#993

In the Matter of Arbitration Between	OPINION and AWARD
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, A.F.S.C.M.E., AFL-CIO	Anna DuVal Smith, Arbitrator
and	Case 02-04-(08-05-88)-0039-01-14
STATE OF OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES	O.C.S.E.A., Grievant (by Kathleen Stewart, Steward)
	Promotion

Appearances

For OSCEA Local 11, AFSCME:

John Fisher; Staff Representative, OCSEA Local 11, AFSCME; Advocate
Jim Pagani; Staff Representative, OCSEA Local 11, AFSCME; Second Chair
Valerie Tipton; Grievant
Anna DeJesus Jacobs; Grievant
Kathy Steward; Chapter President and Steward; OCSEA Local 11, AFSCME; Witness
Tony DeGirolamo; Arbitration Clerk, OCSEA Local 11, AFSCME; Observer

For the State of Ohio:

Shirley Turrell; Labor Relations Officer, Ohio Department of Administrative Services; Advocate
Rachel Livengood; Asst. Chief of Arbitration Services, Ohio Office of Collective Bargaining; Second Chair
Donald P. Bishop; Administrator, Ohio Data Network; Witness
Carolyn Chavanne; MIS Application Manager; Witness
Meril Price; Executive Assistant to Deputy Director, Ohio Office of Collective Bargaining; Witness

Hearing

Pursuant to the procedures of the parties a hearing was held at 9:15 a.m. on May 20, 1992, at the offices of the Ohio Office of Collective Bargaining, Columbus, Ohio, before Anna DuVal Smith, Arbitrator. The parties were given a full opportunity to present written evidence and documentation, to examine and cross-examine witnesses, who were sworn and excluded, and to argue their respective positions. The oral hearing concluded at 4:00 p.m., May 20, 1992. The record remained open to receive Employer Exhibit 2 (transcript of Castle-Thomas arbitration, parties' case number G87-0411) and written closing statements. These documents being timely received, the record was closed on June 5, 1992. This opinion and award is based solely on the record as described herein.

Issue

The parties stipulated that the issues to be decided by the Arbitrator are:

1. Is the grievance properly before the arbitrator?
2. If so, did the employer violate Contract Article 17 in the promotion of junior employees Colleen Hinds and Juanita Noe to the position of Systems Analyst 1.
3. If so, what shall the remedy be?

Joint Exhibits and Stipulations

Joint Exhibits

1. 1986-89 Collective Bargaining Agreement
2. Position Posting - Systems Analyst 1
   PCNs: 41208.0
   41212.0
3. Series Specification - Systems Analyst 1, 64121
4. Interview Schedule and Applications of:
   J. Parham
   A. DeJesus
   V. Tipton

J. Noe
C. Hinds
J. Flemmings
N. Edwards
G. Marshall

5. Seniority Dates of Interviewed Applicants
6. Summary of Scoring of Elements of Structured Interview, Written Test, Interview Questions and Answers
7. Interview Sheets (Strengths and Weaknesses Ratings)
8. Grievance Trail:
   Step 3 & 4 Responses
   Arbitration Request

Stipulation of Fact

Anna DeJesus (Jacobs) met minimum qualifications in 1988, for the classification of Systems Analyst 1.

Relevant Contract Provisions

Article 17 - Promotions and Transfers

§17.03 - Posting

All vacancies within the bargaining units that the Agency intends to fill shall be posted in a conspicuous manner throughout the region, district or state as defined in Appendix J. Vacancy notices will list the deadline for application, pay range, class title and shift where applicable, the knowledge, abilities, skills and duties as specified by the positions description. Vacancy notices shall be posted for at least ten (10) days....

§17.04 - Bidding

Employees may file timely applications for promotions.

