

#1847

OHIO DEPARTMENT OF REHABILITATION
AND CORRECTION AND OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
VOLUNTARY LABOR ARBITRATION

IN THE MATTER OF THE ARBITRATION BETWEEN:

THE STATE OF OHIO, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

-AND-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, AFSCME, LOCAL11, AFL-CIO.

GRIEVANT: PHILLIP TAYLOR
GRIEVANCE NO.: 27-23-(04-08-19)-1291-01-03

ARBITRATOR'S OPINION AND AWARD
ARBITRATOR: DAVID M. PINCUS
DATE: OCTOBER 28, 2005

APPEARANCES

For the Employer

Jessie Keyes	Labor Relations Specialist
Michelle L. Ivey	Labor Relations Officer
Sandy Hinton	Personnel Officer 3
Cathy Simerl	Assistant Chief, Bureau of Personnel
Beth A. Lewis	Advocate and Assistant Chief, Bureau of Labor Rel.

For the Union

Phillip Taylor	Grievant
Rodney Holdren	Union Steward
Robert Conrad	Retired Training Officer 2
David Justice	Staff Representative
Herman S. Whitter	Advocate and Director of Dispute Resolution

INTRODUCTION

This is a proceeding under Article 25, Sections 25.03 and 25.04 entitled Arbitration Procedures and Arbitration Panel of the Agreement between the State of Ohio, Ohio Department of Rehabilitation and Correction, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, AFSCME, Local 11, hereinafter referred to as the Union, for the period March 1, 2003 through February 28, 2006 (Joint Exhibit 1.)

The Arbitration hearing was held on July 29, 2005 at the Ross Correctional Institution. The two parties had selected David M. Pincus as the Arbitrator.

At the hearing, the parties were given an opportunity to present their respective position on the grievance, to offer evidence, to present witnesses and cross-examine witnesses. At the conclusion of the hearing, the parties were asked by the Arbitrator if they planned to submit post-hearing briefs. The parties submitted briefs in accordance with the guidelines agreed to at the hearing.

PERTINENT CONTRACT PROVISIONS

Article 17 - Promotions, Transfers, Demotions and Relocations

17.05 - Selection

If the position is in a classification which is assigned to pay ranges one (1) through seven (7) and pay ranges twenty-three (23) through twenty-seven (27), the job shall be awarded to the qualified employee with the most State seniority unless the Agency can show that a junior employee is demonstrably superior to the senior employee. As permitted by law, affirmative action shall be a valid criterion for determining demonstrably superior.

If the position is in a classification which is assigned to pay ranges eight (8) through twelve (12) or twenty-eight (28) or higher, the job shall be awarded to an eligible bargaining unit employee on the basis of qualifications, experience and education. When these factors are substantially equal, State seniority shall be the determining factor.

Interviews may be scheduled at the discretion of the Agency. Such interviews may cease when an applicant is selected for the position.

(Joint Exhibit 1, pg. 33)

STIPULATED ISSUES

Did the applicant, Dusty Cox, meet the minimum qualifications for the position?

Did the Employer violate Section 17.05 when it did not select the Grievant, Phillip Taylor, for the position of Training Officer? If so, what shall the remedy be?

JOINT STIPULATIONS

1. Successful applicant, Dusty Cox, was hired by the Department of Rehabilitation and Correction on October 15, 1985 as a Correction Officer at the Chillicothe Correctional Institution.
 - Mr. Cox transferred to Ross Correctional Institution on January 18, 1987.
 - Mr. Cox was promoted to Locksmith on May 5, 1991.
 - Mr. Cox was promoted to Training Officer on August 8, 2004.
2. Locksmith is in pay range 08.
3. Grievant Phillip Taylor was hired by the Department of Rehabilitation and Correction on October 13, 1987 as a Correction Officer at the Ross Correctional Institution.
 - Mr. Taylor served as Correction Sergeant/Counselor in an internal interim position beginning April, 1999.
 - Mr. Taylor was promoted to Correction Sergeant/Counselor on May 20, 2000.
4. Correction Sergeant/Counselor is in pay range 29.
5. Training Officer is in pay range 31.

CASE HISTORY

The facts for the most part are not in dispute. The Employer posted a Training Officer 2 position at Ross Correctional Institution (RCI.) A number of bargaining unit members bid on the position, but the present dispute reflects a dispute between two bargaining unit members.

