#1345

IN THE MATTER OF ARBITRATION

BETWEEN

DISTRICT 1199/SEIU, AFL-CIO

AND

THE STATE OF OHIO/ODH

Before: Robert G. Stein
Direct Appointment
Case # 02-10-961202-0037-02-00

Principal Advocate for the UNION:

Matt Mahoney, Administrative Organizer
DISTRICT 1199/SEIU, AFL-CIO
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Principal Advocate for the EMPLOYER:

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INTRODUCTION

A hearing on the above referenced matter was held on November 24,1998, in Columbus, Ohio. The parties stipulated to the fact that the issue was properly before the Arbitrator. During the hearing the parties were given a full opportunity to present evidence and testimony on behalf of their positions. The parties submitted closing arguments in lieu of filing briefs. The hearing was closed on November 24, 1998. The parties agreed the Arbitrator's decision is to be issued by February 1, 1999.

ISSUE

The parties agreed upon the following definition of the issue:

What is the proper pay range for the Public Health Nurse Specialist (65541)?

RELEVANT CONTRACT LANGUAGE/

ARTICLE 39 CLASSIFICATION CHANGES

See Agreement for specific language (Joint Exhibit 1)

BACKGROUND

The Grievants in this matter are twenty-five (25) public health nurse specialists who are employed by the State of Ohio. The Union submitted the classification of public health nurse specialist, which was in pay range 12, for classification review in accordance with Article 39 of the Collective Bargaining Agreement (hereinafter referred to as "Agreement" or "CBA"). The Ohio Department of Administrative Services'(DAS) Classification and Compensation Unit conducted a review of the classification. After conducting its review, the Department of Administrative Services determined that public health nurse specialists should remain in pay range 12.

The public health nurse specialist classification (65541) accrued 105 points under the scoring system used by the Employer in the review. This was the highest numerical score possible in pay range 12. Pay range 13 begins at 106 points. The Union disagreed with the point total granted to the public health nurse specialist classification and felt the Employer denied the public health nurse specialists "crucial consideration" and "crucial points" on their questionnaires. The Union filed a grievance and brought this dispute to arbitration. Article 39 has existed in the Agreement since 1994. This is the first grievance to be filed under this Article.

EMPLOYER'S POSITION

The Employer's position in this case is straightforward. The Employer argues that the Department of Administrative Services conducted a fair and reasonable review of the classification of public health nurse specialist and gave the classification an objective rating. Several changes to the classification specification were recommended by DAS. However, the level of compensation (pay range 12) remained the same. In a case like this the Union assumes the role of prosecutor, asserts the Employer. The evidence and testimony substantiate the fact that DAS was thorough in its approach to evaluating the public health nurse specialist classification.

DAS utilized one informed grader and two blind graders who all arrived at a single conclusion: the public health nurse classification was properly placed in pay range 12. Union failed to meet its burden of proof in this case, contends the Employer. The Union did not provide evidence and testimony to overturn the pay range assignment of DAS in this matter.

UNION'S POSITION

The Union strongly argues that the Employer, through the actions of DAS, were denied "crucial consideration" and "crucial point" in the review of the public health nurse specialist classification. The public health nurse specialist classification received 105 points in the DAS review. This point total is <u>one</u> point away from putting the public health nurses in pay range 13. The testimony of the two nurses present at the hearing and

the rebuttals written by their supervisors prove that the DAS review was flawed. This error unreasonably denied the nurses the pay increase they deserve, concludes the Union.

DISCUSSION

The rights of the Employer in establishing pay ranges and in analyzing the job duties and responsibilities of classification are substantial. It must be acknowledged that any classification on the scale of state government is complex and detailed. The Employer is the "chief architect" of the classification system and therefore must be accorded a presumption of expertise in administrating this complex system. The perfect system has yet to be devised, and this one as in all cases has its strengths and weaknesses. It is also clear that mistakes and oversights occur and should be challenged, as called for in the Agreement.

The Union carriers the burden of proof in this matter. This represents the majority opinion of arbitrators in such matters. (See 3-M Co., 77-1 ARB 8244 (Cohen 1977; Babcock & Wilcox, 77-1 ARB 8259 (Cohen 1976); McGill Manufacturing Co., LA 1094 (Peterson 1976); W-L Molding Co. 76 LA 190, 191 (Beitner). The Union must prove with a preponderance of the evidence that the Employer erred in its point factor analysis of the position of public health nurse specialist. Article 39 places an arbitrator in the position of reviewing the decision of the Employer.

This position can be likened to evaluating the selection of candidates for a promotion. The Employer, whose job it is review classifications and administer the Point/Factor Evaluation System (JX 3; MX 1), must avoid arbitrary or capricious conduct.

Admittedly the decision rendered is based upon the Employer's judgement. However, if this judgement is found to be considered judgement (professional in its conduct and in consideration of all the material facts) it carries a presumption of accuracy.

This is providing the evaluation system is one in which the parties to the Agreement have accepted as being valid. This is the case in the instant matter. The State of Ohio and the Union have lived with the DAS designed and managed job classification system for several years during which the Collective Bargaining Agreements have been negotiated. The Agreement provides for a challenge to the application of the classification system and not its design (Article 39).

Therefore, in reviewing the Employer's Article 39 decision, an arbitrator should focus upon the content of the record as considered by DAS and the procedural integrity and consistency demonstrated by DAS in rendering its judgement. The burden and focus of the Union need to be on demonstrating that the Employer erred in one of three ways:

1. **The Employer did not consider all of the relevant facts and/or;**
2. **The Employer conducted the classification review in an arbitrary or capricious manner and/or:**
3. **The Employer incorrectly applied its standards.**

If none of these points are demonstrated by a preponderance of the evidence, the Employer's judgement must stand and must be presumed to be more valid than any decision which could be rendered by an arbitrator (see Article 7.06 E).

In the instant matter, the Union failed to demonstrate with a preponderance of the evidence that the Employer overlooked some of the facts. The ranking of the nurses in the categories of mental skills, mental demands, physical demands, unavoidable hazards, and

surroundings, for example, appeared to be thoughtful and fact driven. I found that the unrefuted testimony of witness Gail Lively supported this conclusion. Again, this is a matter of professional judgement, but I find this judgement to be considered judgement, i.e., all of the relevant facts were taken into account, there was no evidence of arbitrary or capricious conduct, and the appropriate standards were applied as intended.

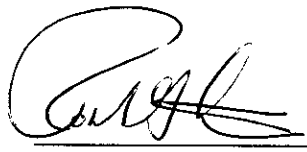
The review of the classification of public health nurse specialist was a close call, one point more and the classification would have be moved to pay range 13. The frustration of those nurses affected is understandable. The facts in this case demonstrated the valuable work the public health nurses perform. The testimony of both Union witnesses, Lois Butler and Lois Bigler, was authentic and demonstrated the dedication these nurses have to their profession.

However, just because it was close a call to grant a change in pay range does not make it a wrong or inappropriate call. There was no evidence or testimony to indicate that the Point/Factor System was not followed or that relevant information was ignored. In the absence of such evidence, I must conclude that the Employer exercised considered professional judgement in accordance with the Collective Bargaining Agreement.

AWARD

The grievance is denied.

Respectfully submitted to the parties this 5th day of February, 1999.



Robert G. Stein, Arbitrator