Upon receipt of all bids the Agency shall divide them as follows:

A. All employees within the office, "institution" or county where the vacancy is located, who presently hold a position in the same, similar or related class series (see Appendix I).
B. All employees within the geographic district of the Agency (see Appendix J) where the vacancy is located, who presently hold a position in the same, similar or related class series (see Appendix I).
C. All other employees of the Agency in the same, similar or related class series.
D. All other employees of the Agency.
E. All other employees of the State.

§17.05 - Selection

A. The Agency shall first review the bids of the applicants from within the office, county or "institution." Interviews may be scheduled at the discretion of the Agency. The job shall be awarded to the qualified employee with the most state seniority unless the Agency can show that a junior employee is demonstrably superior to the senior employee.

B. If no selection is made in accordance with the above, then the same process shall be followed for those employees identified under 17.04 (B).

C. If no selection is made in accordance with the above, then the agency will first consider those employees filing bids under 17.04 (C) and then 17.04 (D), and then 17.04 (E). Employees bidding under 17.04 (C), (D), or (E) shall have no right to grieve non-selection.

Background

In 1988 the Ohio Department of Administrative Services posted two Systems Analyst 1 positions in the Computer Services Division. Employer witnesses testified to the inadequacy of the Systems Analyst 1 classification for the vacancy they were attempting to fill, but stated that it was the best available at the time. (Subsequent to the posting and filling of these vacancies, class modernization affected the subject classification and created a new class, Computer Acquisition Analyst.)

A number of individuals applied for the vacancies, among them Anna DeJesus (now Jacobs) and Valerie Tipton, both of whom were Level A employees by the hierarchy established in §17.04 of the Collective Bargaining Agreement. The parties stipulated that Ms. DeJesus met the minimum qualifications for the Systems Analyst 1 classification. Ms. Tipton's qualifications at the time the vacancies were posted are at issue. Among other applicants were

Colleen Hinds (Level A) and Juanita Noe (Level E). Each of the latter two carried less state seniority than either DeJesus or Tipton. A total of eight applicants, including these four, were scheduled for interviews on June 28, 1988, and their qualifications evaluated, with the result that Noe and Hinds were hired over the more senior DeJesus and Tipton.

A grievance on the matter was filed at Step 3 by Steward Kathleen Stewart on August 5, 1988, protesting alleged violations of the Contract's Preamble, 17.05, 19.12 and "any and all other applicable sections of cont. and/or O.R.C." The Union was named as grievant. Ms. Steward testified, and the Step 3 response shows, that Management was aware of the identity of the most senior applicants for whom relief was sought. The record also shows that at least one of these individuals did not know of the grievance filed in her behalf until 1992. Being denied at Steps 3 and 4, the grievance came to arbitration where it presently resides for final and binding resolution.

Arguments of the Parties

Arguments on Arbitrability

Neither party claimed the Arbitrator is prohibitted from deciding the merits of the case. Rather, the Employer contends that the absence of specifically named individual grievants constrains the Arbitrator to a declaratory remedy of instructive guidance for the future. The parties' arguments on this issue are set forth in the section on remedy below.

Arguments on the Merits

The Union is of the view that the Employer improperly denied Ms. DeJesus and Ms. Tipton promotions to Systems Analyst 1 positions because it violated Article 17 in three ways.

One feature of §17.05 which the Union says supports its view is that it requires sequential consideration of the five applicant groups defined in §17.04. As read by Arbitrator Graham in Savage (Case No. G87-1214), the Employer must find Level A applicants unqualified before considering Level B employees, and "B" bidders unqualified before considering "C" applicants, and so on. In the case at bar, the Employer co-mingled applicants from Levels A and E in the interview process (interviewing all on June 28) and in evaluation (considering all simultaneously on July 2). In the view of the Union, the Employer was not free to review Ms. Noe's application from Level E until all Level A applicants had been found wanting. By this reasoning, the Union concludes that if Ms. DeJesus and Ms. Noe were qualified (which it says they were), the Level E employee awarded the position should not have been even considered.

