

**ARBITRATION DECISION NO.:**

393

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Taxation

**DATE OF ARBITRATION:**

**DATE OF DECISION:**

November 18, 1991

**GRIEVANT:**

Linda Hoffer

**OCB GRIEVANCE NO.:**

30-10-(90-07-09)-0191-01-09

**ARBITRATOR:**

Harry Graham

**FOR THE UNION:**

Dane Braddy

**FOR THE EMPLOYER:**

Timothy D. Stauffer

**KEY WORDS:**

Minimum Qualifications  
Knowledge to be Developed  
After Employed  
Promotion  
10 Column vs. 12 Column  
Acct. Experience  
Tax Commissioner Agent I

**ARTICLES:**

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

**FACTS:**

The grievant was a Clerical Specialist with thirteen years of State service. In May, 1990, the Employer posted a vacancy for a Tax Commissioner Agent I. The grievant applied for this position but was denied the promotion by the Employer based on its belief that the grievant did not meet the minimum qualifications for

the position. Specifically, the Employer asserted that the grievant did not possess the requisite nine months experience in preparing ten column accounting work papers.

### **UNION'S POSITION:**

The grievant more than meets the minimum qualifications for the position according to the Union. She has had years of experience working with twelve column accounting work papers. Expert testimony from a Certified Public Accountant was given to show that twelve column experience is the same as ten column experience, with the addition of two additional columns. If the grievant is able to work with twelve column data she is certainly able to work with ten column data as required for the Tax Commissioner position. Furthermore, prior to State service, the grievant performed accounting like tasks as a bookkeeper for various private sector employers.

The Tax Commissioner vacancy is an entry level position. The State should not be permitted to hire a person off the street and overlook the qualifications and seniority of incumbent State employees. The Union urges that the grievant be awarded the position and the associated pay as a remedy for the failure of the State to promote her.

### **EMPLOYER'S POSITION:**

The State asserts that the grievant did not meet the minimum qualifications for the position. Nothing is on the record to indicate the requisite three courses in accounting. Nor did the grievant submit documentation to indicate she had nine months of prior accounting experience including the preparation of ten column accounting work papers. In preparing the specifications for the Tax Commissioner position, the State took great pains to distinguish accounting from bookkeeping knowledge. Accountants analyze information. Bookkeepers record it. The grievant did not produce accounting experience because she does not possess it according to the State. She is a bookkeeper.

### **ARBITRATOR'S OPINION:**

The State's assertion that the grievant did not meet the minimum qualifications for the position is erroneous. The grievant informed the Human Resources Department that she had utilized twelve-column accounting work papers in previous employment. Furthermore, the Union's expert witness testified that twelve column work papers are the same as ten column work papers with the addition of two columns.

Examination of the Major Worker Characteristics required for the position shows that knowledge of tax auditing, tax laws and regulations, and general business knowledge are to be "Developed after employment." Thus, they cannot be used as minimum qualifications for the position. The evidence on the record does not show any basis for rejecting the application of the grievant other than the fact that she indicated she worked with twelve column, rather than ten column work papers. To deny the senior applicant the position simply because she indicated her familiarity with twelve, rather than ten column work papers, is to be blind to the reality of the fact that knowledge of twelve column work papers encompasses knowledge of ten column work papers as well. If senior bidders who are qualified for the position upon which they are bidding may be so cavalierly dismissed from consideration the seniority protections afforded employees in the Contract will have been fatally compromised. That situation cannot be permitted to occur.

### **AWARD:**

The grievance is sustained. The grievant is to be awarded the Tax Commissioner Agent 1 position and all back pay and benefits as if this event had not occurred.

### **TEXT OF THE OPINION:**

In the Matter of Arbitration  
Between

**OCSEA/AFSCME Local 11**

and

**The State of Ohio,  
Department of Taxation**

**Case Number:**

30-10-(90-07-09)-0191-01-09

**Before:**

Harry Graham

**Appearances:**

**For OCSEA/AFSCME Local 11:**

Dane Braddy

**For Department of Taxation:**

Timothy D. Stauffer

**Introduction:** This dispute is one of several disputes arising from bidding on vacant positions in State service. The Grievants and the Union allege that the State improperly promoted junior employees or, in this case, hired from the labor market.

**Issue:** The issue in this case is:

“Was Linda Hoffer improperly denied a promotion? If so, what shall the remedy be?”

**Background:** The Grievant in this case, Linda Hoffer, is a veteran of thirteen years of State service. In May, 1990 the Employer posted for a vacancy as a Tax Commissioner Agent I. The Grievant was one of those who applied. At the time of her application she was classified as a Clerical Specialist. In due course Ms. Hoffer's application was denied. A grievance protesting that action was processed through the procedure of the parties without resolution. The parties agree that that grievance is now properly before the Arbitrator for resolution on its merits.

