#1815

IN THE MATTER OF ARBITRATION

BETWEEN

DISTRICT 1199 SEIU

AND

OHIO DEPARTMENT OF JOBS AND FAMILY SERVICES

Before: Robert G. Stein

Grievant(s): Laura Gipson
Case # 16-11-030825,26, 27-0025-02-12

Advocate(s) for the UNION:

Harry Procter, ADM. Organizer
SEIU/DISTRICT 1199
1395 Dublin Road
Columbus OH 43215

Advocate(s) for the EMPLOYER:

Pamela L. Anderson, Labor Relations Officer
Andrew Shuman, OCB, 2nd Chair
OHIO DEPARTMENT OF JOBS AND FAMILY SERVICES
Columbus OH 43215

INTRODUCTION

This matter came on for hearing before the arbitrator pursuant to the collective bargaining agreement (herein "Agreement") between the State of Ohio (herein "Employer", "ODJFS" or "Department") and District 1199, SEIU (herein "Union"). The Agreement is effective from June 1, 2003 through May 31, 2006 and includes the conduct that is the subject of this grievance.

A hearing on this matter was held on February 23, 2005. The parties mutually agreed to the hearing date and location and were given a full opportunity to present both oral testimony and documentation supporting their respective positions. The parties each made closing arguments in lieu of submitting post-hearing briefs. The record was closed on February 23, 2005.

The parties have also agreed to the arbitration of this matter pursuant to Article 7 of the Grievance Procedure.

ISSUE

Did the Employer violate Article 30, Section 30.02 by determining that the Grievant did not meet minimum qualifications for the position of Facilities Standards Representative 2? If so, what shall the remedy be?

RELEVANT CONTRACT LANGUAGE
(As cited by the parties, listed for reference. See Agreement for actual language)

ARTICLE (S) 30, Section 30.02

BACKGROUND

The Grievant, Laura Gibson, ("Grievant," "Gibson"), currently a MEDICAID SPECIALIST 2, held the position of Program Consultant at the time the incident occurred and the grievance was filed. Her employer is the Ohio Department of Jobs and Family Services. Gibson has been employed with ODJFS for approximately seven (7) years.

The incident involves the Grievant's bid, in August of 2003, for one of three (3) Facilities Standards Representative 2 (hereinafter "FSR 2") positions (Joint Ex. 3) that were open and posted by the Employer on the same posting. After screening the applications of the candidates, including the Grievant's, the Employer determined that the Grievant did not meet the minimum qualifications for the position. The Grievant disagreed with the Employer's determination and filed a grievance on August 21, 2003.

SUMMARY OF UNION'S POSITION

The Union asserts the Grievant meets the minimum qualifications for the position of FSR 2. The Union cites a long list of qualifications possessed by the Grievant, claiming this experience and education meet the standard of "equivalent coursework and experience. The Grievant points to her Master of Business degree as evidence of experience "in all levels of business operation" (Joint Ex. 4A). The Grievant also claims that she has 3 years of experience in providing technical assistance, notifying of non-compliance, evaluating, surveying, and monitoring that equate to experience in the operation's residential or day care facility.

Based upon the above the Union urges the Arbitrator to sustain the grievance.

SUMMARY OF EMPLOYER'S POSITION

The Employer does not dispute the fact the Grievant has two college degrees and is a productive employee. However, it contends that in the instant matter the Grievant did not demonstrate either during or subsequent to her application for the position of FSR 2 how she met the minimum qualifications for this position.

Based upon the evidence and testimony, the Employer urges the arbitrator to deny the grievance.

DISCUSSION

Resolution of the instant grievance depends mainly on the contractual interpretation and application of Section 30.02 of the Agreement, which in pertinent part provides:

"Applicants must clearly demonstrate on the application how they possess the minimum qualifications for the position."

In contract interpretation disputes, an arbitrator's primary role is to ascertain the mutual intent of the parties. Among the well-established standards of contract interpretation adopted by labor arbitrators is the practice of using an objective approach, rather than a subjective one, to interpret disputed contract language. The objective test is based on how a reasonable person in similar circumstances would interpret disputed contract language. The objective approach is rooted in a common-sense policy that contract language should be based on objectively verifiable information, rather than on one party's subjective intent, which cannot be objectively examined or established. Using an objective approach to contract interpretation lends greater stability and predictability to labor-management contract disputes. *South Peninsula Hosp., Inc. and Int'l Bhd. Of Teamsters, Gen. Teamsters Local 959,* 114 LA 1234 (Landau 2000).