Another Employer error alleged by the Union is the use of impermissible criteria to evaluate the applicants. Section 17.05 states that the "job shall be awarded to the qualified employee with the most state seniority unless the Agency can show that a junior employee is demonstrably superior to the senior employee." Testimony by the negotiators of this language in the Castle-Thomas (Case No. G87-0411) arbitration and Arbitrator Graham's holdings in

that case, in Savage and in Zimmerman (Case No. 24-09-(06-26-90)-0402-01-04) establish that the Agency may not hold bidders to requirements beyond minimum acceptable characteristics specified on the Position Description and Class Specification. Here, Agency witnesses admitted that preferred worker characteristics listed on the job posting were used to assess the applicants, but nothing indicates that the parties contemplated use of preferred worker characteristics to qualify bidders for a position or to determine demonstrable superiority of junior bidders. The Union says that reasons offered by the Employer for failing to apply minimum qualifications do not justify the contractual violation. The impact of technological change on the job's requirements are appropriately addressed in a revised Position Description before the job is posted, not after applications are received. The revised Position Descriptions submitted as Employer Exhibit 5 over the Union's objection are evidence of the Employer's ability to revise minimum qualifications for a position. The impracticality of training the selected employees is but an Employer device, contends the Union, to obscure the true reason the Employer used selected prefered worker characteristics: to obtain the best qualified applicant in contravention of the Contract's mandate that the standard be "qualified."

The Union goes on to contend that by application of the appropriate criteria, Ms. Tipton (like Ms. DeJesus), was qualified for the position she was denied. It asserts that her resumé and application show possession of minimum qualifications set forth on

the Position Description. It argues that the courses she completed qualify inasmuch as the Position Description did not specify college courses, semester hours or quarter hours. If the Employer wanted college course work, it ought to have specified that when posting the positions, not after applications were submitted.

The Union's third and final argument on the merits is that the Employer has failed to carry its burden of showing that the junior Level A applicant awarded the position was "demonstrably superior" to the senior bidders, referencing the Castle-Thomas transcript and several Graham decisions. It claims that the method used by the Employer's interviewer to evaluate the applicants' qualifications was flawed and subject to manipulation inasmuch as it gave the greater weight to subjective interviews and tests. Scoring and weighting were under the total control of the interviewer, making the system amenable to abuse. Moreover, the interviewer was unable to relate her evaluation to the "demonstrably superior" standard.

The Union summarizes that the Employer violated the 1986 Contract in three ways when it failed to promote Ms. Tipton and Ms. DeJesus, and asks that it be granted the remedy requested.

The Employer is of the view that it acted within its authority when it promoted junior employees over senior employees to the position of Systems Analyst 1.

Its first argument in support of this position is that the Union failed to carry its burden of proof by a preponderance of the evidence. The Union failed to show that the "grievants" were qualified. Management, in fact, established that most of Ms.

Tipton's credentials were inadequate to meet minimum qualifications. The Union's failure to call Ms. DeJesus shows an unwillingness to subject her to cross-examination on her qualifications.

It also claims the Union failed to show any violation of Article 17. Article 17.05 clearly and unambiguously established that Management has discretion in sequencing of interviews and no evidence was produced that it considered job candidates in improper sequence. Indeed, the Employer goes on, it properly applied Article 17 as it disqualified "A" candidates before reaching "E" candidates. Moreover, Ms. Noe could be considered a group B candidate.

Management also says the Union failed to offer testimony on the State's method of determining qualification of a position or evidence on the parties' Article 17 intent. The Employer has a long-standing practice of selecting the best qualified candidate and it is not required to select senior marginally qualified bidders. Its expert witness testified that it was Management's practice to rely on Preferred Qualifications in postings. The Castle-Thomas case settled that §17.05 does not require exclusive reliance on minimum qualifications, but that the Employer may use desired or preferred qualifications specific to the duties of the position. The Union's use of Savage is erroneous, claims Management.