**Position of the Union:** When the Employer denied Ms. Hoffer's application for the Tax Commissioner Agent vacancy it cited the fact that she did not possess the requisite nine months experience in preparing ten column accounting work papers. In fact, Ms. Hoffer more than meets the minimum qualifications for the position according to the Union. She has had years of experience working with twelve column accounting work papers. Expert testimony from a Certified Public Accountant is on the record to the effect that twelve column experience is the same as ten column experience with the addition of two additional columns. If Ms. Hoffer is able to work with twelve column data she is certainly able to work with ten column data as required for the Tax Commissioner position. In the opinion of the Union's expert, Earl Dudley, Ms. Hoffer meets the minimum qualifications for the Tax Commissioner vacancy.

Ms. Hoffer possesses vast experience. Her seniority with the State dates from 1978. Prior to State service she performed accounting-like tasks as a bookkeeper for various private sector employers. The Tax Commissioner vacancy is an entry level position. The State should not be permitted to hire a person off the street and overlook the qualifications and seniority of incumbent State employees according to the Union. It urges the Grievant be awarded the position and the associated pay as a remedy for the failure of the State to promote her.

**Position of the Employer:** The State asserts that the Grievant did not meet the minimum qualifications for the position at the time of her application. Nothing is on the record to indicate that she had had the requisite

three courses in accounting. Nor did the Grievant submit documentation to indicate she had nine months of prior accounting experience including the preparation of ten column accounting work papers. In preparing the specifications for the Tax Commissioner position the State took great pains to distinguish accounting from bookkeeping knowledge. Accountants analyze information. Bookkeepers record it. Ms. Hoffer did not produce accounting experience because she does not possess it according to the State. She is a bookkeeper.

During her tenure with the Tax Department the Grievant performed computational tasks. Those tasks are simply not equivalent to the tasks demanded of an accountant according to the State.

Finally, the State points out that when this vacancy was posted there was a form employees were to submit in order to document prior work experience. That form is known as the "Employment Verification" form. It is used to support claims of previous employment. That form was not submitted by Ms. Hoffer. One of her prior employers has died. That furnishes no excuse for her not to have submitted the form for other employment experience. There was nothing on the record at the time the State decided not to promote Ms. Hoffer to indicate she had the experience she now claims is relevant. As that is the case, the State seeks denial of the Grievance.

Discussion: Linda Hoffer's application for the Tax Commissioner Agent 1 vacancy was denied because she allegedly did not provide evidence of her experience in working with ten-column accounting work papers or three courses in accounting. That conclusion of the State is erroneous. On May 30, 1990 Jocelyn K. Brown of the Department's Human Resources Office solicited additional information from Ms Hoffer regarding her qualifications for the Tax Commissioner position. On June 4, 1990 Ms. Hoffer informed the Human Resources Department that she had utilized twelve-column accounting workpapers in her previous employment with J. Edwin Smith Co. The Union's expert witness, Edward Dudley, a CPA and an agent of the Internal Revenue Service, testified that twelve column workpapers are the same as ten column workpapers with the addition of two columns. Ms. Hoffer has well more than the 9 months required experience with such workpapers.

Examination of the Major Worker Characteristics required for the position shows that knowledge of tax auditing, tax laws and regulations, and general business knowledge are to be "Developed after employment." (Joint Exhibit 6, Emphasis supplied). In fact, Ms. Hoffer has a great deal of knowledge of the tasks to be performed by virtue of her thirteen years of service in the Department and her close contact with other Tax Agents.

The Class Concept of the position ((Joint Exhibit 6, p. 4) indicates that this is an entry level class which works "under close supervision and guidance and requires some knowledge of tax laws, rules regulations and filing requirements and working knowledge of accounting in order to perform audits of lowest complexity factors in-house and/or in field to determine tax liability and compliance of taxpayers." Included among the documents in this dispute is an Inter-Office Communication from Marsha Hanes, Supervisor of the Sales Tax Compliance Unit (Undated) addressed "To Whom it May Concern." That document shows that the Grievant has performed desk audits of monthly sales tax return supplemental sheets.

The evidence on the record does not show any basis for rejecting the application of the Grievant other than the fact that she indicated she worked with twelve column, rather than ten column work papers. What type of workpaper to use for a particular task is largely the choice of the person who is performing the work. Some casual accountants might use the back of a napkin. To deny the senior applicant the position simply because she indicated her familiarity with twelve, rather than ten column work papers, is to be blind to the reality of the fact that knowledge of twelve column workpapers encompasses knowledge of ten column work papers as well. If senior bidders who are qualified for the position upon which they are bidding may be so cavalierly dismissed from consideration the seniority protections afforded employees in the Agreement will have been fatally compromised. That situation cannot be permitted to occur.

Award: The grievance is sustained. The Grievant is to be awarded the Tax Commissioner Agent 1 position and all back pay and benefits as if this event had not occurred.

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

Harry Graham  
Arbitrator