Dusty Cox, the successful applicant, was originally hired on October 15, 1985 as a Correction Officer at Chillicothe Correctional Institution (CCI.) He eventually transferred to RCI on January 18, 1987, and was promoted to Locksmith on May 5, 1991. It should be noted that Cox was promoted to the position in dispute, Training Officer 2, on August 8, 2004. This position falls within pay range 31.

Phillip Taylor, the Grievant, was originally hired by RCI on October 13, 1987 as a Correction Officer. On May 20, 2000, the Grievant was promoted to Correction Sergeant/Counselor, which is in pay range 29.

On August 17, 2004, the Grievant formally protested his non-selection. His grievance contains the following pertinent particulars:

[On] June 18, 2004, RCI posted a Training Officer job Pay Range 31. Closing date June 28, 2004. This position was awarded per Sandy Hinton RCI Personnel (sic) Director to Dusty Cox by minimum qualifications and State seniority.

(Joint Exhibit 2A)

The parties were unable to resolve the disputed matter in subsequent stages of the grievance procedure. Neither party raised procedural nor substantive arbitrability concerns. As such, the grievance is properly before the Arbitrator.

THE MINIMUM QUALIFICATIONS ISSUE

The Union's Position

The Union opines that Cox did not meet the minimum qualifications for the training officer position. The minimum qualifications in question, as specified in the Classification Series (Employer Exhibit 4, pg. 5) and disputed posting (Joint Exhibit 3) require the following:

Minimum Qualifications - Six (6) courses in Human Resources, Education, Sociology or Psychology or 18 months experience in preparing informational or instructional programs; 18 months experience in public speaking or effective communications skills; 3 months training or 3 months experience in operating audio visual equipment.

- Or equivalent of Minimum Class Qualifications for employment noted above.

Failure to meet these minimums disqualified the successful candidate from membership in the applicant pool; which, therefore, required the selection of the Grievant as the most qualified senior employee.

Testimony and evidence support this claim. Robert Conrad, a retired Training Officer, and the Grievant remarked specific minimums were not met by Cox. Conrad maintained all Training Officers were required to participate in an Instructional Skills course prior to becoming and performing the duties of a Training Officer. Both witnesses also noted an eight (8) hour instructional skills training course also served as a prerequisite condition. These requirements were met by the Grievant.

The Grievant, moreover, maintained his review of Cox's bona fides indicated minimum qualifications defects. Cox's training record (Union Exhibit 2) strongly supported this position.

The Employer's Position

The Employer opines that Cox did, indeed, meet minimum qualifications. The instructional skill courses discussed by Conrad and others are not required minimum qualifications for the disputed vacancy.

Cathy Simerl, Assistant Chief of the Bureau of Personnel, provided testimony which strongly supported the Employer's conclusion. She emphasized the import of Cox's seven (7) years of experience at Nationwide Auto Parts. Also, specific references nested within Cox's application materials (Joint Exhibit 5) demonstrated, without a doubt, that Cox was a valid member of the applicant pool.

Any testimony and related analysis provided by the Grievant should be discounted. His testimony should be viewed as a self-serving attempt to gain an unwarranted advantage.

THE ARBITRATOR'S OPINION AND AWARD
REGARDING COX'S MINIMUM QUALIFICATIONS

From the evidence and testimony advanced at the hearing, a review of all submitted documents including closing statements, this Arbitrator finds that Cox met the minimum qualifications for the position of Training Officer. He enjoyed: eighteen (18) months experience in preparing informational and instructional programs; eighteen (18) months experience in public speaking, and three (3) months experience in operating audio visual equipment (Joint Exhibit 3.) As such, Cox documented and submitted application material (Joint Exhibit 6) which resulted in qualified membership in the promotion pool.

Duties and responsibilities performed for seven (7) years at Nationwide Auto Parts credibly support this finding. Nothing in the record disputes these qualifications.

Reliance by the Union on "DRC Instructional Skills" training as a minimum qualification for the disputed position is totally misplaced. Neither the vacancy posting (Joint Exhibit 3) nor the classification specification for Training Officer (Employer Exhibit 4) contain this requirement. The language is clear and unambiguous regarding this fact. DRC Standards for Training Personnel (Employer Exhibit 1) does require completion of an approved 40-hour Instructional Skills course or an equivalent by those designated as Training Coordinators. This particular standard, however, does not require course completion prior to placement in the position; but suggests that the course may be completed after an employee accepts the position.

