

BEFORE THE ARBITRATOR

In the Matter of:

STATE OF OHIO, DEPARTMENT OF
HUMAN SERVICES AND

and

OHIO HEALTH CARE EMPLOYEES
UNION, DISTRICT 1199

GRIEVANCE OF
MARILYN WEAVER

#708
16-00-900105-0002-02-12

DECISION AND AWARD

This grievance arises by reason of the failure of the Ohio Department of Human Services to promote the grievant, Marilyn Weaver, to the job of Social Program Developer.

In September of 1989 the ODHS posted for bid two positions of Social Program Developer. Three of those bidding were undisputedly qualified for the job, to wit: Joel Fisher, Mary Carol Shelton and the grievant, Marilyn Weaver. The significant and material qualifications of each is as follows:

Joel Fisher.

- A. A Bachelor of Arts degree in Sociology
- B. Sixteen previous years in state employment; however, only two years of seniority as a result of a break in his state employment.
- C. Held the position of SP Developer in Medicaid Policy for two years.
- D. For the past two years has been a Social Program Analyst II (SPA II) in Medicaid.

Mary Carol Shelton

- A. Six months, Bliss College, shorthand and mathematics
- B. Two years in Primary Alternate Care and Treatment Unit (PACT) as an SPA II.

- C. Sixteen years of service, mostly related to Medicaid, including eight years as an SPA I in the Bureau of Medical Operations.

Marilyn Weaver

- A. One year in post high school education at Career College to be a medical receptionist.
- B. The most senior employee with more than sixteen years of service.
- C. Ten years as an SPA I in the Bureau of Child Support.
- D. Fifteen months as an SPA II in the PACT Unit.
- E. Approximately five years as a clerk typist in the Unit of Nursing Home Certification in the Bureau of Medical Operations.

Generally speaking, the work of all SPA IIs is to monitor medical providers to the Medicaid program to determine if providers are following regulations and/or abusing the program and to arrange for hearings where it appears that there is abuse. In this respect, Ms. Shelton and Ms. Weaver are performing essentially the same work in their present positions. Shelton's experience as an SPA I in the Bureau of Medical Operations, among other things, consisted conducting reviews of prior authorizations of dental providers to Medicaid, and also involves familiarity with certain Medicaid terms and policies. On the other hand, Weaver's ten years as SPA I in Child Support Enforcement and in Public Assistance required her to be familiar with the rules and policies of that agency with respect to collecting from parents who are not paying child support.

While there are other facts relating to employees' experience and work record, I believe the foregoing will suffice for the purposes of resolving this dispute.

Contract Provisions

The present collective bargaining agreement, entered into June, 1989, provides in pertinent part as follows:

§30.03 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, 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. (Emphasis supplied)

The language of the prior agreement with respect to job bids was 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. (Emphasis supplied)

Discussion

At the outset, without belaboring the point, it is clear that applicant Joel Fisher was entitled to one of the vacancies, because he was "significantly" more qualified by reason of his college degree and the fact that he had previously performed the job to which he was now bidding for two and a half years and was at present an SPA II for two years.

The question remaining is whether or not Shelton, with slightly less seniority than Weaver, was significantly more

qualified and therefore entitled to the position above Weaver. When all is said and done about the two applicants, Weaver and Shelton, the criteria which influenced ODHS to select Shelton were education and experience.

In respect to the criteria of education, Ms. Shelton had six months of training at Bliss College as a court reporting/ business math major from January, 1973 to June, 1973.¹ Miss Weaver, post high school, took course work at Columbia Career College to be a medical receptionist. The Arbitrator fails to see that a six month attendance at Bliss College in 1973 in an unrelated business course is of any more significant value in assessing relative qualifications than Ms. Weaver's post high school work. Neither would appear to be of any significant value in determining qualifications. Certainly, one is not significantly greater than the other.

In view of the foregoing, it appears that the sole determining factor in selecting Ms. Shelton over Ms. Weaver was her experience in the Medicaid related jobs, because the SP Developer's job also related to Medicaid and Medicare in terms, policies and regulations. This factor could have been a recognizable difference in accordance with the prior language of the contract which permitted the award of a job to a less senior employee if the qualifications were not "relatively equal." However, under the present language, the criteria is more heavily weighted to

¹See Resume of Shelton. She did not have one year of college as testified to at the Hearing.

seniority, since a junior employee must now be "significantly more qualified." The question, therefore, is, does Ms. Shelton's longer experience with Medicaid make her significantly more qualified.

The arbitrator is of the opinion that to be significantly more qualified may not necessarily be a matter of numbers - two years in one position, ten years in another, three years in another. The numbers of years experience is only significant when measured by the requirements of the job. For example, if it takes one year to become proficient in making a widget, any greater experience is superfluous and immaterial. The ten-year widget maker is no more qualified than the one-year widget maker. The arbitrator believes that this rationale is applicable to the instant case.

