

**THE STATE OF OHIO AND DISTRICT
1199, THE HEALTH CARE AND SOCIAL SERVICE
UNION, SEIU LABOR ARBITRATION
PROCEEDING**

IN THE MATTER OF THE ARBITRATION BETWEEN

OHIO DEPARTMENT OF REHABILITATION
AND CORRECTION ADULT PAROLE AUTHORITY

-AND

OHIO HEALTH CARE EMPLOYEES UNION
DISTRICT 1199, SEIU, AFL-CIO

GRIEVANTS: AMELIA B. PAIGE AND MARIAN D. STANFIELD

GRIEVANCE NUMBERS: 28-03-310192-0025-02-12
28-04-310192-0055-02-12

**ARBITRATOR'S OPINION AND AWARD
ARBITRATOR: DAVID M. PINCUS
DATE: DECEMBER 3, 1994**

Appearances

For the Employer

Anne K. Massaro
Georgia Brokaw
Edith Bargar

Witness
Second Chair
Advocate

For the Union

Amelia B. Paige
Marian D. Stanfield
John Evangelista
Charles Lester

Grievant
Grievant
Grievance Chairman
Organizer

INTRODUCTION

This is a proceeding under Article 7 - Grievance Procedure, Section 7.08, between The State of Ohio, Ohio Department of Rehabilitation and Correction, Adult Parole Authority, hereinafter referred to as the Employer, and District #1199, Ohio Health Care Employees Union, SEIU, AFL-CIO, hereinafter referred to as the Union, for the period July 1, 1992 to May 31, 1994. The Arbitration hearing was held on September 23, 1994 and November 3, 1994 at the Office of Collective Bargaining, Columbus, Ohio. The parties had selected David M. Pincus as the Arbitrator.

At the hearing, the parties were given an opportunity to present their respective positions on the grievance, to offer evidence, to present witnesses and cross examine witnesses. At the conclusion of the hearing, the parties were asked by the Arbitrator if they planned to submit post hearing briefs. Both parties stated they would not submit briefs.

JOINT STIPULATED ISSUE

Was Ms. Stanfield significantly more qualified than Ms. Paige? Was Ms. Massaro significantly more qualified than Ms. Paige? As between Ms. Massaro and Ms. Stanfield who should have received the promotion? Based on the answers to these questions, what shall the remedy be?

PERTINENT CONTRACT PROVISIONS

ARTICLE 30 - VARIANCES

30.01 Job Vacancies

A vacancy is defined as an opening in a full-time permanent or part-time permanent position in the bargaining unit which the agency has determined is necessary to fill.

When a vacancy is created by an incumbent employee leaving the position, and that incumbent is above the entry level position in the classification series, the job shall be posted at the level in the classification series of the leaving employee, provided the duties and responsibilities remain the same. After the employees have had the opportunity to bid for lateral transfers or for promotions, the position can be reduced in the classification series.

When a vacancy will be created by an incumbent employee leaving a position, the agency may post the vacancy and interview and provisionally select a candidate anytime after receiving notice that the position will be vacated.

A job vacancy shall be posted for a minimum of seven (7) days on designated bulletin boards within the agency at the facility where the vacancy exists. Applicants will be notified within thirty (30) days after the final filing date of status of their application.

Any employee who desires to be considered for a position(s) in another agency(s) shall submit an Ohio Civil Service Application (ADM-4268) to the appointing authority of the agency or institution where employment is sought. Such applications shall specify the desired classification(s) and worksites(s). These applications will be maintained on file for the one (1) year from the date of receipt by the appointing authority. If a posted vacancy is not filled pursuant to steps A and B of this article, any applicant meeting qualifications for this position shall be considered pursuant to Step C of this article.

The Employer shall prepare and make available a booklet detailing the classifications available in various agencies, including a listing of the appointing authorities to which applications are to be sent.

Notice of newly-created classifications shall be provided to the Union's central office thirty (30) days prior to initial posting.

30.02 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, and affirmative action. Among those that are qualified the job shall be award to the applicant with the most state seniority unless a junior employee is significantly more qualified based on the listed criteria.

The Employer and the Union agree, through each Agency Professional Committee to review and discuss the agency's approved affirmative action plan annually prior to submission to EEO. Such plans shall include specific hiring goals where necessary.

