

#1988

IN THE MATTER OF ARBITRATION
BETWEEN
STATE OF OHIO DEPARTMENT OF HEALTH
AND
SEIU/DISTRICT 1199
Grievant: Angelita Reid

Case No. 14-00-070817-0057-02-12

Date of Hearing: June 20, 2008

Place of Hearing: SEIU – 1199 Office – Columbus, Ohio

APPEARANCES:

For the Union:

Advocate: Khalid Jalil, SEIU Staff Representative
2nd Chair: Josh Norris, SEIU

Witnesses:

Grievant: Angelita Reid
Cathy Mockus – Social Worker

For the Employer:

Advocate: Chris Keppler, Labor Relations Officer
2nd Chair: Victor Dandridge, Office of Collective Bargaining

Witnesses:

Andrew Bensing – Clinical Director
Karen Keaton – Human Resources
Cindy Wilson – Assessment Manager

OPINION AND AWARD

ARBITRATOR: Dwight A. Washington, Esq.

Date of Award: August 22, 2008

INTRODUCTION

The matter before the Arbitrator is a Grievance pursuant to the Collective Bargaining Agreement (“CBA”) in effect June 1, 2006 through May 31, 2009, between the State of Ohio Department of Health (“Health”) and the SEIU/1199 Chapter (“Union”).

The issue before the Arbitrator is whether Article 30.02 was violated when the Employer selected a less senior candidate for the position of Social Worker 2 as opposed to the Grievant, Angelita Reid (“Reid”). The Employer argues that it followed its internal processes in promoting the less senior candidate over the Grievant and that no violation of the CBA occurred. The Union disagrees.

This matter was heard on June 20, 2008, and both parties had the opportunity to present evidence through witnesses and exhibits. Post-hearing briefs were submitted by both parties on or about July 11, 2008.

BACKGROUND

Reid was employed as a Social Worker 2 at the Department of Youth Services for over twelve years. On May 23, 2007, a Social Worker 2 position was posted by the Employer in the Employee Assistance Program. The Grievant submitted an application for the lateral transfer, along with three other candidates.

Article 30.02 provides that the job shall be awarded to the candidate with the most seniority, “. . . unless a junior employee is significantly more qualified based upon the listed criteria.” The Employer implemented a policy in 2001 to establish criteria in the selection process.

The Employer used an Enhanced Selection Process (“ESP”) to determine who was the best qualified candidate. The ESP contains the following elements: quantitative and qualitative

measures; interview panel; separation of responsibilities by the decision maker; and use of corrective measures to address any abnormality during the process. The candidates' applications and other attachments were initially screened and a qualifications assessment ("QA") occurred. Each candidate received a score based upon the materials submitted. Thereafter, a structure interview occurred which consisted of nine (9) questions and was conducted by a three (3) person panel. Each structure question has a 0-10 point rating scale that each panel member individually scores during the interview. After the interview, the panel members meet with each other to discuss any discrepancies in order to reach a composite score. This process has been used by the Employer for approximately seven years.

The Employer determined that the junior candidate, William Cartwright ("Cartwright"), was significantly more qualified than the Grievant for the posted Social Worker 2 position. The Union contends that application of the ESP was flawed and improperly applied to the Grievant.

ISSUE

Did the Employer violate Article 30.02 of the CBA by promoting a bargaining unit member having less seniority than the Grievant to the posted Social Worker 2 position?

RELEVANT PROVISIONS OF THE CBA AND DEPARTMENT OF HEALTH

ARTICLE 30 – VACANCIES

30.02 Awarding the Job (Transfers and Promotions and Demotions) in part:

'Lateral transfer' is defined as employee requested movement to a posted vacancy which is in the same pay range as the classification the employee currently holds

Applications will be considered filed timely if they are received or postmarked no later than the closing date listed on the posting. Applicants must clearly demonstrate on the application how they possess the minimum qualifications for

the position. Failure to do so will result in the application being screened out and rendered ineligible for further consideration. All eligible applications shall be reviewed considering the following criteria: qualifications, experience, education, and work record. Employment diversity may be a factor in the selection. The Employer maintains the right to administer a test or instrument to measure the listed criteria. 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. The Union may challenge the validity of the test or instrument as part of a non-selection grievance.

POSITIONS OF THE PARTIES

UNION'S POSITION

The Union initially filed three (3) separate grievances contending that the Employer violated the contract by selecting a junior candidate over three more senior applicants classified as Social Worker 2. The Grievant's matter proceeded independently from the others' grievances due to the distinct nature of her claim. The Union asserts that the selection of a less senior employee who was not significantly more qualified than the Grievant violated Article 30.02. The Union contends that the ESP's qualifications assessment and scored structure interview process were flawed.

