplain job at SOCF working at that institution, and that only one other individual from within the Department of Rehabilitation and Corrections applied for any of the three vacant chaplain jobs within that agency. It is clear, then, that if the grievant is at least minimally qualified for the Chaplain III position, he should have been awarded one of the chaplain positions.

It is well recognized that absent contract language to the contrary, an employer has the authority to determine the qualifications for a particular position, so long as its determination is not arbitrary or unreasonable. See, Whirlpool Corp., 56 LA 40, 42 (Johannes, 1971) and Peabody Coal Co., 87 LA 758, 761 (Volz, 1985). This authority is derived from the Employer's inherent management rights. Id. In the instant case, it cannot be seriously argued that the lack of formally established qualifications for the Chaplain III position precluded the Employer from evaluating the qualifications of the applicants when filling this position. The questions to be answered in the instant case, therefore, are whether the Employer properly determined the reasonable minimum qualifications required of a Chaplain III and whether these qualifications were appropriately evaluated in the person of the grievant.

The record does not reflect what all of the criteria used by the Chaplain Screening Committee consisted of when it evaluated the grievant's application. There is no (b)out from the Union's exhaustive and thorough presentation that grievant is minimally qualified in all respects except the lack of clinical pastoral education. The testimony of Rev. Schwarz, however, indicates that the primary reason the grievant was considered unqualified for the Chaplain III position was that he lacked

clinical pastoral education. Schwarz explained that this type of training provides chaplains with the skills necessary to counsel and minister to large institutionalized populations of varying faiths. He also testified that clinical pastoral education obtained from the Association for Clinical Pastoral Education or a similar organization has been recognized for over forty years as an "industry standard" minimum qualification for chaplains across the country, in settings as diverse as hospitals, the military and correctional facilities. Thus, when the Employer's Chaplain Screening Committees, which include bargaining unit chaplains, have used the CPE requirement in filling chaplain vacancies since 1974, and when the association of state-employed chaplains has sought to have CPE explicitly included among the new formal qualifications for the chaplain position, it was not a new qualification created by these entities, but in fact reflected the longstanding nationally recognized standard for the chaplaincy in every type of institution. While it is true, as the Union argues, that the pastoral skills in question can probably be obtained in other ways, given the universal requirement of CPE for chaplaincy, the Employer was entitled to include this education as a minimum requirement. In light of this finding, then, it can be concluded that the Employer properly denied a chaplain's position to the grievant based on his lack of clinical pastoral education.

Because it is the Arbitrator's determination that the Employer could reasonably require applicants for the position of Chaplain III to have clinical pastoral education, it is not really necessary to consider the application of the remainder of the selection criteria used by the Employer to decide this grievance. Nonetheless, the Arbitrator feels compelled to note that the Union is correct in asserting that the procedure

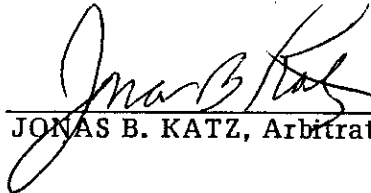
used by the Employer to fill the positions in question was contrary to the terms of the collective bargaining agreement. Rev. Schwarz testified that all the applicants were rated by the Chaplain Screening Committee on a numerical scale and that the highest scoring candidates were selected for interviews before a final determination was made. In doing so, the Committee selected as finalists the most qualified candidates from among all the applicants. Section 28.02 of the contract, however, gives priority to qualified applicants from the facility, the agency and the bargaining unit, in descending order. As explained above, this provision means that a minimally qualified applicant from within the facility where the vacancy exists will be awarded the job over a more qualified applicant from another location within the agency or bargaining unit. The evaluation of relative qualifications only comes into play when there are two or more qualified applicants from within a given category of priority. Finally, if two or more applicants from within said category are determined to have "relatively equal" qualifications, then the position is awarded on the basis of state seniority. The foregoing is the same interpretation of Article 28 found by Arbitrator Donald B. Leach in an arbitration opinion dated February 19, 1987 between the State of Ohio Department of Human Services and Ohio Health Care Employees Union, District 1199, submitted by the Union.

In short, the grievant should not have been eliminated from consideration for the chaplain jobs simply because he was not among the most qualified applicants. This is true even though this evaluation system has been in use for fourteen years. The clear terms of §28.02 of the contract override any binding effect the Committee's practice may have once had. However in the instant case, because the Arbitrator

has determined that the grievant lacks clinical pastoral education, and, therefore, does not possess the minimum qualifications for the Chaplain III position, the grievant has not been prejudiced by the improper procedure used by the Chaplain Screening Committee. In the future, of course, the Employer must give effect to the priorities contained in §28.02 of the agreement when filling vacancies.

AWARD

For all the aforementioned reasons, this grievance is denied.



JONAS B. KATZ, Arbitrator

Issued at Cincinnati, Hamilton County,
Ohio, this 29th day of August, 1988.