Job vacancies shall be awarded in the following sequential manner:

A. The job shall first be awarded to a bargaining unit applicant working at the facility where the vacancy exists in accordance with the above criteria;

B. If no selection is made from A above, the job shall be awarded to a bargaining unit applicant working at the facility where the vacancy exists in accordance with the above criteria;

C. If no selection is made from B above, the job shall be awarded to an applicant working in the bargaining unit in accordance with the above criteria;

D. If no selection is made from C above, the job may be awarded by hiring a new employee.

Within non-institutional agencies and within the Adult Parole Authority, step A above shall not apply.

This Agreement supersedes Ohio Civil Service Laws and Rules regarding eligibility lists for promotions.

JOINT STIPULATED FACTS

1. The grievances are arbitrable and properly before the arbitrator.
2. The applications of Ms. Anne Massaro, Ms. Amelia Paige, and Ms. Marian Stanfield for the position of Parole Services Coordinator PCN# 7346.0 were timely filed.
3. The seniority dates for the three employees are as follows:

Amelia Paige	(4-11-75)
Marian Stanfield	(7-11-79)
Anne Massaro	(9-11-80)
4. Anne Massaro received the position of the Coordinator PCN# 7346.0 on January 26, 1992.
5. The evaluation sheet in use at the time of the selection is listed as Joint Exhibit 7. The total scores of the three employees on the criteria evaluation sheet for the position were as follows:

Amelia Paige	8
Marian Stanfield	14
Anne Massaro	16
6. Joint Exhibits 8, 9, and 10 show the points given to each of the three employees in each category of the evaluation: education, experience, work performance and qualifications - within correctional work.
7. Ms. Marian Stanfield received a promotion to another Coordinator position on February 23, 1992.

CASE HISTORY

The facts surrounding the present dispute, for the most part, are not in dispute. It involves two (2) grievances which were merged for consideration since they involve the same set of circumstances and facts.

The Employer developed an evaluation system to comply with selection standards used to award jobs in accordance with Section 30.02. This provision calls for the review of applications by considering the following criteria: qualifications, experience, education, and work records and affirmative action. Section 30.02, moreover, requires that the job shall be awarded to the application/employee with the most state seniority, unless a junior employee is significantly more qualified based on the listed criteria.

An evaluation devise called a Personnel Selection Evaluation (Joint Exhibit 7) has been developed, and utilized, to capture the essence of the criteria contained in Section 30.02. It consists of four (4) primary selection criteria with various points attached for scoring purposes: (1) Evaluation (maximum is 6); (2) Experience (maximum is 4); (3) Work Performance (maximum is 2); (4) Qualifications within Correctional Work (maximum is 10). A factor is also included to account for the "significantly more qualified" standard. The evaluation instrument specifies:

Applicants who score within two points of each other on the total score will be considered to be relatively equal and the applicant with the greatest state seniority shall be selected.

The disputed matter arose in January of 1992 when Anne Massaro, a junior employee, was selected to fill the position of Parole Services Coordinator. Massaro was hired in September of 1980. This selection was accomplished even though two (2) more senior applicants, Amelia

Paige and Marian Stanfield were also qualified members of the applicant pool. Paige was the most senior applicant with an April 11, 1975 date of hire, while Stanfield was hired on July 11, 1979.

The selection of the junior applicant caused the filing of two disputed grievances. Stanfield contested the selection by noting in her grievance:

On 9/25/91, I applied for the posing of Parole Services Coordinator, PCN=73460. On 1/30/92, I learned that this position was awarded to Anne Massaro. By awarding this position to a less senior, less educated, and younger than myself, the APA has shown blatant discrimination, and severe bias against me
(Joint Exhibit 3)

On February 10, 1992, Paige also contested the selection in dispute. Her Statement of Grievances contains the following:

On 9/25/91, I applied for the posing of Parole Services Coordinator, PCN=73460. On 1/30/92, I learned that this position was awarded to Anne Massaro. By awarding this position to someone less senior than myself, the APA has shown blatant discrimination against me.
(Joint Exhibit 2)

Neither party raised procedural nor substantive arbitrability concerns. As such, both grievances are properly before the Arbitrator.

