

# 777

STATE OF OHIO  
LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration Between:

State of Ohio	)	Case Nos. 34-02-910313-0047-02-12
Bureau of Workers'	)	34-02-910313-0048-02-12
Compensation	)	34-02-910321-0055-02-12
	)	
and	)	Margaret Nancy Johnson
	)	Arbitrator
	)	
District 1199	)	
Ohio Health Care	)	<u>OPINION AND AWARD</u>
Employees Union	)	<u>GRIEVANCES OF</u>
National Union of Hospital	)	<u>SUSAN WOOLLARD, et al.</u>
and Health Care Employees	)	
SEIU, AFL-CIO	)	

This matter came on for hearing on March 16, 1992, in a conference room at the Walker Rehabilitation Center in Cleveland, Ohio, before Margaret Nancy Johnson, the impartial arbitrator selected in accordance with the terms of the Agreement.

The case for the Union was argued by Maria Margevicius, organizer. Also present on behalf of the Union were Susan Woollard, Herman Scott, and Gayle Hutzell, Grievants; and Daneen Walker, Union delegate.

The case for the Agency was presented by Gretchen Green, Advocate, assisted by Robert Thornton.

The parties stipulated that the matter was properly before the Arbitrator for a final and binding decision. Post hearing briefs were filed by both parties which together with the documents submitted into evidence and this opinion and award constitute the entire record of the proceedings.

### GRIEVANCES

The three grievances consolidated for hearing in this matter each protest the consideration given to applicants for a posted job vacancy in the Industrial Rehabilitation Case Management Specialist classification. The grievance of Susan Woollard reads as follows:

Grievant is qualified but was denied meeting the minimum qualifications for PCN 16669.0, 16678.0, 16670.0 - Industrial Rehab. Case Mgmt. Specialist, which is in violation of the contract, including Articles 30 and 34.

The grievances filed on behalf of Scott Herman and Gayle Hutzell recite the same contract violation.

A Level III Hearing for each grievance was held on April 22, 1991. The Agency findings for two of the grievances are set forth hereinafter:

I fail to find a contract violation. Although the grievant gave evidence of her qualifications at the grievance meeting, the documentation was not submitted at the time of application or later when she received her denial letter, Human Resources made an appropriate review based on the available information. Certainly when applying for future Industrial Rehabilitation Case Management Specialist positions, the grievant should provide a complete description and equivalent evidence of the major worker characteristics so a proper determination regarding qualifications can be made.

The union's remedy can not be considered. Management has ceased all hiring activity within the Rehabilitation Division due to budgetary concerns and there are no current plans to fill the vacant positions. Management retains the right to determine appropriate staffing needs.

After reviewing the information and testimony provided, I am denying the grievance in its entirety.

The response to the grievance of Susan Woollard differs and it appears as follows:

I want to note at this time that management offered a written settlement agreement to the grievant indicating that she would be "considered and interviewed for the next posted Industrial Rehabilitation Case Management Specialist vacancy for which she submits the proper application." However, the grievant did not accept the agreement.

I fail to find a contract violation. At the time of application, the grievant did not specify or document her completion of the necessary graduate core coursework. When the additional information was submitted, management had ceased all hiring activity within the Rehabilitation Division due to budgetary concerns and there are no current plans to fill the vacant positions. Management retains the right to determine appropriate staffing needs.

After reviewing the information and testimony provided, I am denying the grievance in its entirety.

#### ISSUE

The issue in this case may be stated thusly. Did the Agency violate the term of the Agreement between the parties when it determined the grievants had failed to meet the qualifications established by the Agency for the position of Industrial Rehabilitation Case Management Specialist and, if so, to what remedy, if any, are the grievants entitled?

systems of rehabilitation, (2) planning, implementation & evaluation of services, (3) legislation, ethics & professional conduct, (4) human development & behavior, (5) aspects of disabling conditions, (6) analysis, synthesis & utilization of rehabilitation research & theoretical information, (7) overview of disability compensation systems, (8) structure and process of disability compensation systems, (9) professional terminology, (10) insurance rehabilitation case management, (11) gathering, synthesizing & dissemination of information, (12) forensic rehabilitation; departmental policies, procedures, expectations & goals affecting case management of services to workers who are industrially injured, disabled or diseased; interviewing\*; public relations\*. Ability to obtain & assess medical & vocational data affecting capabilities of claimants & plan & implement vocational & rehabilitation plans suitable for claimants to obtain gainful employment; prepare & maintain all case management reports & forms; handle sensitive inquiries from & contracts with physicians, employers, unions & claimants & their families; prepare & deliver speeches before technical & general audiences. \*developed after employment