ESP consists of three parts having pre-established criteria: minimum qualifications; qualifications assessment; and scored structure interview. No dispute exists, and both parties agree, that the Grievant met the minimum qualifications for this position. At issue is the validity of the qualifications assessment and the structure interview process.

The Union argues that the Grievant's twelve years as a Social Worker 2 was not accorded proper value in the qualifications assessment. The Grievant was working under the same Social Worker 2 job description as the position sought. Her application indicated she had experiences directly aligned with the position (i.e., intake process, group counseling, and social services interventions/assessments). The Employer either ignored or undervalued her experiences.

Karen Keaton (“Keaton”), HR Senior Analyst, conducted the initial screening regarding the QA where the Grievant was scored considerably lower than Cartwright. Keaton testified that, during her interview with the Grievant, she didn’t seek clarification regarding the Grievant’s work experiences. Keaton admitted a lack of knowledge about the field of social work which prevented her from obtaining relevant responses from the Grievant. According to the Union, Keaton’s lack of knowledge directly contributed to the Grievant’s lower score on the QA grid, which impacted her overall score.

Moreover, the 30% weighted factor given to the QA¹ component is undervalued. This component has been changed from 10% to 20% and now to 30%. The Union asserts that the QA criteria directly relate to qualifications, experience, education and work tasks and should be valued greater than 30% and also that the 70% value given to the structure interview is out of balance with reality.

The Union points out that the validity of the ESP was previously challenged in the Crystal Willis arbitration where the process was found “not to be a valid measure of qualifications, education, experience, and work record.” (Union closing statement, p. 1). The Employer must demonstrate that the selected employee was substantially better in ability and performance. The Union posits that the Employer has failed to demonstrate the validity of the QA process in the key areas previously listed, namely: (1) Keaton failed to properly credit the Grievant’s work experience and (2) the QA of 30% is not properly weighted.

¹ The Qualification Assessment score carries a 30% weighted component. The remaining 70% applies to the structure interview questions.

The Union also argues that the structure interview process was flawed in many respects. The interview is an opportunity for the applicant to demonstrate to the panel² their knowledge, problem solving ability, and qualifications in responding to job-related questions. The questions are established prior to the interview, and each question has a value/point scale as determined by each panel member. Notes are supposed to be taken by each panel member to assist them in recording their rating for each question. Andy Bensing (“Bensing”), Clinical Director and Hiring Manager, was a member of the Grievant’s panel. According to the Union, Bensing failed to document in his notes responses that made the junior candidate “significantly more qualified”. As an example, when asked why the junior candidate scored higher on a question about experience interacting with various age populations, Bensing’s notes did not indicate the difference and nowhere on the documents does justification exist to rate the junior employee higher. The Union also points out that Bensing violated another criteria of the ESP when he changed his interview score after consultation with the other panel members.

The Union concedes that ESP allows an interviewer to change his/her initial score after collaboration with other panel members as long as the reason for the change is contained on the document. However, it argues that Bensing made three (3) changes as a result of the group panel discussion while failing to document the reason(s) for any of the changes. Bensing violated the guidelines by providing no reasons for his changes.

Finally, the Union opines that Article 30.02 controls and the ESP process cannot be used to supplant this provision. The Employer has mistakenly applied the ESP to take into account seniority only if the QA and interview scores are close. The CBA does not intend for seniority

² The panel must consist of at least three interviewers. The interviewers of the Grievant were Andy Bensing, Mary Dohn and Ken Kirksey.

to be a tie-breaker. Rather, seniority is determinative unless a less-senior candidate is substantially more qualified than the others.

The Grievant seeks an award of the Social Worker 2 position in the Employee Assistance Program and back wages from the date the position was filled by the junior candidate.

EMPLOYER'S POSITION

The Department of Health asserts that it properly followed the ESP in selecting a junior candidate over the Grievant. The ESP is used to select a candidate from a group of applicants who are minimally qualified by determining the best qualified candidate for a position based upon defined criteria.

The Employer notes that the Union can challenge the validity of the assessment used; however, the Employer has the authority to implement standards for determining "significantly more qualified" as contained in Article 30.02. The ESP, with some adjustments, has been utilized for over seven (7) years as a valid, job-related assessment tool. Moreover, in July 2006, the Union was provided with the current updated version of the ESP but did not challenge it.

The July 2006 revisions were directed at the structure interview process and focused on three (3) factors: (1) poor interviewer notes; (2) interviewer's poor memory; and (3) unexplained scoring differences. The revisions resulted from an arbitration award issued by Susan Grody Ruben and ensured that the emphasis on the structure interview could be validated by competent and reasonable evidence.