THE ARBITRATOR'S MINIMUM QUALIFICATION AWARD

Cox met the minimum qualifications for the position of Training Officer.

THE MERITS OF THE PROMOTION DECISION

The Union's Position

The Union argues the Employer violated Article 17.05 when it failed to select the Grievant for the position of Training Officer 2. The Grievant and Cox were not substantially equal on the basis of qualifications, experience and education. The Grievant exceeded Cox's standing on the various factors; which precluded the use of State seniority as the determining factor.

A review of the successful applicant's and the Grievant's training records (Union Exhibit 1) evidence an obvious discrepancy favoring the Grievant. The Grievant had greater experience in terms of the number and types of classes taught. The Grievant, moreover, completed the Employer's forty (40) hour instructional skills course, along with another eight (8) hour instructional skills course. The successful applicant, however, failed to complete either course.

The Employer's Position

The Employer maintained it did not violate section 17.05 and did, indeed, select for promotion the appropriate candidate on the basis of qualifications, experience and education. If the Arbitrator determines the successful applicant and the Grievant were substantially equal on the specified criteria, Cox should be viewed as the properly selected successful applicant based on his seniority. He enjoys more seniority than the Grievant.

The Grievant submitted an application and an attached resume (Joint Exhibit 6.) The application was virtually blank in terms of content and the resume lacked sufficient specificity. Hinton testified the successful candidate completed all sections of his application, with pertinent information contained therein, while also providing specifics regarding his experience, qualifications and education.

The Employer urged the Arbitrator to limit his analysis to information provided by the application materials. The Employer should not be expected to go beyond what is contained in the application materials. If the Employer sought-out information outside the four corners of any application and attached material, it could be charged with discrimination or giving certain individuals unfair preference.

THE ARBITRATOR'S OPINION AND AWARD REGARDING THE PROMOTION DECISION

The successful applicant was selected properly in accordance with Section 17.05. The factors specified in the Collective Bargaining Agreement (Joint Exhibit 1) were not substantially equal which meant the State seniority option was not applicable in this instance. The successful applicant's qualifications, experience and education exceeded those possessed by the Grievant.

This determination was based primarily on the documents or application materials submitted by both individuals and reviewed by the Employer for promotion purposes. It does not and cannot consider narrative and other forms of evidence discussed by the Grievant at the arbitration hearing, but not specifically referenced in submissions included for review by the Employer. An earlier arbitration decision authored by Arbitrator Grahm (Grahm, OCSEA Award #437, ACB Award #767, 1992) supports this position. He noted an employer is not expected to go beyond what is contained in the application. This axiom is well-established within the collective bargaining setting in which the parties operate. An alternative view would shift employee-related responsibilities to the employer causing potential litigation and arbitration difficulties based on discrimination and other forms of preferential treatment. It would place certain obligations on the Employer; obligations unspecified in Section 17.05 and obligations totally within any applicant's responsibility.

The Grievant at the arbitration hearing raised a number of qualifications, experience and education accomplishments that could have elevated his standing on the "substantially equal" or "exceeded" continuum. They were not, again, properly submitted during the application process and are, therefore, not properly before the Arbitrator. Some of the information relied upon was based on references to his training record. The training record was not attached to his application materials. Similar accomplishments not referenced specifically in the materials include: duties performed with the United States Marine Corps; training provided to non-profit organizations outside the Department; and participation in a summit attended by Governor Taft.

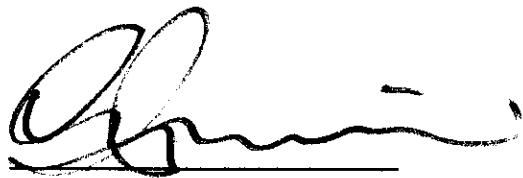
The successful applicant's materials (Joint Exhibit 5) were much more detailed and content-laden resulting in qualifications superior to the Grievant. Unlike the Grievant, Cox completed all sections of the application in detail. The Grievant, moreover, failed to include any reference to his education activities and completed instructional/education courses (Joint Exhibit 6.)

THE PROMOTION DECISION AWARD

The Grievance is denied. The Employer did not violate Section 17.05 when it did not select the Grievant for the position of Training Officer 2. The successful applicant, Dusty Cox, is deemed more qualified based on materials submitted during the application process.



Signed and dated this 28th Day of
October, 2005 at Beachwood, Ohio



Dr. David M. Pincus
Arbitrator