The minimum qualifications for the position are also set forth in the job specifications as follows:

Minimum qualifications include:

Completion of graduate major core coursework in rehabilitation counseling; valid drivers license;

- Or Completion of graduate major core coursework in rehabilitation counseling, nursing or comparable field or nursing which must have included knowledge of at least seven of following areas: (1) history & systems of rehabilitation, (2) planning, implementation & evaluation of services, (3) legislation, ethics & professional conduct, (4) human development & behavior, (5) aspects of disabling conditions, (6) analysis, synthesis & utilization of rehabilitation research & theoretical information, (7) overview of disability compensation systems, (8) structure & process of disability compensation systems, (9) professional terminology, (10) insurance rehabilitation case management, (11) gathering, synthesizing & dissemination of information, (12) forensic rehabilitation; valid driver's license.

- Or valid certification as Certified Rehabilitation Counselor or Certified Insurance Rehabilitation Specialist as issued by Commission on Rehabilitation

Counselor Certification, or valid licensure as Licensed Professional Counselor as issued by Ohio Counselor & Social Worker Board or Licensure as Certified Rehabilitation Registered Nurse as issued by appropriate body, or valid licensure as Registered Nurse & 12 mos. exp. in rehabilitation; valid driver's license.

- Or alternative, equivalent evidence of the Major Worker Characteristics noted above may be substituted for the experience requirements, but not for the mandated certification or licensure.

On February 11, 1991, the Agency posted a vacancy, one of several, in the Case Management Specialist classification for bid pursuant to the requirements of Article 30 of the Collective Bargaining Agreement. The posting (Union Exhibit 2) included the job duties, major worker characteristics and minimum qualifications as cited above. The three grievants in this proceeding each bid on at least one of the Case Manager positions using the Internal Job Application form provided by the Agency.

Grievant Susan Woollard applied for three of the vacancies (Union Exhibits 3a, b, c). At the time of her applications, grievant Woollard held the job title of Industrial Vocational Evaluator, a job title she had held for approximately one and one-half years. In her application, Ms. Woollard set forth her prior work experience. For her educational training wherein the applicant is to list specific graduate coursework relating to the job duties, Ms. Woollard listed her graduate coursework at the Kent State University Graduate Rehabilitation Counseling Program. These included the following:

- 1) Introduction to Rehabilitation (history and systems of rehabilitation legislation, ethics, and professional conduct;
- 2) Occupational Aspects of Rehabilitation and professional conduct;
- 3) Medical Information Rehabilitation planning, implementation and evaluation of services; forensic rehabilitation, gathering, synthesizing, and dissemination of information; aspects of disabling conditions; overview of disability compensation systems; human development and behavior re:
- 4) Measurement and Appraisal
- 5) Psychological Aspects of Disability
- 6) Introduction to Counselling Theory
- 7) Individual Counselling Procedures
- 8) Psychiatric and Drug Rehabilitation counselling methods; professional terminology)
- 9) Research in Rehabilitation

In response to the application request to specify "how you meet the minimum qualification for this position," the grievant replied, "I possess the majority of major work characteristics as listed for this job posting by virtue of my previous work experience in industrial rehabilitation and the specific knowledge gained from my coursework in Rehabilitation counselling."

On February 26, 1991, pursuant to a phone conversation with Human Resources on the preceding day, Grievant Woollard faxed additional information on her graduate coursework (Union Exhibit 4). This information included the course titles and the specific job qualifications covered thereby.

On March 1, 1991, Grievant Woollard was issued a denial letter (Union Exhibit 1). In its letter the Agency explained the reason for the denial as follows:

Thank you for applying for PCN 16669.0, 16678.0, 16670.0 - Industrial Rehab Case Management Specialist positions in the Cleveland Field Office.

The Office of Human Resources has reviewed your application and determined that you do not meet the necessary minimum qualifications to be granted an interview

for these positions. This determination was based on the minimum qualifications in the Ohio Classification Specifications and done in accordance with pre-screening procedures.

