
In The Matter of the Arbitration

OPINION AND AWARD
The Sharon Woodgeard Grievance

-between-

State of Ohio, Department of
Rehabilitation and Correction
(Southeastern Correctional Institution)

-and-

District 1199, SEIU

ARBITRATOR: John J. Murphy
Cincinnati, Ohio

APPEARANCES:

FOR THE STATE: Beth A. Lewis
Cindy J. Klein
Office of Collective Bargaining
106 North High Street, 7th Floor
Columbus, Ohio 43215

Also present: Alice Bartlett
Personnel Office at
Southeastern Correctional Institution

Virgil Hill
Supervisor of Recovery Services at
Southeastern Correctional Institution

FOR THE UNION: Matt Mahoney
Field Representative
District 1199, SEIU
475 East Mound Street
Columbus, Ohio 43215

Also present: Sharon Woodgeard
Grievant

2011.11.14

FACTUAL BACKGROUND:

A person, holding the position of Correctional Program Coordinator at the Southeastern Correctional Institution (SCI) retired, thereby creating a vacancy in that position. SCI, following the contract and practice, posted the vacancy for ten days--August 29 to September 8, 1997. The posting contained a list of "Minimum Qualifications" and "Additional Position Specific Minimum Qualifications" (PSMQ's). The PSMQ's were stated to be: "LISW and/or CCDC." These acronyms stand for Licensed Independent Social Worker and Certified Chemical Dependency Counselor.

The Grievant with twenty years of seniority at SCI had been a Correctional Program Specialist at the institution since 1986. This classification is the gateway classification of three in a classification series issued by the Department of Administrative Services of the State of Ohio. While persons in this classification are required to have a working knowledge of correctional social programs and program techniques, this is called a "developmental level class" and persons in this classification work under general supervision. The next classification is that of Correctional Program Coordinator--the one for which SCI posted a vacancy in August of 1997. According to the Department of Administrative Services, persons in this classification require a "considerable knowledge of correctional social programs and program techniques in order to develop and coordinate social and rehabilitative programs." This is called a "full performance level class."

The Grievant as well as others applied for the position during the 10-day window of the receipt of application. She met the Minimum Qualifications as set forth in the posting. With respect to the PSMQ's, her application did not include possession of either certificate as a Licensed Independent Social Worker (LISW) or of a Certified Chemical Dependency Counselor (CCDC). Her application, in fact, stated: "I have requested an application for CCDC."

The Grievant was the most senior of all of the applicants for the vacant position. She was not selected for an individual interview because by initial screening she was determined to have met the minimum qualifications but did not meet the PSMQ's. One applicant met minimum qualifications and the PSMQ's and was awarded the position.

After the successful applicant declined the position, the agency (SCI) decided to repost the vacancy for a 10-day period from November 14 to November 24, 1997. The posting was identical to the first posting of the vacancy with the exception of the date and a slight change in compensation. Again, the Grievant filed her application for consideration under the second posting during the window period for receipt of applications beginning November 21, 1997. Again, while the Grievant met the minimum qualifications, her own reference to meeting the PSMQ's was the following statement in her application: "Registered Candidate for CCDC I, in the process of completing formal application." Again the Grievant was not interviewed on an individual basis because she did not meet the PSMQ's; and, again, she was rejected although she was the most

senior of all of the applicants. Again, the successful applicant met both the Minimum Qualifications and the PSMQ's by possessing a license as a Certified Chemical Dependency Counselor II.

GRIEVANCE:

The agency (SCI) made the second posting of this vacancy on November 14, 1997. Three days later, Sharon Woodgeard filed the grievance considered in this arbitration. The grievance stated the problem as follows:

Management violated the contract by reposting Correctional Program Coordinator position instead of filling this position after the first posting 8-29-97 through 9-8-97 according to the contract.

The grievance requested that the position be awarded to Sharon Woodgeard, and that she be made whole.

The grievance was denied by referring to the absence of the Grievant's failure to hold either of the licenses required by the PSMQ's. The agency's Step Three answer dated March 3, 1998 stated:

The Additional Position Specific Minimum Qualifications calls for an LISW and/or a CCDC license and the grievant does not yet have either of these licenses.

ISSUE:

Whether the agency, Southeastern Correctional Institution, failed to comply with the contract in denying the award of the position of Correctional Program Coordinator to the Grievant after posting this position from August 29, 1997 to September 8, 1997? If so, what should the remedy be?

RELEVANT CONTRACT PROVISION:

30.02 Awarding the Job (Transfers and Promotions and Demotions)

. . . .

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 according to 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.

POSITIONS OF THE PARTIES:

A) Union Position

This case involved the right of the Grievant to rise up the career ladder after twenty years experience with the Southeastern Correctional Institution. The Grievant had been a Correctional Program Specialist since 1986, and was aspiring for the next level---Correctional Program Coordinator--in the classification series for the correctional program.

While the Grievant was without a doubt the most senior applicant, and she met the Minimum Qualifications, the agency thwarted her right to the position by arbitrarily assigning a position specific qualification to the vacancy. This change in the position was not warranted; the Union was not notified; and the Department of Administrative Services did not approve the additional qualifications of the position in question.

