

#1381

ARBITRATION PROCEEDINGS

In the Matter of Arbitration)	Grievance No. 16-00-980515-0015-02-12
)	
between)	Grievance of: Stephen Norris
)	
The State of Ohio, Department of)	Hearing Dates: April 7, 1999 & May 3, 1999
Human Resources)	at Columbus, Ohio
)	
and)	
)	
District 1199/SEIU, AFL-CIO)	OPINION AND AWARD

APPEARANCES

For the Union:

Harry W. Proctor, Administrative Organizer, District 1199

Stephen Norris, Grievant

Michael Robison, Delegate, District 1199

For the Employer:

Didi Anekwe, Advocate, ODHS

Keith Nichols, Labor Relations Officer

Linda Cooksey, Business Manager, ODHS

Cynthia G. Lucas, Supervisor of Interstate Central Registry

Natalie D. Edwards, ODHS/ODR&C

Carol Nelson, HSS3/Child Support

Enforcement. The Grievant applied for a lateral transfer to this position but he was not awarded the position. Instead, a less senior employee was awarded the position and the Grievant alleges that the decision of the Employer to award the position to the less senior applicant violated the Collective Bargaining Agreement, particularly Articles 1, 5, and Section 30.02. Specifically, the Grievant alleges that he should have been awarded the vacant position pursuant to his application because he was among those qualified for the job and he was the applicant with the most State seniority. The Grievant disputes the decision of the Employer which awarded the position to the junior employee based upon the Employer's determination that the junior employee was "significantly more qualified based on the listed criteria" which was required to be considered for determining which applicant was to be selected for the position. The criteria to be considered are "qualifications, experience, education, and work record, and affirmative action."

The issue for determination in this case is whether the junior employee who was selected for the position is more significantly qualified for the position based upon the listed criteria.

II. FACTS

The position in question required the successful applicant to act as a member of a team that plans, develops, implements and coordinates program and procedures for operation of the Interstate Central Registry within the 88 Ohio County Child Support Enforcement Agencies on a rotation basis. The employee is required to analyze new and proposed regulations to determine their impact on the present interstate operations. He or she is required to assist in developing new policies and procedures, review, analyze and process incoming interstate IV-D cases, insure that the processing and tracking system is properly in place for all incoming interstate action requests so that the system is adequate to account for statewide activities and to meet federal requirements including the CSNET

experience dealing with the Support Enforcement Tracking System (SETS), working with CSNET and her duties performed as a Child Support Enforcement Investigator with a particular county, her experience was more focused and relevant to the job duties and requirements needed to fill the vacant position. The Grievant's more recent experience involved less with the direct handling of child support cases and more with the conversion of data and the education and training of County Child Support Enforcement Agencies in order that they would be in compliance with SETS, CSNET and other state and federal requirements. Nelson clearly had more current knowledge of the UIFSA statutes while the Grievant's experience in the processing of child support enforcement cases was done under the prior URESA. Both applicants had good work records. The Grievant had received favorable evaluations and had been temporarily promoted to a supervisor position in order to lead a team for program reviews. When Nelson applied for the position her existing job was classified as a Human Services Specialist II. Subsequently, her job was upgraded to a Human Services Specialist III classification. It was stipulated between the parties that the Grievant attended a UIFSA training program between October, 1997 and January, 1998. It was further stipulated that Nelson did not attend any UIFSA training between October, 1997 and January, 1998, although it was established in the evidence that Nelson reviewed and was familiar with the training manual.

The Employer decided to institute a test or examination to determine the most qualified applicant for the position. It was determined that the test would involve structured interviews with oral and written questions to each of the applicants. The questions were composed with the input from supervisors of the agency and the interviews were conducted by the Chief of the Bureau of Direct Services, Rose Riley, and two supervisors within the Bureau of Direct Services, Jack Saliba and Cynthia Lucas. Nelson had listed Jack Saliba as one of her references in her pending Ohio Civil

were incorrect. The Employer stipulated that Nelson received 3 points for attending a UIFSA training session when, in fact, she was not in attendance. It was further improper for one of the interviewers to be a person named as a reference by Nelson on her employment application. The Employer's manual for writing and conducting structured interviews provides that panel members should disqualify themselves if they cannot rate the answers of candidates objectively. This principle becomes important because the score on one of the Grievant's answers was reduced after a consultation between the panel members. The Union further believes that management improperly credited Nelson with authoring a particular document used by the agency when it was established that a portion of the document was developed in 1992, prior to Nelson's employment with the State. Moreover, Nelson could not have acquired experience with CSNET because the system had not yet been fully developed.