You do not meet the minimum qualifications in the following area(s):

-Completion of graduate major core coursework in rehabilitation counseling, nursing or comparable field or nursing which must have included knowledge of at least seven of the following areas: (1) history & systems of rehabilitation, (2) planning, implementation & evaluation of services, (3) legislation, ethics & professional conduct, (4) human development & behavior, (5) aspects of disabling conditions, (6) analysis, synthesis & utilization of rehabilitation research & theoretical information, (7) overview of disability compensation systems, (8) structure & process of disability compensation systems, (9) professional terminology, (10) insurance rehabilitation case management, (11) gathering, synthesizing & dissemination of information, (12) forensic rehabilitation; valid driver's license.

-Or valid certification as Certified Rehabilitation Counselor or Certified Insurance Rehabilitation Specialist as issued by Commission of Rehabilitation Counselor Certification or valid licensure as Licensed Professional Counselor as issued by Ohio Counselor & Social Worker Board or Licensure as Certified Rehabilitation Registered Nurse as issued by appropriate body, or valid licensure as Registered Nurse & 12 months experience in rehabilitation; valid driver's license.

Thank you for your interest in this position and we hope you will continue to apply for other posted vacancies for which you are qualified. Should you have any questions regarding this matter, please contact me at 466-7080.

Upon receipt of this letter the grievance of Ms. Woollard was filed. Thereafter, on March 13, 1991, Ms. Woollard submitted additional coursework information which included the course number, catalogue description, completion date and the minimum job qualifications satisfied by the coursework (Union Exhibit 5).

On April 30, 1991, a Grievance Settlement Agreement specifically denying liability in the alleged contract violation but offering consideration and an interview for the next posted Case Management vacancy was offered by the Agency (Union Exhibit 8). The settlement was rejected by Ms. Woollard for the following reasons:

The settlement does not specifically state that I meet the minimum qualifications for the Industrial Case Management Specialist positions previously posted. The statement fails to address that I was erroneously denied the opportunity to interview for the original positions posted (PCN 16669.0, 16678.0, 16670.0), when I had in fact submitted a proper application with the requested addendum specifying qualifying information.

I seek an agreement which states my qualification for the position of Industrial Case Management Specialist and ensures that an interview will be granted following the formality of my filing applications for the new postings. Additionally, I seek management's written guarantee that I will not be denied the opportunity to be interviewed based on Human Resources' failure to be able to correctly interpret my application as meeting the stated minimum qualifications for Industrial Case Management Specialist.

I do not accept paragraphs 2 and 3 for the reason that I choose not to exclude myself from the possibility of pursuing arbitration should I find myself denied eligibility for this position in the future.

The grievance of Ms. Woollard was considered at an April 22, 1991 Level III hearing. The response of the hearing officer (Joint Exhibit 2) denying the grievance of Ms. Woollard follows:

I want to note at this time that management offered a written settlement agreement to the grievant indicating that she would be "considered and interviewed for the next posted Industrial Rehabilitation Case Management Specialist vacancy for which she submits the proper application." However, the grievant did not accept the agreement.



I fail to find a contract violation. At the time of application, the grievant did not specify or document her completion of the necessary graduate core coursework. When the additional information was submitted, management had ceased all hiring activity within the Rehabilitation Division due to budgetary concerns and there are no current plans to fill the vacant positions. Management retains the right to determine appropriate staffing needs.

After reviewing the information and testimony provided, I am denying the grievance in its entirety.

The Step 4 Response of the Office of Collective Bargaining, dated June 6, 1991, appears below:

Your grievance arises from the contention that the management staff of the Ohio Bureau of Workers' Compensation (BWC) has violated the terms of Section 30.02 of our labor agreement. You allege that BWC failed to properly award a job as Industrial Rehabilitation Case Management Specialist.

Article 5 of our current labor agreement reserves to the BWC the right to determine the size of its work force. After having posted notice of a vacancy in the above-mentioned job classification, the BWC ceased all hiring due to budgetary constraints. The decision was made to continue operations without adding another Case Management Specialist.

For the reasons stated above, as well as for those reasons recited at earlier steps of the grievance procedure, your grievance is denied.

Grievant Herman Scott transferred to the Agency where he has worked since September 1989 as a Career Counselor. Prior to his employment with the Agency, the grievant worked with the Bureau of Vocational Rehabilitation. Grievant Scott also applied for an Industrial Rehabilitation Case Management Specialist position (Joint Exhibit 9). In his application Grievant Scott indicated that he met the minimum qualifications for the position by reason of the formal training he had received through the Ohio

Rehabilitation Services Commission. The topics covered in the coursework included:

1. history and systems of rehabilitation
2. professional terminology
3. aspects of disability conditions
4. legislation, ethics and professional conduct
5. analysis and utilization of rehabilitation research
6. researching, synthesizing and dissemination of information
7. planning, implementing and evaluating services.

