#1311

CERTIFICATE OF SERVICE

This will affirm that the attached **Arbitration Opinion and Award** *in the matter between*

The

District 1199, The Health Care and Social Service Union,

Service Employees International Union, AFL-CIO

and the

State of Ohio,

Office of Collective Bargaining

was served to the below named parties at the stated addresses:

Harry W. Proctor, Admin. Org SEIU, 1199 475 E. Mound St. Columbus, OH 43215	Michael P Duco Manger, Dispute Resolution Office of Collective Bargaining 106 North High Street 6th & 7th Floor Columbus, OH 43215-3019

by U. S. Mail, First Class Postage, on August 28, 1998
I affirm, to the best of my knowledge that the foregoing is true and accurate

August 28, 1998
John S. Weisheit, Fact Finder Date

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IN THE MATTER
OF
ARBITRATION
OPINION & AWARD

BETWEEN

District 1199
The Health Care and Social Service Union, Service Employees International Union, AFL-CIO

and the

STATE OF OHIO, OFFICE OF COLLECTIVE BARGAINING

Case No.: 16-00-960520-0016-02-12

Grievant: Cathleen Veysey

Arbitrator: John S. Weisheit

Issue: Vacancy

Date of Hearing: July 28, 1998

Award Issued: August 28, 1998

APPEARANCES FOR THE

EMPLOYER	UNION
Didi Anekwe, Labor Relations Admin. Carmine Perna, SETS Analyst Mark Birnbrich, SETS Project Director Lou Kitchen, Representative, OCB	Harry W. Proctor, Admin. Org., Dist. 1199/SEIU Cathy Veysey, Grievant Michael Robison, Delegate, 1199/SEIU

GRIEVANCE DEFINED

"Did the Employer violate the Article 30 of the 1199 Contract when it failed to award the Grievant the position of Human Services Specialist II, PCN? If so, what is the appropriate remedy?"

DECISION

The Grievance is denied.

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AUTHORITY

The above named Arbitrator was selected by the parties for the purpose of attaining final and binding resolution of this matter in keeping with terms in the Contract between the parties. His authority is limited by specific provisions included in the Contract, applicable laws of the State of Ohio and the United States of America.

A Hearing was held on July 28, 1998, in Columbus, Ohio. At that time each party was given the opportunity to present documentation and testimony considered relevant to their position. Prior to closing of the Hearing, the parties indicated that they had a fair and ample opportunity to present such evidence considered relevant to their respective position. All witnesses were sworn in and testified under oath. The Arbitrator's notes constitute the official record of the Hearing.

This Opinion and Award is based on the testimony and documentation provided.

BACKGROUND

The State of Ohio, hereinafter referred to as the "State" and/or "Employer", entered into a series of collective bargaining agreements with District 1199, The Health Care & Social Service Union, Service Employees International Union, AFL-CIO, hereinafter referred to as the "Union" and/or "1199". Said Agreements govern certain terms and conditions of employment for employees in defined classifications. The most recent Agreement entered into was for the period of 1997-2000. The issue in this instant case arose in the previous Collective Bargaining Agreement between the parties for the period of 1994-1997 (JX#1).

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The Grievant was employed in a limited time position of Human Services Specialist II (HSS II) for an 18 month period. The Grievant's exact hire date into this limited full time position , while not agreed to by the respective party, was sometime in March or April, 1995. Regardless, of the actual first date of work, there is no dispute that the Grievant's first day of work was prior to that of Employee "N". The position was covered under the Union/State Agreement in effect at that time (JX #1). On February 12, 1996, a number of regular full time positions as Human Services Specialist II were created and posted as vacant pursuant to the Contract (JX#1). A number of the employees, holding temporary 18 month HSS II positions, including the Grievant and Employee "N", applied for these regular full time HSS II positions. All positions mentioned were granted to employees in 18 month HSS II positions, except for the Grievant. All but one position was filled by more senior employees than the Grievant. Employee "N", though less senior, was deemed "significantly more qualified" than the Grievant and awarded the position. The Grievant then filed this instant Grievance on May 20, 1996. The issue was timely and properly processed through contractual steps and is, by stipulation of the parties, properly before the Arbitrator for determination on its merit.

STIPULATIONS

The parties stipulated that no question of jurisdictional or procedural arbitrability exists and the matter was properly before the Arbitrator for determination on its merit.

The parties, by joint submission, entered a number of stipulations as exhibits, including the CBA from which the grievance arose (JX#1), and the Grievance, as originally filed, and administrative responses (JX#2). It was stipulated by the parties that the Opinion & Award was authorized for publication by professional and academic sources.

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SUMMATION OF UNION CONTENTION

The Union contends the Grievant was unduly denied assignment to the Human Services Specialist II Position posted in February, 1998. The contention is based on the fact that she was the more senior employee, had been deemed to meet minimal qualifications for the position, and the Employer failed to demonstrate "Employee N" is significantly more qualified than the Grievant. It argues the criteria used in selection process was of its own subjective design and was not based on controlling provisions of The Contract (JX#1).

The Union seeks appointment of the Grievant to the position in question, with all back benefits and wages and to be made whole in every way.