The first rule in interpreting contract language is the "plain meaning rule." According to this rule, if a writing appears to be plain and

unambiguous on its face, its meaning must be determined from the four corners of an instrument itself without resorting to extrinsic evidence of any nature. *Colonial Baking Co. (Chattanooga, Tenn.) and Bakery, Confectionery & Tobacco Workers, Local 25*, 110 LA 1071 (Holley 1993). If the words are plain and clear, conveying a distinct idea, there is no occasion to resort to technical rules of interpretation, and the clear meaning will ordinarily be applied by arbitrators. *Colonial Baking*. If the language of a contract is free from ambiguity, an arbitrator should effectuate the clearly expressed intent of the parties. *Duluth (Minn.) City and County Employees Credit Union and AFSCME Council 96, Local 3558*, Befort 2002). In those circumstances, there is no need for an arbitrator to go beyond the face of a contract to resolve a dispute. *QUADCOM 9-1-1 Pub. Safety Communications System (Carpentersville, Ill) and Local 73, Serv. Employees Int'l Union*, 113 LA 987 (Goldstein 2000).

An arbitrator may not add to or subtract from a written document and must consider if the words used are, or can be, subject to different meanings and whether they are clear and unambiguous. *PPG Indus., Inc., Chem. Div. (Natrium. W.Va.) and Int'l Chem. Workers Union, Local 45*, 96 LA 1029 (Ghiz 1991). Arbitrators apply the principle that parties to a contract are charged with full knowledge of its provisions and of the language they chose to include. Any "equity" arguments advanced cannot be used as a substitute for express contractual language. *Los*

Angeles School Dist., 85 LA 905, 908 (Gentile 1985). The parties are assumed to have adopted the language used in their Agreement as fully representing their intentions. An arbitrator's decision cannot be made on the basis of competing equities or sympathies but rather on the basis of the contract that the parties have written and adopted to govern their relationship. Moreover, arbitrators cannot search for inferences or intentions that are not apparent and not supported by words documenting that intent.

The arbitrator also notes that the parties' Agreement clearly and specifically limits his power in reviewing the Union's grievances. Section 7.07E of the Agreement specifically provides:

> *" The arbitrator shall have power to add to, subtract from, or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the express language of the Agreement."*

In order to determine whether there has been a violation of Article 30.02, it is necessary to examine the content of this provision. In Article 30.02 the parties agreed to the following requirement:

"Applicants must clearly demonstrate on the application how they possess the minimum qualifications for the position.

Although the evidence demonstrates the Grievant is well educated and possesses a Master's Degree in Business Administration. I find, on her application, she failed to demonstrate <u>how</u> she met the minimum qualifications for the position of FSR 2. The evidence and testimony in the

record demonstrate the Grievant listed her education and experience and relied upon the Employer to interpret how it relates to the minimum qualifications for FSR 2.

For example, during the hearing the Grievant attempted to explain that her Master of Business Degree equates to experience in running a child care facility. The assertion that possessing a Master's Degree in Business Administration is equivalent to operating a childcare facility is without foundation. A more detailed explanation of just how the curriculum equates to the experience of running a childcare facility needs to be explained. No such explanation appears in a clear or demonstrative manner on her November 2003 job application as required in Article 30.02.

What is more burdensome for the Grievant in this case is the second sentence of Article 30.02. In this statement the parties have an agreed upon remedy for employees who fail to *"clearly demonstrate"* on the application *"how they possess the minimum qualifications"* for a position.

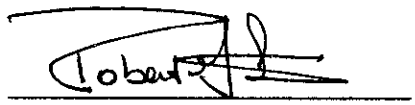
"Failure to do so will result in the applicant being screened out and rendered ineligible for further consideration."

Based upon the above, this language removes the discretion from the Arbitrator in fashioning a remedy. The Grievant did not demonstrate how her education and experience established her as being minimally qualified, and by operation of the Agreement, her application was properly screened out.

AWARD

The grievance is denied.

Respectfully submitted to the parties this 12th day of April 2005.



Robert G. Stein, Arbitrator