Grievant Scott stated his grade for the training was 95+. He then specified courses completed in graduate and undergraduate school. These were:

Human Development  
Interviewing and Counselling Skills  
Statistics  
Test Construction  
Administration and Interpretation  
Theories of Learning  
Theories of Personalities  
Job Analysis and Compensation  
Report Writing  
Writing Business Letters  
Abnormal Psychology  
Inservice Training

Mr. Scott testified that he had an undergraduate degree in Psychology and a masters degree in Business Administration. In addition, he had 120 hours in training in the field of psychology. The training included coursework covering legislation, human development and behavior, aspects of disability conditions.

On March 1, 1991, the grievant was issued a letter indicating the grievant failed to meet the minimum qualifications for the position of Case Manager (Union Exhibit 10). He grieved this determination on March 7, 1991. The Hearing Officer's Level III response to the grievance states:

I fail to find a contract violation. Although the grievant gave evidence of his qualifications at the grievance meeting, the documentation was not submitted at the time of application or later when he received his denial letter, Human Resources made an appropriate review based on the available information. Certainly when applying for future Industrial Rehabilitation Case Management Specialist positions, the grievant should provide a complete description and equivalent evidence of the major worker characteristics so a proper determination regarding qualifications can be made.

The union's remedy can not be considered. Management has ceased all hiring activity within the Rehabilitation Division due to budgetary concerns and there are no current plans to fill the vacant positions. Management retains the right to determine appropriate staffing needs.

After reviewing the information and testimony provided, I am denying the grievance in its entirety.

The third grievant in the proceeding is Gayle Hutzell. She has been with the Agency for two years and presently holds the position of Vocational Evaluator II, the job held at the time of her job bid. Prior to her employment with the Agency she was a Vocational Evaluator in Nashville with Vocational Guidance Services. Her job duties there were comparable to job duties she currently performs.

Grievant Hutzell testified that she applied for each of the seven Case Management positions posted for bid and that she received seven denial letters from the Agency. The application of Ms. Hutzell (Union Exhibit 11) sets forth her education and training relating to the duties of the position. With almost five years of actual work experience in Rehabilitation, the grievant indicated on her application that she met the equivalency of the master's degree. At the Arbitration hearing, Ms.

Hutzell testified that her work experience covered seven of the major worker characteristics. These were listed as planning, implementation and evaluation of services; human development and behavior; aspects of disabling conditions; analysis, synthesis and utilization of rehabilitation research; professional terminology; gathering, synthesizing and dissemination of information.

The denial letters received by Grievant Hutzell stated she failed to meet minimum qualifications. Following the third step hearing on the grievance concerning the Agency action on the application, the hearing officer stated as in the case of Grievant Scott, that grievant may have been qualified but that the Agency had ceased hiring. Additionally, the Agency stated that the grievant had failed to present sufficient evidence of qualifications at the time of application.

Gretchen Green, Labor Relations Officer for the Industrial Commission, provided testimony on behalf of the Agency. She testified that a pre-screening of the applications of the three grievants in this case failed to establish the applicants met the minimum qualifications for the position in issue. The job posting stated specifically that completion of graduate major core coursework in rehabilitation counseling in identified areas was a prerequisite. Ms. Green testified that in pre-screening Grievant Woollard's application, personnel was unable to discern the completion of the coursework listed by Grievant Woollard. She further stated that equivalency experience to satisfy the minimum qualifications had to be identified by the applicant and

that the applications of Grievants Herman and Hutzell had failed to do so.

Ms. Green provided testimony as to the reorganization and freezing of hiring within the Agency. A decision had been made around the time of the Level III hearing in April, 1991, not to fill present vacancies. Thereafter, vacancies in Case Management were posted and subsequently filled by the Agency.

On June 11, 1991, the Agency issued promotion letters to two employees, with an effective date of June 16, 1991 (Union Exhibits 7 and 8). The positions thereby awarded were Industrial Rehabilitation Case Management Specialist (PCN 16669.0 and PCN 16670.0), as applied for by the Grievants Hutzell and Woollard.

