

BEFORE THE ARBITRATOR

#498

In the Matter of:

STATE OF OHIO
OFFICE OF COLLECTIVE
BARGAINING

Case Nos.
17-00(01-08-90)-0001-02-12
17-00(89-12-29)-0093-02-12

and

DISTRICT 1199, SEIU

OPINION AND AWARD

This arbitration arises by reason of the granting of the position of Industrial Reemployment Specialist, Toledo District office, to employee Helen V. Beck, whose seniority (10/21/79) was less than to other applicants, Dennis McMickens (2/22/69) and Linda Wentling (6/26/77).

In the 1986-89 collective bargaining agreement between the parties, Section 28.02, Awarding the Job (Transfers and Promotions), read in part as follows:

... 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.

The present Section 30.02, Awarding the Job (Transfers and Promotions), reads in part as follows:

... All timely filed applications shall be reviewed considering the following criteria: qualifications, experience, education, and work record, and

affirmative action. 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.

POSITIONS OF THE PARTIES

Union Position

It is the Union's position that applicant McMickens, who was the most senior of the three applications in question, should be award the position on the basis of seniority. In the alternative, it appears that the Union's position is that if McMickens is not entitled to the award, then Wentling should be selected since she has greater seniority than Beck.

State Position

The State's position is that based on the criteria set forth in the contract, it properly concluded that employee Beck was significantly mor qualified than McMickens and Wentling for the position.

FACTS

It appears from the evidence that while McMickens has considerably more seniority than the other two applicants, he does not have the educational background of either. He does not have a college degree, although he had three years of college in speech-communications and nine years and five months as an Industrial Rehabilitation Counselor. Beck has a Masters

Degree in rehabilitation counseling from Bowling Green University and Wentling has a Masters Degree in education, guidance and counseling, a PHD in educational technology, group counseling and business administration, and five and a half years seniority as an Industrial Rehabilitation Counselor.

The job was awarded to applicant Beck, who had less seniority than both McMickens and Wentling, on the basis of the fact that she has a Masters Degree in rehabilitation counseling from Bowling Green University, whose program is accredited by the national body on rehabilitation counseling, and that she had more seniority on the present job of Industrial Rehabilitation Counselor than Wentling and an equal amount of seniority as an Industrial Rehabilitation Counselor as McMickens. In addition, Ms. Beck was at the time of the interview, a certified rehabilitation counselor since 1982 and a licensed professional counselor; whereas Ms. wentling at that time was not a certified rehabilitation counselor, but was subsequently so certified.

Ms. Wentling's presentation was certainly impressive. She contended that certain aspects of her training directly related to rehabilitation counseling was not considered in that light in determining her relative qualifications. In addition, it was her contention, and that of the Union, that the

qualifications for the job have not been consistently applied and that other persons in the State holding the position of Industrial Rehabilitation Counselor have far less qualifications than she.

DISCUSSION

The Union has made a very cogent argument that the persons presently holding the position of Industrial Rehabilitation Specialists do not have the qualifications of McMickens, Wentling and/or Beck. It has introduced into evidence the summary of experience and education of those who presently hold the specialist classification. While I agree with the Union that the other specialists may not have the qualifications of McMickens, Wentling or Beck, those comparative qualifications are not germane to this issue. I can only assume that the recent appointment of consultants to specialists was based on the relative merit of those who were applying for the position. In this case, I am required not to compare the applicants with other existing specialists, but to compare the qualifications of those who applied for the position in question. If the present specialists were not specialists and were bidding against those seeking the position in question, I would have no trouble finding some, or all, of the present applicants significantly more qualified. However, that is not the case.

In this case, I must determine the relative qualifications among the three remaining applicants, McMickens, Beck and Wentling.

In the light of all the foregoing, I do not believe that employee McMickens is entitled to the job by reason of his seniority. His experience as an Industrial Rehabilitation Counselor is the same as that of employee Beck, but his educational qualifications are significantly less than that of both Wentling and Beck. Therefore, on that basis, I cannot find that the Agency was unreasonable in determining that others were significantly more qualified.¹

As to Beck and Wentling, the comparison is, of course, much closer. While I give full credence to the fact that Wentling's education in general and in most subjects is related to the position in question and that she is, in comparison to others holding that position through the State, significantly more qualified, I cannot find that the State was unreasonable in determining Beck to be significantly more qualified based upon her Masters Degree in the directly related subject of rehabilitation counseling from a university with a nationally accredit program, her greater experience as an Industrial

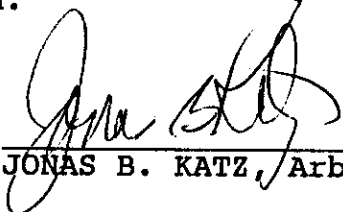
¹ There is testimony in the record that the new director is placing greater emphasis on educational qualifications.

Rehabilitation Counselor and the fact that she has been certified since 1982 .

Although I have found in this case that Ms. Beck's selection as being significantly more qualified was not unreasonable, I must observe that Ms. Wentling's qualifications are substantial. I, therefore, believe that should another vacancy occur in any other facility, her application must be given prime consideration on a state-wide basis under Section 28.02.

AWARD

The grievances are denied.



JONAS B. KATZ, Arbitrator

Issued at Cincinnati, Hamilton County,
Ohio, this 5th day of October, 1990.