The Employer argues that the examination was extremely relevant in determining the best qualified candidate. The job duties involved work within the Interstate Central Registry. This requires very specific and detailed knowledge of interstate child support enforcement procedures including UIFSA law. Six of the ten questions on the structured interview were specifically related to the application of UIFSA. The question described fact patterns and mock cases which required knowledgeable responses. Nelson scored 41 on the six interstate specific questions, which was the highest score received by any candidate. The Grievant scored a 24 on these six specific questions, the lowest score among all of the candidates.

The structured interview process was a fair process. There were seven questions which required verbal responses and three which required written responses. The same three panel members interviewed each candidate in the same fashion. While the Grievant was somewhat knowledgeable,

IV. DISCUSSION

The Employer is correct in its interpretation of many arbitration authorities which hold that employers should have considerable discretion in cases involving the determination of merit or ability versus seniority for job promotions when the determination involves the substantive and technical aspects of a particular job. It is presumed that management is entitled to the benefit of the doubt when matters of technical qualifications are concerned and management selections based upon the substantive qualifications and aspects of a particular job should be accepted unless it can be proven by the Union that management's decision was arbitrary, capricious, irrational or entirely unreasonable under the circumstances.

While this might be the accepted arbitration principle for substantive considerations, the procedural aspects for the determination should be looked at in a different light. Management should be strictly accountable for following the required contractual procedures for selecting candidates for a promotion. There is nothing in the Agreement between the parties which prohibits the Employer from creating a test or examination in order to objectively determine the qualifications of the respective candidates. Moreover, there is nothing in the Agreement which prohibits the Employer from giving greater weight to the qualifications component of the criteria so long as the other components of experience, education, work record and affirmative action are considered. The test or examination, however, must be fairly administered in order to provide an equal opportunity for all applicants. In this case, Linda Cooksey, the Business Manager of the Ohio Department of Human Services, testified about the establishment of the structured interview process used in this case. She gave the opinion that the process in this case was fair and that it met with all of the reasonable standards in effect for developing civil service examinations. One of the exhibits introduced in this

interviewers were given sample responses that were excellent, acceptable and unacceptable. An acceptable response would be to explain to the county that the candidate was unsure of the answer. They were to inform the questioner where to look in the manual or training material and ask them to do the research. If they could not find the answer they were requested to e-mail the candidate again for assistance. It was determined that an unacceptable response would be to tell the questioner that they were unsure of the answer and that they were forwarding the message on to their Supervisor. The Grievant responded that he would contact his immediate Supervisor for assistance. He further stated, however, that he would provide the answer to the questioner in a timely manner implying that he would do the research or obtain the information and not pass the responsibility on to his Supervisor. Initially, two of the three panel members credited the Grievant with an acceptable response and awarded a score of four. After discussion, the score was reduced to zero. The two panel members who reduced the score were the panel members within the Bureau of Direct Services, both of whom have a working relationship with Nelson, and at least one of whom was listed as a reference by Nelson on her employment application and was recommending Nelson for the position. These circumstances arguably raise a question of favoritism and the lack of objectivity on the part of two panel members and otherwise give the appearance of impropriety. The Grievant's response clearly falls into the acceptable category because he did not intend to avoid responsibility by turning the matter over to his Supervisor. His answer indicates that he was taking responsibility for doing the research and obtaining an answer for the questioner. A score of four on this question would have raised the Grievant's total score to fifty-three and to twenty-eight on the six UIFSA specific questions. Moreover, Nelson received credit for attending the UIFSA training when she was not in attendance. She erroneously received a score of ten for attending the training when she should only

scrutiny. Under the circumstances presented here, the interviews and examinations should be retaken by Nelson and the Grievant with new interviewers having no relationship with either of the applicants in order to obtain more accurate scores from which a determination of a significant disparity should be made. If the new scores are not significantly different the Grievant must be awarded the position based upon his greater seniority, experience, education, work record and affirmative action. The Employer should make a new determination of significance relative to the examination scores after the new examinations are completed.

V. AWARD

The grievance is sustained in part and denied in part. Considering all of the criteria under Section 30.02, the Employer is entitled to award the position to Nelson instead of the Grievant if Nelson's scores are significantly greater than the Grievant's on new examinations and interviews to be administered by panels members who have no relationship to either of the applicants. The new interviews and examinations should be limited to the Grievant and Nelson because the other candidates did not file grievances; the Employer takes the position that Nelson was the only candidate who was significantly more qualified than the Grievant under the prior selection process; and, the Grievant would have been selected for the position but for the superior scores received by Nelson.

Date:

July 8, 1999

Mitchell B. Goldberg
Mitchell B. Goldberg, Arbitrator