The denial of the Agency to recognize the alleged minimum qualifications of the grievants for the February postings are at issue in this proceeding. The three grievants contend the finding of the Agency that the applicants failed to satisfy the minimum qualifications was in error.

#### POSITION OF THE UNION

The Union maintains the testimony and evidence presented by the witnesses established the minimum qualifications of each grievant for the position of Case Management Specialist. In the case of Grievant Woollard, the job bid submitted clearly sets forth the graduate major core coursework completed by Woollard. Addendums submitted subsequently provided further detail on the completed coursework. The documentation of the qualifications of

Grievant Woollard unequivocally established her qualifications for a posted vacancy.

Grievant Scott met the minimum qualifications through his alternative equivalent experience. Through his job duties in Rehabilitation Counseling, Grievant Scott satisfies the requisite knowledge in seven (7) out of twelve (12) areas. His application specifically identifies those major worker characteristics which he had acquired through direct, first-hand experience. In addition, Grievant Scott has had extensive formal training in the required areas.

Grievant Hutzell similarly identified alternative equivalent evidence for at least seven (7) of the major worker characteristics. She provided this information on her application for the vacancies in the Case Manager classification. The testimony elicited at the hearing reinforces the contention that Grievant Hutzell met the requirements of the job.

All three grievants in this proceeding met the minimum qualifications, a fact acknowledged by the Agency in the course of the grievance proceedings. The assertion made by the Agency that it had stopped hiring due to budgetary constraints is blatantly not true. Promotion letters filling two of the posted positions demonstrate the falsity of this assertion.

As the grievants each met the minimum qualifications they were improperly eliminated from consideration. Having met the minimum qualifications, the grievants were entitled to consideration for the positions pursuant to Article 30 of the Collective

Bargaining Agreement. As a remedy, the grievants are entitled to appointment to a Case Manager position and compensation for lost wages retroactive to June 16, 1991.

The grievances should be sustained.

#### POSITION OF THE AGENCY

The Agency maintains that its action in this case did not constitute a contract violation. The consideration given to the applications of the grievants was consistent with acceptable professional standards and with contractual requirements. There was no contract infringement in this matter.

A determination as to employee qualifications is a most basic managerial prerogative. It is the employer that must identify job requirements. Similarly, it is the employer that reviews and considers the qualifications of job applicants for vacancies within the organization. The judgment of a third party ought not to be substituted for that of management.

Moreover, in reviewing the qualifications of the grievants herein, the Arbitrator is limited to a review of the information available to the Agency at the time of the job bid. It is inappropriate for the Arbitrator to consider information received subsequent to the determinations which are challenged herein. Any qualifications which an applicant may possess but failed to state on the application cannot be introduced subsequent to a decision having been made. Such a procedure would seriously impede efficiency in filling jobs.

Having failed to demonstrate minimum qualifications on their job applications, the grievants were properly eliminated. The decision made by management ought not to be set aside by a de novo review.

The grievants herein did not have the requisite major worker characteristics to qualify <sup>for</sup> the jobs in question. Grievant Woollard failed to establish completion of the required coursework. Grievants Hutzell and Scott failed to demonstrate evidence of alternative equivalency. The decision made by management in regard to the minimum qualifications of these applicants was reasonable and proper. There was no abuse of discretion in this matter. Accordingly, the decision of the employer must be affirmed.

The grievances should be denied.

#### DECISION

The three grievants in this proceeding each applied for posted vacancies in the Industrial Rehabilitation Case Management Specialist job classification. The applications were denied because the grievants allegedly failed to "meet the necessary minimum qualifications." It is this managerial determination that gives rise to the grievances consolidated for hearing in this case.

The contract provision deemed applicable herein is Article 30.02. The parties have negotiated language which provides that "all timely filed applications shall be reviewed considering the



following criteria: qualifications, . . ." The Union maintains that the Agency failed to give proper consideration to the qualifications of the grievants. The Agency, on the other hand, contends that the applications of the grievants were properly reviewed and a decision was reasonably made that the grievants each lacked the minimum prerequisites.

The minimum qualifications for the position of Case Manager were included on the job postings. These included:

completion of graduate major core coursework in rehabilitation counseling, nursing or comparable field of nursing which must have included knowledge of at least seven (7) of twelve enumerated areas.

In lieu of graduate coursework the applicant could satisfy requirements by holding a "valid certification . . . or valid licensure . . . and 12 months experience in rehabilitation . . ."