The Employer asserts that the Grievant as well as two (2) other senior candidates were not selected for the Social Worker 2 position in the EAP area. The junior candidate was selected using a valid assessment instrument. The qualification assessment and the structure interview clearly established that Cartwright was selected based upon the ESP guidelines and criteria.

The Employer explains that Keaton's initial screening was based upon a review of the materials submitted by the candidate. The level of detail submitted by the candidate is instructive in the scoring a candidate receives on the qualitative assessment. Keaton testified that Cartwright was scored higher than the Grievant for several reasons: (1) the Grievant failed to describe in detail how her work experiences met the posted criteria; (2) specific qualifications may not be assumed due to a candidate's title or job description; and (3) the Grievant failed to convey words on her application that clearly stated her qualifications. As a result of this screening process, Cartwright received 48 points and the Grievant received 25 points. (Joint Exhibit (JX) 7(A), (B)).

The Employer argues that the structure interview with the panel also complied with the ESP. Bensing testified that he is a subject matter expert regarding the social worker vacancy and that Cartwright was significantly more qualified than the Grievant in several areas – client confidentiality and crisis intervention. Regarding the lack of documentation for score changes after the group discussion, the Employer responds that the criteria required documentation only if the score resulted in a change of greater than two points in that category.

The interview guidelines which are attached to the structure interview questions states that the panel members are required to discuss the candidate's performance on each question as soon as possible to determine if any significant scoring discrepancies exist. According to Bensing, if more than a two (2) point variance exists on a particular question and a panel member changes their initial rating, the reason(s) must be documented. Bensing lowered the Grievant's score by one (1) point on three (3) different questions after discussions with the other panel members. Kirksey lowered the Grievant's score on three (3) questions but increased the

score on one (1) question. Bensing and the other panel members' average score on the structure interview for the Grievant was 55. The average score for Cartwright was 75.

The Employer points out that, even if the Grievant was re-credited with the points that were lowered by Bensing and Kirksey, it would be insufficient to put the Grievant in the competitive range of the highest-scoring candidate. The competitive range is established by the highest-scoring candidate, and any other score within 10% of the top score lies within that range.

Cartwright's final selection score was 77.03. Therefore, the competitive range was from 77.03 – 69.32. The Grievant's final selection score was 52.51. The successful applicant simply did a better job of documenting his qualifications in the materials he submitted and was able to convey experiences and qualifications during the interview that allowed the employer to determine that a significantly more qualified junior candidate existed.

The Employer argues that, for all the reasons cited above, the grievance should be denied.

DISCUSSION AND CONCLUSIONS

Based upon the sworn testimony at the hearing, exhibits and post hearing statements, the grievance is denied. My reasons are as follows:

As stated in previous arbitral decisions between the parties, the Employer can fill a vacancy with a less senior candidate as long as the determination of qualifications for the job is exercised by the Employer in a manner that is neither arbitrary, unreasonable or capricious. State of Ohio & SEIU District 1199, AFL-CIO, 27-930818-0959-02-12 (Stanton, 1994) and State of Ohio & SEIU District 1199, AFL-CIO, 16-00-980515-0015-02-12 (Goldberg, 1999).

The Grievant contends that the qualifications assessment and structure interview components of the ESP were flawed. The Grievant's QA concerns are two-fold: (1) the

Employer did not properly credit her previous experiences as they related to Social Worker 2 duties at DYS; and (2) the 30% weighted factor is undervalued in the selection process.

Regarding the QA, a candidate's application or resume must contain evidence satisfying the job criteria contained in the QA grid. The criteria in this matter included, but were not limited to, the following: (1) Master's or advanced degree in social work; (2) at least two (2) years experience as a licensed worker; (3) experience in providing referrals for treatment and other counseling; and (4) experience in providing counseling to clients. If the candidate's application or resume contained evidence of the criteria ". . . the candidate will get points for it." (JX 7(A) p. 1) (Emphasis added).

Keaton testified that Grievant's application contained no evidence of meeting some of the criteria contained on the QA grid. To that extent, the Grievant received zero (0) points on 5 of the 8 areas. On the other hand, Cartwright received zero (0) in only three (3) areas. (JX 7 (A)). The Grievant's total QA points were 25 and Cartwright's were 48. Aside from the points differential, the Union contends that the Employer should have given more value to the Grievant's 12 years of experience as a Social Worker 2. If the Grievant's past work experiences were aligned with the position, the obligation rests with the Grievant to provide information that allows the Employer to give credit based upon the Grievant's submitted information.

