

ARBITRATION DECISION NO.:
395

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UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Rehabilitation Services Commission

DATE OF ARBITRATION:

DATE OF DECISION:
November 18, 1991

GRIEVANT:
Shirley Snyder Conner

OCB GRIEVANCE NO.:
29-01-(89-08-30)-0019-01-09

ARBITRATOR:
Harry Graham

FOR THE UNION:
Maxine Hicks

FOR THE EMPLOYER:
Darla Burns

KEY WORDS:
Minimum Qualifications
Promotion
Programmer Analyst 2
Alternative Methods of
Meeting Minimum
Qualifications

ARTICLES:
Article 17 - Promotions
and Transfers
§17.01-Promotion
Article 25 - Grievance
Procedure
§25.01-Process

FACTS:

The Rehabilitation Services Commission posted a position for a Programmer Analyst 2. The grievant was among those who bid on the position. She was not awarded the vacancy due to the opinion of the employer that she did not meet the minimum qualifications. Specifically, it was the view of the Commission that she did not possess either algebra or the equivalent of one course in algebra.

UNION'S POSITION:

It is undisputed that the grievant has had a college level course in programming language, FORTRAN. The grievant earned a grade of A in that course. In order to understand FORTRAN knowledge of algebra is essential. The grievant does not have a course in algebra but that does not mean she does not know it. To the contrary, she has a sound knowledge of algebra. She could not have learned FORTRAN without it. The union points that the minimum qualifications contain the word "or" which should be taken to mean that the grievant might satisfy the requirements for the position in a number of ways. Given the grievant's education and her experience with a private data processing enterprise, the Union asserts that the grievant has met the minimum qualifications.

EMPLOYER'S POSITION:

According to the State, the minimum qualifications for the Programmer Analyst 2 vacancy include one course in algebra. The grievant does not have such a course on her record. Nor does she have an equivalent course. It cannot be said with any confidence that the FORTRAN course in which the grievant was enrolled is the equivalent of algebra. As the grievant has had neither a course in algebra nor its equivalent, the State insists the grievance be denied.

ARBITRATOR'S OPINION:

The union presented a document from the grievant's computer science instructor which stated that "Our students are urged to complete an algebra course prior to enrolling in this programming course." In this situation it is unmistakable that, notwithstanding that lack of formal training in Algebra, she successfully completed the course in FORTRAN. She earned an A. The grievant's academic and work record demonstrates beyond doubt that she met the State's own qualifications for the position but for the lack of algebra in her academic background. That lack is compensated for with the passage of the FORTRAN course with an A and letter from her instructor indicating the desirability but not the necessity for the algebra course.

The applicant was told that she would be required to satisfy the minimum qualifications "or provide documentation of education, training, and/or experience that is equivalent to the stated worker characteristics for the number of courses or months of training/experience noted in the minimum qualifications." The evidence submitted by the grievant was indicative of her

successful satisfaction of all requirements itemized by the State but one, her lack of the algebra course. That defect is remedied by her passage of the FORTRAN course, the letter from her instructor and work history.

AWARD:

The grievance is sustained. The grievant is to receive the position and all pay and benefits to which she would have been entitled but for this event.

TEXT OF THE OPINION:

In the Matter of Arbitration
Between

OCSEA/AFSCME Local 11

and

**The State of Ohio,
Rehabilitation Services Commission**

Case Number:

29-01-(89-08-30)-0019-01-09

Before:

Harry Graham

Appearances:

For OCSEA/AFSCME Local 11:

Maxine Hicks

For Rehabilitation Services Commission:

Darla Burns

Introduction:

This dispute is one of several concerned with the issue of whether or not certain employees who bid on promotional opportunities met the minimum qualifications for the vacant position. The Department involved in this situation is the Rehabilitation Services Commission. As is the case with other disputes of the same nature the Grievant and the Union allege that the Grievant met the minimum qualifications for the vacant position and was more senior to the person who received the job. The Employer disputes the fact that the Grievant met the minimum qualifications for the vacancy.

Issue:

The issue in this dispute is:

"Was Shirley Snyder Conner improperly denied a promotion? If so, what shall the remedy be?"

