

ARBITRATION DECISION NO.:

511

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Bureau of Workers' Compensation

DATE OF ARBITRATION:

August 5, 1993

DATE OF DECISION:

August 15, 1993

GRIEVANT:

Kelley Munnerlyn

OCB GRIEVANCE NO.:

34-04-(91-08-23)-0153-01-09

ARBITRATOR:

Marvin Feldman

FOR THE UNION:

John Fisher, Staff Rep.

FOR THE EMPLOYER:

C. Stanley Wilder, Advocate

Dick Daubenmine, Second Chair

KEY WORDS:

Promotion

Minimum Qualifications

Bids for Promotion

ARTICLES:

Article 17 - Promotions, Transfers and Relocations

§ 17.05 - Applications

§ 17.06 - Selection

FACTS:

The grievant was a Data Systems Coordinator at the Ohio Bureau of Workers Compensation. He applied for a Programmer Specialist 2 position but was declined an interview; the Agency determined that the grievant did not meet the minimum qualifications for the position. The job posting set forth the minimum qualifications as: 1) 6 months experience as a Programmer Specialist 1, or 2) 10 months training or 30 months experience in computer science, etc., OR 3) equivalent evidence of the Major Worker Characteristics.

UNION'S POSITION:

The grievant met the minimum qualifications for the position and should have been granted an interview. In addition to extensive formal training, the grievant had system design experience at the facility. The Union emphasized that many of the duties of the Data Systems Coordinator position overlapped with those of the Programmer Specialist 2. The Union maintained that the grievant was the most senior applicant, that he was qualified and that he was proficient in the minimum qualifications. Thus, under Article 17 of the Contract, the grievant was entitled to bid and interview for the Programmer Specialist 2 position.

EMPLOYER’S POSITION:

The grievant did not meet the minimum qualifications for the Programmer Specialist 2 position. The job posting specified that a successful candidate have either 6 months of experience in the Programmer Specialist 1 position, or 10 months training or 30 months experience in computer science. The grievant had never worked in the Programmer Specialist 1 position, and he only had roughly 30 days of computer training. Therefore, he did not meet the minimum qualifications for the position.

ARBITRATOR'S OPINION:

There was no contractual violation because the grievant was not qualified for the position. The grievant was unable to meet any of the three "tests" for qualification. First, he had never worked as a Programmer Specialist 1; therefore, he failed the 6 months test. Second, he had only 12 days of out-service training and roughly 30 days of formal computer training (some of which was only at an elementary level of systems analysis and design). Moreover, the grievant had neither taken advanced college courses nor did he have advanced training in any of the systems and design concepts necessary for the position. Thus, the grievant failed the 10 months training or 30 months computer science experience test. Third, he failed to show that his work experience qualified him for the Programmer Specialist 2 position, so he likewise failed the equivalent experience test.

Consequently, the Agency determined that the grievant was deficient in the areas of systems analysis and design. The Agency concluded that although the coursework listed on the grievant's application provided him with a good informational basis, the grievant was incapable of performing a competent systems analysis.

Finally, the Arbitrator was impressed by the fact that the Agency enlisted the aid of the Programmer Systems Manager in screening candidates for the position. The Programmer Systems Manager evaluated the grievant's skills and determined that he was not qualified to hold the position. The Manager concurred that the grievant still required additional training and experience. In fact, by the time this grievance actually came before the Arbitrator, a Programmer Specialist 1 position became available, and the grievant was awarded this position.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

**VOLUNTARY ARBITRATION PROCEEDINGS
GRIEVANCE NO. 34-04-910823-0153-01-09**

STATE OF OHIO
The Employer

-and-

**OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, LOCAL 11,
A.F.S.C.M.E. AFL-CIO**

The Union

OPINION AND AWARD

APPEARANCES

For the Employer:

C. Stanley Wilder, Advocate
Dick Daubenmine, Second Chair
Nancy Seman, Agency Representative
Robin Lind, Witness
Diane Murray, Witness
Brian Galloway, Witness
Joan Smith, Witness
S. Mike Hakes, Witness

For the Union:

John Fisher, Staff Representative
Kelley Munnerlyn, Grievant
Mack Tincher, Steward
Dave Dariel, Observer

MARVIN J. FELDMAN

Attorney-Arbitrator
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1. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties, the parties having failed resolve of this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted at the conference facility of the union, in Columbus, Ohio, on August 5, 1993, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses should be sworn and sequestered and that post hearing briefs would not be filed. It was upon the evidence and argument that this matter was heard and submitted and that this opinion and award was thereafter rendered.