It is true that Ms. Shelton had more years of experience in Medicaid-related positions. Ms. Shelton was familiar with and implemented policy in the Bureau of Medical Operations. Ms. Weaver was familiar with and implemented policy and regulations in the Bureau of Child Support. Both, therefore, were equally knowledgeable in policy making and implementing same, also concededly in different subject matter areas. What, however, seems to be amiss in the ODHS determination is the acceptance of the fact that both employees were satisfactorily performing the identical job of SPA II relating to the very same subject matter, without any deficiencies by reason of unfamiliarity with Medicaid rules and regulations or a lack of understanding of same.² It is true Ms.

²It should be noted that the comparative chart (prepared by the ODHS for the employee summary) omits any mention of Ms. Weaver's SPA II classification.

Shelton worked some months longer at the job, but nothing presented to the arbitrator indicates that work performance of one was significantly better.³ The evidence also seems to indicate that the significant difference between the jobs that both applicants held at the time of the bid and the job they were applying for was planning and developing program policy with respect to the same subject matter that they were required to deal with as SPA IIs in the PACT unit. The testimony of Ms. Lang in this respect is significant.

Arbitrator. What is the -- putting all this job description business aside, what is the biggest difference between the job they held and the job they were bidding for.

A. The job they were bidding for, they would be responsible for planning and developing program policy for the PACT program.

Arbitrator. Now, tell me what that means.

A. That means that they have to analyze the policy that is already in place, make sure that it's in compliance with the federal regulations, in other words, they have to interpret the federal regulations, and make sure that the state is in compliance and then how we can improve that program and make it better and develop new policy.

Arbitrator. Okay. So the recent experience of all three applicants in that respect and their exposure to the Medicaid program would have been the same given the jobs that they had at that time. Correct?

A. Given the jobs that they currently had; however, Mr. Fisher did have experience in writing policy prior to his resignation. (Emphasis supplied)

...

Arbitrator. Now, then you add to that in Mr. Fisher's case

³While it was noted by Miss Lang that Ms. Shelton's review exceeded Ms. Weaver's, the testimony of Mr. Ferguson establishes that the work performance was not a factor in this selection.

the fact that he was a two and a half year -- that he had two and a half years of prior service doing the exact job which he was bidding for, correct?

A. Yes.

Arbitrator. And in Ms. Shelton's case, what was it that she had that was greater in experience related to the new job.

A. Okay. Her experience as a Social Program Analyst when she was in the Bureau of Medical Operations, she would have had to interpret Medicaid policy from the provider's standpoint and the recipient's standpoint. She would have had to make sure that anything that she authorized was in compliance with the State regulations for the Medicaid program.

Arbitrator. Wasn't that also true of the three applicants in their present position?

A. Yes, in their present position. What I'm saying is that Ms. Shelton had a few more years experience in doing that.

Arbitrator. There was no complaint about Ms. Weaver's ability to do that, though, was there?

A. No.

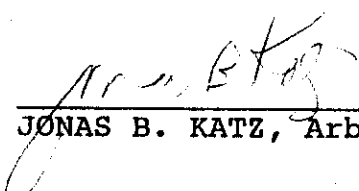
In light of the fact that Ms. Weaver's and Ms. Shelton's current exposure to the Medicaid program qualified each to perform the work, and since neither Ms. Shelton nor Ms. Weaver, unlike Mr. Fisher, had experience in writing, planning and developing policy, I do not believe that Ms. Shelton was significantly more qualified to do the additional work of the job description, namely, planning and developing policy, than Ms. Weaver.

I have reached this conclusion based upon what I believe is the aforementioned highly significant change in the language of the present contract. Mere reliance on numbers alone, without more, does not make a person significantly more qualified. While the ODHS has relied upon that generality that more experience alone

equates to significantly more qualified, there is no evidence in the record of what specific experience or knowledge Ms. Shelton had as a result of her prior activity as an SPA I that was necessary to perform the SPD's job. The evidence in the record indicates that the subject matter of both applicants as SPA IIs was the subject matter which they would be dealing with as an SPD. The significant difference in the job is the planning and developing of policy. Neither party had any prior experience or qualifications in that respect. Therefore, I believe that the ODHS violated the contract in awarding the job to Ms. Shelton. This is particularly true, when we consider that the contract has a six-month probationary period, and the testimony indicated that whoever received the job, Ms. Shelton, Ms. Weaver or Mr. Fisher, would undergo on the job training under Ms. Lang's supervision during the probationary period.

Award

In view of the foregoing, the arbitrator directs that Marilyn Weaver be placed on the job of a Social Program Developer as a probationary employee and that if she completes her probationary period satisfactorily, she is to receive as back wages the difference between the pay she received as an SPA II and the pay of a Social Program Developer, retroactive to the date of the awarding of the job to Ms. Shelton.



JONAS B. KATZ, Arbitrator

Issued at Cincinnati, Ohio
this 19th day of December, 1991