Background:

In due course the Employer came to post for applicants for a vacant position as Programmer Analyst 2. Ms. Conner was among those who bid on the position. She was not awarded the vacancy due to the opinion of the Employer that she did not meet the minimum qualifications. Specifically, it was the view of the Commission that she did not possess either algebra or the equivalent of one course in algebra. Ms. Conner filed a grievance to protest her denial of the Programmer Analyst 2 position. That grievance was not resolved in the procedure of the parties and they agree it is properly before the Arbitrator for determination on its merits.

Position of the Union:

It is undisputed that the Grievant has had a college level course in a programming language, FORTRAN. Ms. Conner earned a grade of A in that course. In order to understand FORTRAN knowledge of algebra is essential. Ms. Conner does not have a course in algebra but that does not mean she does not know it. To the contrary, she has a sound knowledge of algebra. She could not have learned FORTRAN without it.

As was the case with other disputes of this nature, (eg. Bundesen and Ogden) the Union points out that the minimum qualifications contain the word "or." This should be taken to mean that the Grievant might satisfy the requirements for the position in a number of ways. Given Ms. Conner's education and her experience with a private data processing enterprise, the Union asserts that the Grievant has met the minimum qualifications established by the State. As she was senior to the person who was awarded the position, the Union urges she be given the Programmer Analyst 2 job with attendant back pay and benefits.

Position of the Employer:

According to the State the minimum qualifications for the Programmer Analyst 2 vacancy include one course in algebra. Ms. Conner does not have such a course on her record. Nor does she have an equivalent course. The Department of Administrative Services has the view that the most appropriate set of qualifications for the position were those including algebra.

It cannot be said with any confidence that the FORTRAN course in which Ms. Conner was enrolled is the equivalent of algebra. Her instructor indicated it

had an orientation towards business applications. Such a background is not what the State was seeking when filling the Programmer Analyst 2 position. None of the supporting material supplied by her indicate that the course she took was equivalent to algebra. As Ms. Conner has had neither a course in algebra nor its equivalent, the State insists the grievance be denied.

Discussion:

The employer in this dispute determined at the third step of the Grievance procedure (Joint Exhibit 9) that the Grievant met the minimum qualifications for the Programmer Analyst 2 position with one exception. She lacked one course in Algebra. Ms. Conner enrolled in and passed a FORTRAN programming course with a grade of A. The only shortcoming on her application was the absence of the algebra course. Union Exhibit 3 is a letter from Jeffrey E. Frates, Ms. Conner's computer science instructor, to the State officials who were investigating this grievance. In his letter Mr. Frates wrote that "Our students are urged to complete an Algebra course prior to enrolling in this programming course." In this situation it is unmistakable that Grievant lacks that course. It is equally unmistakable that notwithstanding that lack of formal training in Algebra, she successfully completed the course in FORTRAN. She earned an A. The State acknowledges that but for the absence of the algebra course she would have been determined to possess the minimum qualifications for the Programmer Analyst 2 position. The defect with the position of the State in this case is that it overlooks the forest for the trees. Ms. Conner's academic and work record demonstrates beyond doubt that she met the State's own qualifications for the position but for the lack of algebra in her academic background. That lack is compensated for with the passage of the FORTRAN course with an A and letter from Mr. Frates indicating the desirability but not the necessity for the algebra course.

The Third Barnhart Dictionary of New English, 1990, H. W. Wilson Co. contains an entry for FORTRAN. It is defined as a noun which is an "acronym for formula translator, a computer language used for writing programs involving scientific and algebraic computation." (Emphasis added). It is undisputed that the Grievant possesses knowledge of FORTRAN. Included within that is sufficient knowledge of algebra to enable Ms. Conner to pass a course in FORTRAN with a grade of A.

In the course of processing the Grievance it was reiterated that an applicant would be required to satisfy the minimum qualifications "or provide documentation of education, training, and/or experience that is equivalent to the stated worker characteristics for the number of courses or months of training/experience noted in the minimum qualifications." (Joint Exhibit 7, emphasis supplied). The evidence submitted by Ms. Conner was indicative of her successful satisfaction of all requirements itemized by the State but one, her lack of the algebra course. That defect is remedied by her passage of the FORTRAN course, the letter from her instructor and work history.

Award:

The grievance is SUSTAINED. The Grievant is to receive the position and all pay and benefits to which she would have been entitled but for this event.

Signed and dated this 18th day of November, 1991 at South Russell, OH.

Harry Graham
Arbitrator