II. STATEMENT OF FACTS

Two clauses in the contract are involved in this particular matter. They are sections 17.05, paragraph A and 17.06, paragraph A. Section 17.05, paragraph A, revealed the following:

"§17.05 - Applications

Employees may file timely applications for promotions. Upon receipt of all bids the Agency shall divide them as follows:

A. All employees within the office (or offices if there is more than one office in the county), 'institution' or county where the vacancy is located, who presently hold a position in the same, similar or related class series (see Appendix 1), and who possess and are proficient in the minimum qualifications contained in the class specification and the position description."

Section 17.06, paragraph A, revealed the following:

"§17.06 - Selection

A. The Agency shall first review the bids of the applicants from within the office (or offices if there is more than one office in the county), county or 'institution.' 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. Affirmative Action shall be a valid criteria for determining demonstrably superior. Interviews may be scheduled at the discretion of the Agency. Such interviews may cease when an applicant is selected for the position."

A vacancy was posted for a programmer Specialist 2. The job duties indicated in that particular vacancy revealed the following:

"JOB DUTIES:

Leads team of lower-level programmer specialists &/or other computer personnel (e.g., programmer/analysts) by providing work direction & training (e.g., programming software installation, software testing, trouble shooting hardware & software equipment, peripheral installation); coordinates projects involving the development, modification, & implementation of personal computer application programs & software packages; determines user needs & recommends appropriate solutions; develops user manuals & instructions; conducts training (e.g., spreadsheet, word processing, database) for users & other computer personnel; identifies & resolves PC application errors.

Develops & implements PC-based application programs; maintains & updates existing programs; evaluates hardware & software products to asses (sic) compatibility with user needs & installed hardware & software base; installs & configures PC software packages.

Instructs users in the operation of equipment & the use of software packages; trouble shoots PC hardware & software problems; installs & upgrade4s (sic) personal computer systems & peripherals.

Performs other related duties as required (e.g., maintain support & maintenance activities records."

The minimum qualifications listed for that particular vacancy revealed the following:

"MINIMUM QUALIFICATIONS:

6 months experience as Programmer Specialist 1, 64141.

-Or 10 months training or 30 months experience in computer science which included computer & programming techniques, operation of computer hardware & peripheral equipment, systems analysis & design, computer software package programming & mathematical concepts from use in computer science.

-Or alternative, equivalent evidence of the Major Worker Characteristics noted above."

The grievant submitted his application for that internal job posting. His application revealed the following:
 [Form]
 OHIO Bureau Of
 Workers' Compensation

NOTE •All applications are subject to pre-screening based on the minimum qualifications listed on the vacancy posting.
 •Your application must show you meet all of these qualifications to be granted an interview, so please be thorough.

Classification of Position Posted:

PROGRAMMER SPECIALIST 2

Position control number (only one P.C.N. per application)

Deadline for applying:

PCN #2025.0

JUNE 27, 1991

Name, Last

First

M.I.

Office Phone

MUNNERLYN

KELLEY

G.

466-6969

Present Classification

Division/section

DATA SYSTEMS COORDINATOR

REMOTE COMPUTING

Are you full-time permanent?

Bargaining Unit Status

☒ Yes ☐ No

☒ AFSCME _ 1199 ☐ OEA ☐ Exempt

Are you currently on probation? ☐ Yes ☒ No

WORK EXPERIENCE: Briefly describe any of your current or prior work experience which relates to the duties of the vacant position. (continue on separate page if necessary)

Provide technical support and training for Central and District Offices. Duties include programming software installation, software testing, trouble shooting hardware and software equipment, peripheral installation. other duties include: installing and configuring hardware and software packages.

Coordinated project involving the development, modification and implementation of personal computer application programs and software packages to determine user needs and recommends appropriate solutions; develops user manuals and instructions (i.e. spreadsheet, word processing, and databases for users and assigned personnel as directed).

Developed and implemented PC-based application programs; maintained and updated existing programs; evaluates hardware and software products to assess compatibility with user needs and installed hardware and software as directed. Instructed users in the operation of equipment and the use of software applications.

Please list any direct supervisory responsibilities required in your current or previous position or any special training related to supervision.

(BWC Form 5510; PERS-10)

[Form continued]

EDUCATION/TRAINING: Please list specific course work which relates to the duties of this position.

