

**ARBITRATION DECISION NO.:**

397

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Health

**DATE OF ARBITRATION:**

**DATE OF DECISION:**

November 18, 1991

**GRIEVANT:**

Mark Bundesen

**OCB GRIEVANCE NO.:**

14-00-(90-03-05)-0018-01-13

**ARBITRATOR:**

Harry Graham

**FOR THE UNION:**

John Feldmeier

**FOR THE EMPLOYER:**

Michael D'Arcy

**KEY WORDS:**

Minimum Qualifications  
Promotion  
Microbiologist 3  
Attainment of Requirements  
After Promotion  
Equal Treatment of Bidders

**ARTICLES:**

Article 17 - Promotions  
and Transfers  
§17.01-Promotion  
§17.06-Selection  
Article 25 - Grievance  
Procedure  
§25.01-Process  
Article 43 - Duration  
§43.03-Work Rules

**FACTS:**

The grievant, a Microbiologist 2 for the Department of Health, applied for two vacant Microbiologist 3

positions in the department. One was in the AIDS section and has been awarded to another applicant/grievant in another arbitration due to the fact that she had more seniority. The other, the subject of this dispute, was in the Rabies section. The grievant did not receive this position in the Rabies section due to the employer's belief that he did not meet the minimum qualifications for the position.

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

Although one of the requirements for the position is that the person be immunized to Rabies, this requirement can be attained after a person receives the job. On the position description, attainment of that condition is marked with an asterisk, indicating it may be secured after the position is awarded. In the grievance procedure the employer admitted it has never been a requirement that employees have immunity to Rabies before working in the section. Immunity may be acquired after assignment to work with rabies.

The grievant met the education and experience qualifications listed on the posting. He had 11 years of experience as a Microbiologist 2 at the time of the bid. The employer claimed that he did not show all of his qualifications on his application. However, as the union pointed out, the successful applicant likewise did not list all of the qualifications for the job but nonetheless was awarded the position.

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

The State points out that the grievant did not itemize his entire set of qualifications when he completed his application. The department acted on the information available to it. It acted in good faith. The department has no responsibility to make a detailed inquiry in order to determine if an applicant possesses the requisite qualifications for a vacant position. The grievant did not indicate his qualifications with specificity. Consequently, he should not secure a promotion according to the State. Furthermore, the Contract at Section 43.03 eliminates past practices. That the State may have immunized employees in the Rabies section prior to the Contract after they came to work there is irrelevant.

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

The State in this case held the grievant to standards it did not apply to the successful bidder. It is inconsistent for the State to argue that the grievant's application should be denied on the basis that it was incomplete and then award the position to another applicant whose application was also incomplete. Furthermore, the grievant met the minimum qualifications of the Classification Specification and Position Description. He possessed the requisite experience. Other attributes sought by the State such as immunization against rabies and the ability to operate certain equipment might be attained after placement in the position.

#### **AWARD:**

The grievance is sustained. The grievant is to be placed in the Microbiologist 3 position in the Rabies section. He is to receive all pay and benefits to which he 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,  
Department of Health**

**Case Number:**

14-00-(90-03-05)-0018-01-13

**Before:**  
Harry Graham

**Appearances:**

**For OCSEA/AFSCME Local 11:**  
John Feldmeier

**For Ohio Department of Health:**  
Michael D'Arcy

**Introduction:**

This dispute is one of a series of disputes involving the alleged failure of the State to promote applicants for various positions in State service. In particular, this case is related to another proceeding, that involving a Grievant named Lynn Ogden. Ms. Ogden was denied a promotion to the position of Microbiologist 3 in the Department of Health. The Grievant in this dispute, Mark Bundesen, was also a bidder on the same position. As was the case with Ms. Ogden, his bid was rejected in favor of that of a junior employee. In the Ogden dispute I determined that the State had violated the Labor Agreement and awarded the position to the Grievant, Ms. Ogden. That decision does not moot Mr. Bundesen's grievance as he also applied for another Microbiologist 3 position. That vacancy was in the Rabies section of the Health Department. The vacancy awarded to Ms. Ogden was in the Aides section. It is the Microbiologist 3 vacancy in the Rabies section that is under review in this proceeding due to the decision involving Ms. Ogden and the Microbiologist 3 vacancy in the Aides section.

**Issue:**

The issue in this case is:

"Was Mark Bundesen improperly denied a promotion? If so, what shall the remedy be?"

**Background:**

As pointed out above, Mark Bundesen, the Grievant in this dispute, applied for two vacant Microbiologist 3 positions in the Department of Health. One was in the Aides section and has been awarded to Lynn Ogden in a parallel proceeding. The other, the subject of this dispute, was in the Rabies section. Mr. Bundesen did not receive the position in the Rabies section. It was awarded to a junior bidder, Michael Oman. A grievance protesting that action was properly filed and the parties agree it is properly before the Arbitrator for determination on its merits.