As an alternative to the twelve months experience in rehabilitation, the applicant could substitute "equivalent evidence of major worker characteristics." Such equivalent evidence, however, could not be substituted "for the mandated certification or licensure." The Arbitrator finds, then, that to satisfy the minimum qualifications, the applicant either had to have completed specific graduate coursework in rehabilitation or nursing, or had to have a specified license or certification.

The question posed by these grievances is whether the Agency reasonably reviewed the qualifications of the aggrieved applicants. In the denial letters issued to each grievant management stated the applicants lacked the requisite minimum

qualifications. Clearly a determination as to applicant qualifications is a managerial prerogative. There is no authority for an Arbitrator to substitute his or her judgment for that of management in such a matter. However, it is the province of the Arbitrator to ensure that managerial discretion is appropriately exercised. Arbitral review is a proper mechanism for redressing managerial action lacking in reason. Thus, the three grievances now pending are analyzed to ascertain whether or not the Agency in this proceeding exercised reasonable judgment in finding the grievants lacked the necessary qualifications.

In evaluating the applications of the grievants, the Arbitrator is restricted to considering the information known to the Agency at the time of the bid. In the opinion of the Arbitrator it would be inappropriate to render an arbitral decision on employee qualifications based on information not available to the Agency at the time of decision making. Only the qualifying data provided to the Agency may be reviewed herein. The question the Arbitrator is considering is whether the Agency acted reasonably based upon knowledge it had at the time a decision was made. Such a question cannot be answered using supplemental information provided subsequent to the action now challenged.

Having analyzed the context in which the grievances shall be considered, the Arbitrator next addresses the individual applicant-grievants in this proceeding.

#### A. Herman Scott

The application of Herman Scott sets forth the formal training received by the aggrieved through the Ohio Rehabilitation Services Commission. He listed the topics studied demonstrating that the major worker characteristics for the job were covered thereby. He further listed courses completed in graduate and undergraduate school relating to the field. Additionally, the grievant provided a detailed review of his work experience, relating it to the major worker characteristics for the Case Manager position.

The Arbitrator cannot find the Agency decision that Grievant Scott lacked the minimum qualifications was arbitrary or unreasonable. The requirements listed on the job posting are very specific. These include completion of graduate coursework in specified subjects. While the grievant showed "formal training" in the areas required, he has not demonstrated on his application completion of graduate coursework. An alternative to graduate coursework is licensure or certification. The application of Grievant Scott fails to demonstrate this alternative qualification.

In the absence of an express indication of completed graduate coursework on the enumerated areas, the Arbitrator cannot find that Grievant Scott met the minimum qualifications for the position of Case Manager. It is not within the Arbitrator's authority to determine that the prior work experience and formal training of Grievant Scott satisfies the minimum qualifications.

Having failed to demonstrate he possessed the specific certifications, licensing or coursework, the grievant was reasonably denied further consideration.

This grievance must be denied.

**B. Grievant Gayle Hutzell**

Similarly to Grievant Scott, Gayle Hutzell included on her job application prior work experience which covers extensive involvement with vocational training and guidance. Grievant Hutzell has almost five years of work in rehabilitation in addition to coursework and training in the field. Additionally, this grievant holds a teaching certificate for vocational evaluation issued by the Ohio Board of Education for which the grievant was required to pursue graduate coursework at the Master's level.

While the work experience of this grievant, as in the case of Grievant Scott, is impressive, the Arbitrator cannot find that it is a substitute for the specifications listed on the job vacancy announcement. Any substitution of work experience for the formal graduate coursework or licensing requirements must be made by management.

A subsequent finding by the Agency that the "grievant gave evidence of her qualifications at the grievance meeting" does not establish the Agency erred in its February 26, 1991 letter sent to Grievant Hutzell. The earlier communication indicating the grievant had failed to meet minimum qualifications was reasonably based upon a review of the minimum requirements and the information provided by the grievant relating to these prerequisites.

In the opinion of the Arbitrator it cannot be found that the decision made by the Agency in this case was unreasonable. On the contrary, it was consistent with the exact requirements set forth in the job posting.

This grievance is denied.