A further failure of the Union to carry its burden, says Management, is its failure to prove a violation of Article 25.08.

It is unreasonable to expect the Employer to furnish the Union with proficiency test questions and answers, but the State supplied what it had in this four-year-old case.

A second approach taken by the Employer is that it is vested with exclusive authority to assess qualifications and to develop tests to determine qualifications. In support, it references a number of arbitration decisions outside this collective bargaining relationship. It further draws the Arbitrator's attention to a number of principles it asserts are well established by arbitral authority elsewhere: a junior bidder may be selected over a senior who requires extensive training, an outside candidate may be chosen who can perform complex duties without training, and relative qualifications may be subject to more finite scrutiny as technological complexity increases. Applying these principles to the case at bar, the selection of Hinds and Noe rather than DeJesus is justified because DeJesus lacked the ability to perform the job without training and she was deficient on a number of qualities where Noe and Hinds had experience and/or education. Another principle established by cases referenced by the Employer is that management may select junior candidates as long as the process is not arbitrary or capricious. The State claims it used an objective, relevant instrument and the applicants had advance notice of the job's requirements and duties. It asserts the junior unsuccessful applicants did not themselves grieve their non-selection because they recognized their limitations.

The third argument of the State is that the classification system in use in 1988 was inadequate for selecting systems analysts. If the Arbitrator may not consider the evolution of class specifications since the selection (as the Union argues), then she should also not consider the evolution of Article 17's interpretation through arbitration cases decided after the selection decision. The State goes on to distinguish the Savage and Zimmerman cases cited by the Union. In Savage, the "demonstrably superior" exception of Article 17 was held to apply to junior but not senior employees. In Zimmerman, use of preferred aualifications was prohibitted unless linked to the Position Description. Here, the demonstrably superior employees are junior and the preferred qualifications are linked to the Position Description, says the Employer.

For these reasons, the State requests that the grievance be denied in its entirety.

Arguments on the Remedy

The Union states first that the Employer's claim that unnamed grievants constitutes a flaw is without merit. Article 25.01(A) of the Contract defines a grievance as a dispute "between the Employer and the Union or any employee...." Article 25.01(B) permits the Union to process grievances for a grievant, "a group of grievants or itself setting forth the name(s) or group(s) of the grievant(s)." The grievance describes the affected group and they were specifically identified in the Employer's Step 3 response. Moreover, the Grievants' absences from grievance meetings is no

bar, since the Contract is permissive on this matter. The Union further asserts that notification of grievants and inclusion of names on the grievance is purely an internal Union matter. It is well settled, it contends, that a Union may pursue a policy grievance such as this on its own volition and further that employees cannot waive contractual rights, citing Elkouri & Elkouri, 1985. Thus, the Union has not violated the Contract and the Employer has not been prejudiced by lack of knowledge of who the grievants were. Therefore, there is no contract violation rendering the grievance nonarbitrable or limiting the arbitrator's remedial power, says the Union, referencing Arbitrator Bittell in the parties' case G87-1287.

The Union next asserts that an arbitrator has broad remedial powers under a collective bargaining agreement unless her authority is expressly limited, citing two Sixth Circuit decisions and the recent Queen City Lodge No. 69, F.O.P. v. City of Cincinnati, 63 Ohio St. 3d 403 (1992). The Contract's sole constraint on arbitral remedial power is in Section 24.01, demonstrating that the parties knew how to constrain arbitral authority and chose not to do so except in abuse cases. Thus, concludes the Union, this arbitrator has the authority to determine the appropriate remedy for the Employer's violations.

For Ms. DeJesus, who met the minimum qualifications and who has since been promoted, the Union seeks lost wages to the time of her promotion since this was the only harm caused her by the Employer's violations.