If this agency "is to have the ability to change qualifications willy-nilly, Article 30 becomes toothless and

seniority rights become impotent." Denial of this grievance would result in the agency becoming "able to tailor positions to hire whomever they wanted."

B) Agency Position

The gist of the Grievant's complaint seems to be that on the first posting--after a qualified applicant turned down the position--the Grievant, being the most senior employee who applied for the position, should have been awarded the job. However, the Grievant misses the point that she was not qualified for the job. Section 30.02 states: "among those that are qualified, the job will be awarded to the Grievant with the most State seniority" The Grievant may have been the most senior applicant, but she was not a qualified applicant because she did not meet the Position Specific Minimum Qualifications for the job. A senior employee cannot be placed in a position simply on the basis of her seniority; she must be qualified to do the job.

The Union did not show that the Employer acted arbitrarily in requiring either a license as an LISW or as a CCDC. Management retains the right to determine specific qualifications, and these qualifications relate to the job duties of Correctional Program Coordinator. This is further shown by the job description for this position issued by the Department of Administrative Services and the references to this position in the Classification Series for the Correctional Program, also issued by the Department of Administrative Services.

OPINION:

A) Authority to Set Position Specific
Minimum Qualifications to a Vacant Position

The record shows that the central office of the Department of Rehabilitation and Corrections sent a memorandum to the agency, Southeastern Correctional Institution, to add the PSMQ's in this case. The rationale was based on requirements of federal funding and ensuring that applicants could perform the job.

The Union raised some questions in its opening statement and in the course of the hearing about whether the Department of Administrative Services had to approve what is contained in a job posting. The State representative opined that the Department of Administrative Services does not approve job postings, but approves position descriptions and classification series that included the job of Correctional Program Coordinator.

The question was raised by the arbitrator as to whether or not the Department of Rehabilitation and Correction was free to add PSMQ's to job postings. After much discussion, the Union's theory was established as follows: the Union did not deny the authority to add the PSMQ's in this case, but this authority was acted upon arbitrarily and, therefore, the Grievant's rights under Article 30 to the promotion were violated.

B) Was the Decision to Require a License as a Licensed Independent Social Worker and/or a Certified Chemical Dependency Counselor an Arbitrary Decision?

1) The Duties of a Correctional Program Coordinator

The working title of a Correctional Program Coordinator is that of a Substance Abuse Coordinator. This record shows that over 70% of all of the persons held in the institutions supervised by the Department have chemical dependency problems.

Duties of a Substance Abuse Coordinator are set forth in what is called the Global Criteria. They range from interviewing clients for appropriate treatment and the level of such treatment, to identifying biopsychosocial conditions of the client. Several skills are needed, including a skill in interviewing persons who are in denial of their condition and fear. All of the above is preparatory to choosing among several treatment modalities, including counseling techniques that would fit a particular client's needs.

This record on the duties of a Substance Abuse Coordinator are directly reflective of the job description and classification series notations by the Department of Administrative Services. For example, both require development of individual treatment plans, and providing rehabilitative program counseling for inmates.

The question raised in this hearing is whether licensure as an LISW and/or a CCDC is reasonably related to these job requirements. It is clear that they are.

To be licensed as an individual social worker one must have a college degree in social work, and often a Master's degree. There is an examination and orals for the licensure, and such a license permits individual counseling. Therefore, when an applicant displays a license as an LISW, the agency can be assured that the applicant can perform the functions of the job of Substance Abuse Coordinator.

The license as a Certified Chemical Dependency Counselor has three grades of proficiency. A CCDC I is a gateway license requiring education in substance abuse, a one year preceptorship with a CCDC I, and a day-long examination. A CCDC II license requires the drafting of a case study with a specific client and the submission of same to the State of Ohio. The study must then be defended before a 3-person panel of persons with CCDC II licenses. Finally, a CCDC III license requires an advanced degree in behavioral science or social work.

The key connection between these two licenses and the work of Substance Abuse Counselor is the necessity of having sufficient education in the full range of rehabilitative and counseling techniques. The Grievant recognized that knowledge of these different techniques comes through education, and requires the displaying this knowledge as part of the examination process for CCDC.

The ultimate issue in this case was whether the requirement of either of these licenses--LISW or CCDC--was an arbitrary decision. In other words, the decision had to be bereft of any rationale

basis. The question in this case is not whether the arbitrator or whether the Union would have agreed with the decision. The question rather is whether the Union showed the absence of any rational connection to the duties required to be performed in the job for which the Grievant had applied. The record amply demonstrates a rational connection between the requirement of these licenses to the job duties. These licenses demonstrate the knowledge and technical ability necessary to perform the job.

The contract requires that the most senior applicant be awarded the job out of those applicants who "are qualified." The Grievant did not have either the LISW nor CCDC license at the time of her application or at the time of the award of the position.^{1/} Accordingly, the Grievant was not among those qualified for the position.

AWARD :

The grievance is denied.

1/ The record shows that the Grievant did, indeed, take the examination for the gateway proficiency level of CCDC I and failed. This fact, while in this record, has no bearing on this analysis. The issue in this case is the threshold issue whether the requirement of such a license could be made part of the posting as a necessary qualification.

Date: June 7, 1999

John J. Murphy
John J. Murphy
Arbitrator
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