**Position of the Union:**

The Union makes the same arguments in this dispute as it did in the case involving Mr. Bundesen's colleague, Lynn Ogden. When Mr. Bundesen was denied the position in the Rabies section one of the reasons advanced by the Employer was that he lacked immunity to Rabies. On the position description, attainment of that condition is marked with an asterisk, indicating it may be secured after the position is awarded. In the Grievance procedure the Employer admitted that it has never been a requirement that employees have immunity to Rabies before working in the section. Immunity may be acquired after assignment to work with rabies.

Similarly, the State rejected Mr. Bundesen's application as it did not indicate he possessed the ability to operate certain types of equipment associated with the position. As was the situation with the rabies immunity, knowledge of that equipment is marked with an asterisk, indicating such knowledge is to be acquired after placement in the position.

The State also rejected Mr. Bundesen for the Microbiologist 3 position as he did not meet one of the specifications on the posting, the ability to write and or edit technical and scientific publications. That qualification is listed neither on the classification specification nor the position description. Under Section 17.05 of the Agreement to hold Mr. Bundesen to that standard was improper according to the Union.

The Grievant met the education and experience qualifications listed on the posting. He had 11 years of experience as a Microbiologist 2 at the time of the bid.

As was the case with Lynn Ogden, one of the reasons advanced by the Employer for rejecting Mr. Bundesen's bid was the fact that he did not show all of his qualifications on his application. Again, as was the case with Ms. Ogden, the successful applicant, Michael Oman, did not list all of his qualifications on his applications either. Nonetheless, Oman received the position and Bundesen, who was senior, did not. The State cannot disqualify an applicant based on an allegedly incomplete application and at the same time award a position to an applicant whose application is no more complete the Union insists.

In determining the qualifications of various applicants the Employer constructed a matrix. The matrix shows that Mr. Oman was qualified in Universal Precautions, Aseptic Techniques, and the ability to write and edit technical publications. Nowhere on his application is that shown. The Employer cannot reach into the ether and ascribe qualifications to applicants when they are not indicated on the application. As that occurred in this instance, the Union urges that Mr. Bundesen be awarded the Microbiologist 3 position in the Rabies section and be made whole for the loss he experienced.

### **Position of the Employer:**

The State points out that the Grievant did not itemize his entire set of qualifications when he completed his application. The Department acted on the information available to it. It acted in good faith. The Department has no responsibility to make detailed inquiry in order to determine if an applicant possesses the requisite qualifications for a vacant position. That Mr. Bundesen answered affirmatively to the question of whether or not he met the minimum qualifications cannot determine the outcome of this dispute. He did not indicate his qualifications with specificity. As that is the case, he should not secure a promotion according to the State.

The Agreement at Section 43.03 eliminates past practices. That the State may have immunized employees in the Rabies section prior to the Agreement after they came to work there is irrelevant.

In the final analysis, the State views Mr. Bundesen's application as being incomplete. The responsibility is on the applicant, not the State, to complete the application fully. As Mr. Bundesen did not do so in its view, the grievance should be denied.

### **Discussion:**

This dispute is much like the Ogden dispute. The State in this case held Mr. Bundesen to standards it did not apply to the successful bidder, Mr. Oman. It is inconsistent for the State to argue Mr. Bundesen's application should be denied on the basis that it was incomplete and impute to Mr. Oman qualifications he did not show on his application. (Employer Ex. 2.) The successful bidder did not indicate he possessed the ability to write and/or edit technical publications. Nor did he show he had knowledge of Universal Precautions. The State credited him with those attributes which are nowhere indicated on his application.

Furthermore, Mr. Bundesen met the minimum qualifications of the Classification Specification and Position Description. He possessed the requisite experience. Other attributes sought by the State such as immunization against rabies and the ability to operate certain equipment might be attained after placement in the position.

At Section 17.06 of the Agreement the parties have acknowledged the importance of seniority in the

selection process. There must be a due regard for seniority as provided by the Agreement. In this case, the State for whatever reason imputed to Mr. Oman qualifications he did not show he possessed. It did not do as much for Mr. Bundesen. No legitimate reason exists for the Employer to credit employees with attributes not shown on their applications. The State cannot assert Mr. Bundesen's application was incomplete and overlook similar defects in Mr. Oman's application. Nor can the Employer hold the Grievant to attainment of qualifications its own documents provide are to be gained after entry into the position. When it does so, it opens itself to the sort of result that has occurred in the Lynn Ogden dispute and in this situation as well.

**Award:**

The grievance is SUSTAINED. The Grievant is to be placed in the Microbiologist 3 position in the Rabies section. He is to receive all pay and benefits to which he would have been entitled but for this event.

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

Harry Graham  
Arbitrator