Regarding Ms. Tipton, the Union claims the arbitrator is unable to determine the alleged demonstrable superiority of the junior candidate awarded the position because of the Employer's flawed evaluation methodology. It asserts that remanding to the Employer is inappropriate since the evaluation process--flawed though it be--was completed. It therefore requests that the senior minimally-qualified Ms. Tipton be awarded the position she was denied so that she can demonstrate her ability to perform the duties in a probationary period, and that she be awarded back pay.

In conclusion, the Union requests a clear statement regarding the meaning and operation of Article 17 to prevent continued arbitration of matters already decided.

The Employer argues that the Union's failure to name specific aggrieved employees on the grievance and/or the employees' failure to file their own individual grievances in a timely fashion acts as a significant constraint on the Arbitrator's remedial power. It contends that an employer's obligation to pay affected employees for lost wages expires when each fails to grieve timely or be expressly named by the union, and points out that the "grievant" who testified admitted she had no knowledge of the matter until January, 1992, four years after the fact. In support of its position, it cites the Civil Procedure Rule on class action and Compco Corp., 85 LA 725. It further claims that the Union's explanation of its failure to inform the affected employees cannot be weighed since no evidence of retaliation or need for protection from retaliation was presented. It further questions the wisdom of

the Union assuming responsibility for policing all management actions.

Finally, the State claims that the Union filing on behalf of "the most senior employees" creates the risk of erroneous remedy should there be disagreement on seniority dates, and further that an award of back pay is inequitable, citing Carnation Co., 84 LA 863. It therefore asserts that in the event the Arbitrator finds for the Union, remedy should be limited to instructive guidance for the future.

Opinion of the Arbitrator

Arbitrability

Inasmuch as there is no remaining employer claim that the substantive issue is outside the scope of arbitral authority, the grievance is held to be properly before the Arbitrator for final and binding resolution.

Merits

The parties agree that many issues about the interpretation and application of Article 17 have been settled in arbitration, but they disagree as to what the holdings were and to their application to the facts of this case. This arbitrator has carefully read the decisions of Arbitrator Graham cited by the parties and the transcript of the Castle-Thomas case, and reached certain conclusions regarding points applicable to the case before her.

Evaluation Process. In Savage, Arbitrator Graham upheld the Union's view that §17.05 requires the Employer to apply the hierarchy of §17.04 sequentially in considering bids for vacant

positions (p. 13). Thus, only if all bidders from §17.04(A) are unqualified is the Employer free to consider the qualifications of §17.04(B) applicants. I agree this is true because §17.05(A) says the "job shall be awarded to the qualified [office, county or "institution"] employee...." (emphasis added) and §17.05(B) says "If no selection is made in accordance with the above, then" §17.04(B) applicants shall be considered (emphasis added). This language is not permissive. It directs the Employer to consider applicant groups in a given order and reach conclusions regarding qualifications of the members of one group before proceeding to the next group. I therefore concur with Arbitrator Graham's holding that the "Agreement provides that before persons in [lower subsections] may be considered all bidders in [higher] classifications...must have their qualifications evaluated. Only if bidders in [the higher] classifications are found wanting may the State reach people in [the lower] subsection" (Savage at 13).

In the instant case applicants from a two subsections, A and E, were co-mingled in the interview process and the qualifications of none considered until data from all were collected. The Union's position regarding the evaluation process is correct. The language of Section 17.05 describes an iterative process that is consistent with the intent expressed by the negotiators in the Castle-Thomas hearing, namely to prevent prepositioning and secure seniority rights (Union interests, Castle-Thomas Tr. 64) and to avoid state-wide seniority bidding units (State interests, Castle-Thomas Tr. 73 and 95). Thus, Article 17 permits comparisons of employees only

within hierarchical groups and prevents comparisons between groups. To accomplish this, the evaluation process prescribed by the Article prohibits co-mingling. The Employer must complete §17.05(A) before beginning §17.05(B), and complete §17.05(B) before beginning §17.05(C). While Article 17 permits Agency discretion in scheduling interviews, as the State argues here, this discretion may be exercised within each subsection's group of bidders. The State may not interview §17.04(B) candidates until it has made its decision on §17.04(A) candidates. Applying this rule to the case at hand, the State should not have interviewed Ms. Noe (a Level E candidate) until it had fully evaluated all the Level A candidates and found only one or none to be qualified. Whether Ms. Tipton and/or Ms. DeJesus were harmed by the Employer in this regard depends on whether they were qualified, which issue is taken up below.