The QA limits the screener's review to the information contained on the document(s) submitted by the candidate. Keaton credibly testified that when she reviewed the Grievant's application, it contained insufficient evidence to award her more points; therefore she received zero (0) in 5 areas. The Grievant admitted that she did not submit a resume or any other attachments with her application even though additional documents are allowed. The Arbitrator very carefully reviewed the Grievant's application, as well as the application and resume

submitted by Cartwright, and concludes that credible evidence exists to substantiate the QA points Keaton awarded to the Grievant and those she awarded to Cartwright.

Keaton's role is to document the criteria found in the application/resume clearly indicating that the applicant possesses the education and work experience that satisfies the criteria. The applicant's role is to review the position description and respond with specificity regarding their education and experiences that satisfy the criteria. The Grievant failed to list the work experiences necessary for her to receive more credit. Cartwright provided more detail on his application and resume which, consequently, aided Keaton in determining his specific job-related experiences.

I find that Cartwright's application and resume are more specific and substantive than the Grievant's. For example, Cartwright's resume states that his experiences include: counseling services to inmates; provided screening intake; group/individual counseling; assisted in developing programs for family drug court; provided case management and consultation, including plans. A review of the Grievant's application fails to contain the detail which would have enabled Keaton to give her additional credit.

Regarding the 30% weight issue, the evidence fails to support a finding that the Grievant's documents were insufficiently considered requiring the QA instrument to be determined invalid. The Union argues that Keaton's lack of knowledge of the Social Worker 2 duties impacted the Grievant from receiving proper scoring credit on the QA. As stated previously, the QA screening is based primarily on documents submitted by the candidate, not by conduct of the Employer. Moreover, the Employer has discretion to formulate and administer a test or instrument under 30.02 as it chooses and the Union did not challenge components of

revised ESP in July 2006. Therefore, the 30% weight given to education, work experience and qualifications on the QA has not been shown to be arbitrary or capricious in this matter.

The structure interview was assailed by the Union on several grounds. The Union contends that Bensing changed his score after the panel discussion without any documentation to verify the modification. The interview guidelines are clear and state that “every panel member should take notes during the interview.” They suggest that notes are important.

It is undisputed that panel members Bensing and Kirksey changed their ratings on several questions after discussing the structure interview with each other (JX 7 pp. 1-8, 17-24), whereas panel member Dohn did not (JX 7 pp. 33-40). The ability to change the score is not the issue. What documentation exists as to why the score was changed is the concern. I agree with the Union that documentation needs to exist to ensure that the criteria is applied fairly and consistently.

Bensing testified that it was his understanding that, if panel members changed their score, documentation was only required if the change was two points or greater. The evidence fails to support this position. The last page of the interview document states as follows: “If a panel member changes his/her interview score [sic] as a result of the discussion with the panel, briefly note the information supplied that determined the new rating.” Therefore, a brief written note is required under ESP whenever a panel member changes his/her interview score after the panel discussion. The failure to properly document the scoring changes once again relegates the ESP to rely upon incomplete notes and the interviewer’s memory. It’s a fact that none of the panel documented the reason(s) for their scoring change(s) in this matter. This noncompliance, although critical, is not fatal to this matter. The panel, independently and collectively, scored the Grievant significantly lower on the structure interview than Cartwright. The total point

difference between Cartwright and Grievant was over 20 points based upon their composite scores. If the revised scores would have placed the Grievant in the competitive range, a violation of the Agreement would have occurred because the significance of proper documentation goes to the heart of the structure interview in that scoring differences are explainable and a record must exist regarding what occurred. However, that is not the case in this matter.

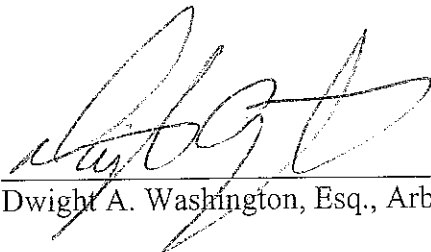
To uphold this hiring decision under the contract, the record must support a finding that Cartwright was significantly more qualified than the Grievant. As noted earlier, Cartwright scored significantly higher than the grievant on the QA, and the record supports that determination. On the structure interview, the Grievant's average score was 55 and Cartwright's was 75.³ The difference in the score is attributable to Bensing and the other panel members rating Cartwright higher in areas based upon the interview criteria. The overwhelming scoring differences by all involved in this process indicates that Article 30.02 was not violated.

Therefore, for the reasons cited above, the grievance is denied.

AWARD

The grievance is denied.

Respectfully submitted this 22nd day of August, 2008.


Dwight A. Washington, Esq., Arbitrator

³ The competitive range for the Social Worker 2 was 77.03 – 69.32 (top score x 90%).