MERITS OF THE CASE

The Position of the Union

Although the facts surrounding each of the Grievant's disputes is similar, specific arguments and theories offered in support of each particular grievance tend to differ. As such, the relevant arguments will be presented separately for analysis purposes.

AMELIA PAIGE

The Union argues that Paige was deprived of a promotional opportunity. As the most senior employee, possessing the requisite qualifications, she should have been selected based on the seniority standard contained in Section 30.02.

The Union also challenges the points assessed on several portions on the Personal Selection Evaluation. Her evaluation indicates a total score of eight (8) points with subsection evaluations indicating that the following points per category:

1. Education = 1
 2. Experience = 4
 3. Work Performance = 0
 4. Qualifications within correctional work = 3
- (Joint Exhibit 10)

She contests the points awarded in two (2) particular areas: (3) Work Performance and (4) Qualifications within Correction Work. With respect to the former category, the Union alleges Paige was erroneously awarded 0 points. Even if her personal file has some missing evaluations, the scoring protocol requires an award of two (2) points. Points awarded for the latter category are viewed as equally defective. The Union argues the Grievant should receive 2 points for "Trained other Employees." She testified she often helped orient new employees which adequately fulfilled this training criterion. These proposed adjustments would have resulted in a total score of twelve (12) points.

Selection of the junior employee was also viewed as a blatant act of discrimination. Paige maintained very few, if any, black females have been promoted within the Cleveland District Office. The disputed incident merely serves as an additional example of the discriminatory practices engaged in by the Employer.

MARIAN STANFIELD

Arguments concerning Stanfield's non-selection also center on alleged understatements on her Personal Section Evaluation (Joint Exhibit 9). Discriminatory practices were also raised as possible defects in the selection process.

The Union argues even if adjustments are not made to the total score in Stanfield's evaluation, the Employer violated its own scoring guidelines. By realizing a total score of fourteen (14) points, the Grievants score should have been viewed as relatively equal when compared against Massaro's score of sixteen (16) points. As such, her standing in terms of greater state seniority should have resulted in her selection.

In the alternative, several scoring adjustments are in order based on several erroneous scoring decisions. The Grievant maintained she attained: an Associates Science Degree in Law Enforcement; Bachelor of Science Degree in Law Enforcement, and a Masters Degree in Public Administration. In the Union's opinion, this educational history should have resulted in a score of six (6) rather than five (5) points. She was denied any points for her Masters Degree even though it was closely related to the field; and sited as a loosely related field in the dowment distributed by the Employer.

Another scoring problem exists concerning the Qualifications - Within Correctional Work category. Stanfield contends she should have receive a point for "Trained other employees." She claimed she assisted in the training of employees, while others were formerly designated as the trainer. Stanfield also maintained she helped orient new employees which realistically serves as a valid training opportunity.

These adjustments result in score changes totalling three (3) points; which would cause an upgrade to seventeen (17) points in Stanfield's overall total score. This score would then exceed the score obtained by Massaro at the time of the evaluation.

Based on the above review, the Union proposes several arguments in favor of Stanfield's selection over Paige and Massaro. Even though Stanfield possessed less state seniority than Paige, her evaluation score significantly exceeded the score attained by her coworker. With respect to Massaro, Stanfield possessed a greater amount of state seniority. Her original score fell within two (2) points of Massaro's score which caused her score to be viewed as relatively equal. Also, justified adjustments would have resulted in a total score exceeding the score realized by Massaro.

Stanfield also raised a discrimination claim. The basis for this claim appears to hinge on her age, sex, handicap and nationality.

The remedy request for Paige, deals with placement into the disputed position and a make whole remedy. The remedy request for Stanfield, however, differs because she received a promotion to another Coordinator position on February 23, 1993. As such, the Union does not request promotion into the position of Coordinator (PCN #7346.0) which is presently in dispute. Rather, the Union wishes that Stanfield be made whole in terms of lost wages and other related benefits for an approximate one (1) month period. The period in question being January 26, 1992, Massaro's appointment date, to February 23, 1992, the date Stanfield was promoted to another Coordinator position.

The Position of the Employer

The Employer asserts its selection of Massaro did not violate Article 30 requirements. Each candidate for the posted vacancy was screened properly and fairly by applying a selection instrument which complied with standards contained in Article 30.02. As such, the Employer was justified in its decision to by-pass more senior employees and selecting a significantly more qualified junior employee.