Degree of Qualification. When considering applicants from a given subsection, the job must be awarded to the senior qualified bidder unless a junior bidder is "demonstrably superior." The State contends that it may select the best qualified candidate and has no obligation to select marginally qualified bidders. This view is not precisely correct, nor is it entirely wrong. As Castle-Thomas makes clear on page 23, senior applicants have substantial promotion rights under §17.05. They do not have to be the best qualified to be selected, or even equally qualified. They must merely be qualified. Thus, if there are one or more qualified bidders within the subsection pool under consideration, the

Employer has the obligation to select the most senior (even if s/he is not the best qualified), but with one exception. If the Employer can show that a junior bidder from the subsection is better qualified by a substantial difference than the more senior, the junior may be selected (Castle-Thomas at 23-24). Moreover, if there is a qualified candidate from a higher subsection (e.g. Level A), the Employer may not evaluate lower-subsection applicants (e.g. Level E) in a search to find a better qualified bidder, as the above paragraphs make clear.

In the context of this case, the State may select the junior Level A applicant it deems best qualified (Ms. Hinds) if either of the senior Level A bidders (Ms. Tipton and Ms. DeJesus) are unqualified or if it can show the junior to be "demonstrably superior" to either of the seniors. To select the Level E applicant (Ms. Noe), it does not have to show "demonstrable superiority" if the Level A bidders are unqualified, but it may not select her (even if she is "best qualified") if any two Level A applicants are qualified. Again, the outcome of this case turns on the question of the seniors' qualifications, a subject to which I now turn.

Qualifications. The Union argues that the Employer may hold bidders only to minimum acceptable characteristics specified on the Position Description and Classification Specification, and by these criteria the senior bidders are qualified. The State holds to the view that it may rely on preferred or desired qualifications specific to the duties of the position. By these criteria, the

senior applicants are unqualified. Two cases recently decided by Arbitrator Graham are instructive. In Zimmerman, a case arising under the 1989 Contract, he held that the State may not hold bidders to qualifications it desires, only to qualifications that are required (p. 7). In Savage, a case arising under the 1986 Agreement, he held that the State may not go beyond the minimum acceptable characteristics "as specified by the State itself on its own Position Description and Classification Specification" (p. 16). I draw the same conclusions from my own reading of Article 17 of the 1986 Agreement as illuminated by the negotiators' testimony in the Castle-Thomas case. At the time the 1986 Contract was under negotiation, the State had a problem relying on the more generic Classification Specification for a statement of qualifications, and the Union became persuaded that the Position Description, where qualifications relevant to a particular position within a classification could be spelled out, should be the determinative document (Tr. 62). Thus, the State obtained the ability to specify job-relevant requirements for the position (Tr. 68 & 70) (subject to Union protest), and the Union obtained for the employees advance knowledge of qualifications and control of favoritism in promotions (Tr. 68). That Position Descriptions are reviewed by the Department of Administrative Services would prevent the job from being wired to a favored individual. An inescapable conclusion is that the operative document is the Position Description. A bidder's ability to perform the work of the position must be evaluated by measuring the bidder's attributes against the

qualifications provided in the Position Description (Tr. 68, 97, 116-117). The State may not go beyond what it sets forth on the specific Position Description and generic Classification Specification as requirements for the position. A person who possesses these attributes, thus meeting the requirements, must be deemed qualified. Applicants may not be held to other than required attributes, even if they are desired or preferred by the Employer.