#### C. Grievance of Susan Woollard

The evidence submitted in the case of Susan Woollard included three applications filed with the Agency for three of the vacancies in the Case Manager classification. On these applications the grievant indicates that she is currently enrolled in a university graduate program in rehabilitation. She also lists graduate coursework in pursuit of her graduate degree. A comparison of the applications filed indicates that an additional course is listed on Union Exhibits 3(B) and 3(C) entitled Administration and Coordination in Rehabilitation. In contrast, Union Exhibit 3(A) lists only the graduate coursework completed by the grievant. The reasonable conclusion to make is that at the time of her application the grievant had enrolled in Administration and Coordination in Rehabilitation but had not yet completed this study.

The minimum qualifications list completion of graduate major coursework in at least seven areas. On her application (Union Exhibit 3(A)) the grievant lists completed coursework in nine subjects and correlates the graduate coursework taken with the specific area identified for minimum qualifications.

In the opinion of the Arbitrator this grievant has well established the completion of graduate major core coursework in rehabilitation counseling in more than seven of the specified areas. It is difficult to determine what additional data the grievant needed to demonstrate her minimum qualifications.

The Agency contends the grievant had not completed her graduate coursework at the time of the application. The Arbitrator recognizes this fact and understands that additional coursework has subsequently been completed by the grievant. But, on its face, Union Exhibit 3(A) states the completion of specifically identified graduate classes sufficient to satisfy the minimum qualifications. There is no indication that completion of the graduate program was a prerequisite for this job.

The Agency further argues that the grievant had failed to establish when the identified coursework had been completed. Again, the Arbitrator cannot find that completion dates were necessary to establish minimum qualifications.

Additionally, the Agency argued that given the volume of applications processed by Human Resources, the applicant had to very clearly identify the qualifications possessed for a particular job. The Arbitrator does not disagree with this position. In the case of Grievant Woollard, however, she very specifically itemized the coursework taken and the areas covered to meet the stated minimum qualifications. The volume of applications is not an excuse for the failure to review the information submitted by a candidate.

The Arbitrator finds that the Agency erred in disqualifying Grievant Woollard from further consideration for the Case Management Specialist positions for which she had applied. The next question to be resolved is the appropriate remedy for Grievant Woollard.

The Arbitrator cannot find from the evidence submitted that the grievant would have been entitled to one of the positions posted for bid. Article 30.02 of the Agreement sets forth other criteria in addition to qualifications. These include work record, experience, and affirmative action. In the absence of evidence on these factors the Arbitrator cannot find the grievant was improperly denied the promotion she sought.

The Arbitrator believes the appropriate remedy in this case is a review of the application of the grievant. It having been established that the grievant met minimum qualifications, it must next be determined whether the grievant was the qualified candidate considering the additional factors set forth in Article 30.02. In the event the grievant would have been the qualified candidate, then, she is entitled to compensation for lost earnings from June 16, 1991 until the time of her subsequent promotion to Case Manager.

The Agency maintains that it is not liable for any back pay in this matter because it had determined not to fill the vacancies originally posted. The evidence submitted, however, does not sustain this assertion. On the contrary, Union Exhibits 7 and 8, dated June 11, 1991, established appointments to PCN

16670.0 and PCN 1669.0, two of the positions posted earlier on which Grievant Woollard had bid. While the Agency maintains that these appointments were for subsequent job postings, the evidence fails to support this contention. The best evidence to establish a reposting would have been the vacancy announcement itself. In the absence of the best evidence available, the Arbitrator cannot find that the appointments made on June 11, 1991 were for posting different from those on which Grievant Woollard had bid.

The Arbitrator retains jurisdiction of the grievance of Susan Woollard pending the review directed above. In the event the Agency determines the grievant would have been entitled to the job had she not been improperly eliminated from consideration, a back pay award will be granted. A determination that the grievant would not have been appointed to a vacancy is subject to additional review only to ensure compliance with and the reasonable application of Article 30.02.

#### AWARD

1. The grievances of Herman Scott and Gayle Hutzell are hereby denied.

2. The grievance of Susan Woollard is sustained to the extent it is found she met minimum qualifications for the posted vacancies. The Agency is directed to review the application of Susan Woollard to ascertain whether the grievant was entitled to a posted vacancy. In the event it is determined that Susan Woollard was entitled to appointment, a compensatory award is



appropriate. The Arbitrator retains jurisdiction of this matter pending the above review.

  
Margaret Nancy Johnson  
Arbitrator

Dated and made effective in Cleveland,  
Cuyahoga County, Ohio this 17th day of May, 1992.