SUMMATION OF EMPLOYER CONTENTION

The Employer contends that "Employee N" was awarded the full time Human Services Specialist II position after being determined significantly more qualified than the Grievant. The Employer notes significant difference in work skills and performance between the Grievant and "Employee N" regarding attendance, computer skills, communication, and knowledge of child support enforcement policies and procedures of the State.

The State contends it did not violate the Contract and the Grievance should be denied.

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DISCUSSION

The material facts are not in dispute in this case. Its determination rests solely on basis of a review of the respective interpretation and application of the issue as stated in this instant grievance of specific terms and conditions set forth in the Contractual language. Section 30.2 provides, in part:

"All timely filed applications shall be reviewed considering the following criteria: qualifications, experience, education, and work record, and affirmative action. Among those that are qualified the job shall be awarded to the applicant with the most state seniority unless a junior employee is significantly more qualified based on the listed criteria."

Evidence, in testimony and document indicate the basis for filling vacancies is by granting the transfer to the most senior, qualified employee is the rule not the exception. The Grievant is the most senior qualified applicant for the position in question. The Employer argues that "Employee N" was "significantly more qualified", based on qualification, experience, education & work record. Determination of qualification was attained by supervisor recommendation, employee interview, and review of position application information.

Since it is unrefuted that general rule for filling a vacancy is to the qualified, most senior employee, and the exception is to a less senior significantly more qualified employee, the burden for determination rests on criteria considered in determining an employee as being significantly more qualified.

By Contract, the Employer has reserved rights to fill a vacancy with a less senior employee under expressly stated terms. In normal contract interpretation, such language grants the employer the right to implement and apply such a provision in a manner that is consistent, does not erode the effect of the primary means of filling the vacancy, and is neither arbitrary nor capricious . In this case, certain factors the Employer used in finding Employee "N" significantly more qualified than

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the Grievant, are found not relevant in determining level of qualification in this matter. These include weight to certain general references regarding prior work experience, attendance records; and the de minimus seniority .

Prior Employment: Prior employment record and relevant information is normaily found applicable of a new-hire but not for a transfer and/or promotion after having completed probationary employment with the current employer. This is particularly true when an applicant has been an employee for a sufficient period of time in which first hand assessment can be attained regarding knowledge and abilities. No evidence was introduced indicating a background check regarding accuracy on such employment information, other than that supplied by the applicant. Appropriate work and skills for this position can reasonably be derived from standard Employer work records of the employees and recommendations of Employer supervisors of the employees under consideration. This is considered sufficient in this instant matter since both applicants had about one year of service with the State. It is also noted that the Grievant and Employee "N" were determined minimally qualified as a basis of attaining an interview for the regular HSS II position.

Attendance: No documentation indicated that attendance is generally considered in determination of qualification of an applicant. No evidence was introduced to demonstrate such a practice was known by the Union and/or accepted as a practice in the interpretation of stated leave provisions of the Contract. No evidence suggested the Grievant's absences were other than approved.

Seniority: Seniority results from the express terms of the Contract. Its definition and terms cannot be minimized or altered by use of leave unless expressly so stated. Such is not the case in this matter. The Contract is clear, seniority starts the day of initial employment by the State. No evidence was found that employee absence reduced seniority. Thus the Employer's claim that

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seniority is de minimus in this case due to relevant close hire date and comparison of attendance records is without merit. It is a basic provision for the general rule of filling vacancies.

While the previous issues are found not applicable or limited in determining relative comparison, other work record factors are found valid and merit consideration. The Employer properly posted notice of the vacancy. This included a copy of the job description. The applicants, including the Grievant and "Employee N", were deemed minimally qualified for the position. They were granted an interview in keeping with a uniform standard procedure. Said procedure included a written exercise for the applicants to respond and relate selected criteria considered significant by the Employer in the position sought (SE#3). This was a standard form completed by all applicants. Upon review of interview information and comments from the applicant's supervisors, the interview committee determined the "Employee N" to be significantly more qualified than the Grievant for the vacant position. Greater weight was given to the applicants Computer knowledge and skills; Understanding of the "SETS" program operations; State Child support enforcement; ar Communication skills to others regarding operations of the SETS program. These skills and abilities could be more objectively assessed. Evidence and testimony by the Employer were persuasive that such skills and knowledge were of significant importance for use in the vacant position. The Employer has a right to make the such subjective judgement call on criteria under the Contract. An Arbitrator is without authority to substitute personal value judgements of management, unless it is determined that management has exceeded its authority as previously indicated. Evidence demonstrates, absent the stated exclusions above, the Employer used reasonable prudence in the determination that "Employee N" was significantly more qualified than the Grievant prior to the time the position was offered. No evidence indicates that use of the

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exception provision in filling the HSS II position in question reduced the general rule regarding filling of vacancies. No evidence indicates the State acted in an arbitrary or capricious nature in this matter. It is concluded the Employer did not violate Article 30 of the Contract and the Grievance should be denied.

DETERMINATION AND AWARD

Based on the forgoing, the Grievance is denied.

Certificate of Issuance

I hereby certify that the forgoing **Opinion and Award in the Matter of Arbitration between the State of Ohio, Office of Collective Bargaining and District 1199, The Health Care and Social Service Union, Service Employee International Union, AFL-CIO**, is a true copy as issued and signed by me this **28th** day of **August, 1998**. at **Galion, OH, Crawford County, OH.**

John S. Weisheit

John S. Weisheit, Arbitrator

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