Applying these principles to the case at hand, the Department was not constrained to the minimum qualifications of the Systems Analyst 1 classification when it sought to fill its positions in 1988. It was free to go beyond the Classification Specification and develop the Position Description to meet its needs.[1] Ms. Tipton's, Ms. DeJesus' and the other applicants' qualifications should then have been judged only against the requirements specified on the Position Description and Classification Specification. They should not have been required to have the desired background of two years experience in computer equipment acquisition, etc., stated on the posting.

For the Acquisition Analyst positions posted, the State is held to the Systems Analyst 1 Classification Specification and the Acquisition Analyst Position Description. According to testimony of the State's expert witness, Meril Price, two positions of the

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[1]Indeed, this case would seem to exemplify the problem the State sought to solve in negotiations, for the miminum class requirements are claimed to be inadequate qualifications for the position because of technological advances and an inability to train on the job.

same classification may involve different duties and thus have different job-related requirements. A major distinguishing feature of these positions, as testified by Donald Bishop and supported by the duties set forth on the Position Description, was the knowledge of a variety of systems and vendors (both hardware and software) in order to deal with a variety of users. Another was the ability to write specifications sufficiently narrow to achieve a good solution to the user's business problem, but sufficiently broad to permit competitive bidding. Ms. Tipton does not possess these attributes. The credentials she offers (Union Ex. 1) to show she meets the Minimum Class Requirements are of State in-service and vendor training (each mostly one day in length), rather than undergraduate courses taken at an accredited educational institution, which was the standard used for "course" on classification specifications, according to Ms. Price. Additionally, at least some of the experience offered is not in the areas required: billing is not budgeting and data analysis is not statistical analysis, for example. Her experience was largely on word processing systems. The evidence she submitted of her systems analysis and writing skills and abilities were co-authored, and her role in projects she worked on was vague and unspecified. This record does not support the conclusion that Ms. Tipton was qualified for the position she sought in 1988, possessing neither the Minimum Class Requirements nor the Minimum Acceptable Characteristics for performing the job duties of Acquisition Analyst: she lacked the courses and/or

experience that would provide her with a broad knowledge of computer systems and skill in systems analysis and design.

As for Ms. DeJesus, the parties stipulated she possessed the Minimum Qualifications for the Systems Analyst 1 classification. But this does not necessarily qualify her for the Acquisition Analyst position. She must also possess the Minimum Acceptable Characteristics on the Position Description. Whether she had the requisite knowledge, skills and abilities for this position is difficult to determine, since she did not testify, nor was documentation submitted other than her application and the interviewer's strengths/weaknesses analysis and summary scores on the various instruments. The application reveals experience in programming and computer operations, and courses in programming, computer operations and systems analysis. The interviewer felt that she lacked a broad base of technical knowledge, noting specifically hardware and systems analysis. She also lacked the preferred two years experience in computer equipment acquisition. The latter criterion is not permitted, for although it may be a desirable attribute, it is not a requirement of the position. Knowledge of computer functions and operations, however, is one of the Minimum Acceptable Characteristics for the position, and the Arbitrator is persuaded that broad knowledge is required to perform the duties described on the Position Description. Moreover, it is the Union's burden to establish by a preponderance of the evidence that Ms. DeJesus possessed the requisite knowledge. While it was established that she met the minimum qualifications for the

classification, it was not shown that she either studied or had experience with a broad spectrum of hardware such as would constitute sufficient knowledge to perform the duties of the position. While the Union is correct that it is the Employer's burden to show demonstrable superiority of a junior applicant, it is the Union's burden to show the senior bidders were qualified. This it did not do.

In sum, although the Employer erred both in its evaluation sequencing and choice of criteria for selection, neither of the senior bidders who were joined to this grievance was shown to be qualified for the position and so neither was harmed by the Employer's actions.

Award

The grievance is denied in its entirety.

Anna DuVal Smith

Anna DuVal Smith, Ph.D.
Arbitrator

July 6, 1992
Shaker Heights, Ohio