The present dispute is a bit unique because two (2) grievants are proposing related, yet independent, arguments and theories hoping to attain promotional rights to one contested position. Paige's arguments primarily deal with seniority obligations, while Stanfield proposes arguments dealing with her standing of being "significantly more qualified" than the other two bargaining unit members. Both Grievants cannot secure an identical remedy since one position is in dispute.

Testimony provided by Massaro concerning her qualifications, and a review of her Personal Selection Evaluation (Joint Exhibit 8) clearly support the selection decision. Her original total score and category specific scores indicate she was "significantly more qualified" as opposed to Paige and Stanfield. Testimony provided by Massaro, moreover, suggested several scoring errors in the Qualifications - Within Correctional Work category, which would have increased her score to twenty-one (21) points. She alleged, through the introduction of documents (Employer Exhibit 1) and testimony, that she was directly involved in unarmed self defense training. These responsibilities should have resulted in additional points for Work Direction (2 points) and Direct Supervision (3 points). Obviously, these additional points, if properly accounted, would have resulted in a greater difference among the respective scores.

Paige's claim should not be affirmed even though she possessed the most state seniority. The less junior employees, Stanfield and Massaro, were significantly more qualified in the areas of Education and Qualifications - Within Correction work. Point distributions on the respective Personal Selection Evaluations (Joint Exhibits 8, 9, and 10) and related testimony clearly support this conclusion. Even if the Union's arguments involving justified adjustments to her score were affirmed by the Arbitrator, she would still not be able to overcome the scores attained by the junior applicants.

With respect to the discrimination claim, the Union failed to properly support this theory. The record does not support an allegation of this sort.

When one compares Massaro's qualifications as opposed to those enjoyed by Stanfield, the selection made by the Employer seems justified. Even though Massaro is viewed as the more junior employee based on the state seniority criterion, her qualifications, especially in the areas of Training of other employees, causes Massaro to become the significantly more qualified applicant. Massaro's testimony, moreover, indicates her Qualifications were undervalued based upon her unarmed self defense training responsibilities. These responsibilities caused her to provide work direction and supervision of bargaining unit members and other personnel participating in unarmed self defense training.

THE ARBITRATOR'S OPINION AND AWARD

From the evidence and testimony introduced at the hearing, and a complete and impartial review of pertinent contract provisions, I find Paige did not have her contractual rights violated when the Employer failed to select her for the Parole Services Coordinator position. Even though she was the most senior employee based on the criterion contained in Section 30.02,

other junior employees were significantly more qualified. The same conclusion would be reached even if one factors in the proposed adjustments in the Work Performance and Qualifications categories. These additional points would not render her qualifications as "relatively equal." Her revised score would still not require the Employer to apply her state seniority standing.

With respect to the discrimination claim, mere allegations without supporting documentation and evidence fail to establish certain threshold considerations necessary for a proper and fair determination.


From the evidence and testimony introduced at the hearing, and a complete and impartial review of pertinent contract provisions, I find that the Employer did violate Section 30.02 by selecting a junior employee, Massaro, even though she was not significantly more qualified than Stanfield. This ruling does not require any evaluation of arguments provided regarding various articulated point adjustments. Rather, the Employer violated its own guidelines (Joint Exhibit 7) dealing with selection protocols when two (2) applicants "score within two points of each other on the total score." When this selection outcome occurs, the Employer views these applicants as "relatively equal" causing the selection of "the applicant with the greatest state seniority."

On the original Personal Selection Evaluations (Joint Exhibits 8 and 9), Massaro scored sixteen (16) total points, while Stanfield scored fourteen (14) total points. This condition should have triggered the previously noted guideline. Since both applicants were "considered to be relatively equal" as specified in the guidelines (Joint Exhibit 7), Stanfield should have been selected as a consequence of her "greatest state seniority."

AWARD

The grievance of Amelia Paige is hereby denied.

The grievance of Marian Stanfield and her proposed remedy is hereby upheld. The Employer is ordered to make Stanfield whole in terms of wages and other related benefits, less appropriate deductions, as a consequence of her non-selection. The compensable period in question is January 26, 1992 to February 23, 1992.



Dr. David M. Pincus
Arbitrator

December 3, 1994