COMPUTER TRAINING COURSES COMPLETED:

- 1. Advance Lotus 1-2-3
- 2. Intermediate Lotus 1-2-3
- 3. Introduction to Lotus 1-2-3
- 4. Financial Analysis 1-2-3
- 5. Intro. to the Personal Computer
- 6. Intro. Local Area Network (LANS)
- 7. Advance MS-DOS
- 8. intermediate MS-DOS
- 9. Lead operator (NCR Worksaver)
- 10. Intro. Microsoft word 5.0
- 11. inter. Microsoft Word 5.0
- 12. Advance Microsoft Word 5.0
- 13. Intro. to FirstChoice
- 14. Intro. to MultiMate
- 15. Intro. to DECmate III
- 16. Introduction to Rbase
- 17. Introduction to Dbase

List any special machinery or equipment that you can operate which would aid you in performing this job.

KNOWLEDGE OF SOFTWARE UTILITIES

- 1. PCTools
- 2. Sidekick Plus
- 3. Norton Utilities
- 4. Qic Tape Utilities
- 5. Central Point Backup

KNOWLEDGE OF SOFTWARE PACKAGES

- 1. Harvard Graphics
- 2. PageMaker
- 3. Alpha Four
- 4. Paradox
- 5. Microsoft for Windows

KNOWLEDGE OF PERIPHERAL EQUIPMENT

1. HP Laser Printers
2. Kyocera Laser Printer
3. NCR Laser Printer
3. Dox Maxtrix Printers

Specify how you meet the minimum qualifications for this position.

I have over one (1) year of training, over 2.5 years of work experience with computers and peripheral equipment. I have met with staff and department heads to discuss their computer and automation needs. I have researched software packages to make recommendations for new designs, developments for ongoing and upcoming projects. Provide group and individual training for new and upgrades computer equipment, peripheral equipment and software packages.

Describe any specific skills or knowledge you have that might aid you in performing this job.

I have been studying forth generation languages on my own time, I have a personal computer at home. This adds and gives me the advantage when exploring and studying the concepts of programming languages. I have knowledge of Algebra and Statistical Analysis.

If applicable, do you have required license(s) necessary to perform this job? (please list)

Signing this application certifies that all of the above information is complete and true to the best of my knowledge.

Signature

Date

On July 2, 1991, the personnel officer reviewed the grievant's application and revealed by letter that the grievant did not meet the minimum qualifications and sent the grievant the following verification of that:

"This is to acknowledge the receipt of your application for PCN 2025.0, Programmer Specialist 2, in the Remote Computing Section.

The Department of Human Resources has reviewed your application and determined that you do not meet the necessary minimum qualifications to be granted an interview for this position. This determination was based on the minimum qualifications in the Ohio Classification Specifications and done in accordance with pre-screening procedures.

You do not meet the minimum qualifications in the following area(s):

6 months experience as Programmer Specialist 1, 64141.

-Or systems analysis & design & mathematical concepts from use in computer science.

If upon receipt of this letter you wish to submit additional information to show that you meet the minimum

qualifications, you must contact me immediately at (614) 466-7080. At that time, you will be advised of the date by which we must receive your addendum."

On July 3, 1991, the grievant answered that correspondence and his answer revealed the following:

"I received a letter from you today dated: July 2, 1991 Indicating (sic) that I did not meet the minimum qualifications: for PCN: #2025.0 (Programmer Specialist 2).

My work experience and training is equivalent to an associate degree in computer science and exceeds the minimum qualifications as indicated on the second page of posting; which reads as follows:

MINIMUM QUALIFICATIONS CONTINUED:

--Or alternative, equivalent evidence of the Major Worker Characteristics noted above.

Further more, (sic) I have over 2.5 years performing such JOB DUTIES as indicated on the posting of the PCN stated above.

I completed a five (5) day course titled 'Introduction to Local Area Network' at the NCR World Training Center in Dayton, Ohio, this course covered many subjects including an in depth look at systems analysis and designs.

I completed a three (3) day course titled 'Lead Operator' at the NCR Training Center in Westerville, Ohio, this course covered one full day on the subject 'systems analysis'.

I completed a three (3) day course titled 'Financial Analysis for Advance Lotus Users' this course cover (sic) various mathematical concepts pertaining to computer science.

I completed over forty (40) hours of MS-Dos training and over two years of experience writing programs in MS-Dos that use Hexadecimal, Decimals and Binary representatives (which are mathematical concepts in computer science).

If additional information is needed, please contact me at 466-6969."

On August 13, 1991, the same personnel officer at the agency indicated again that the grievant did not meet the minimum qualifications. That letter revealing that stated as follows:

"This is to acknowledge the receipt of the addendum to your application for PCN 2025.0, Programmer Specialist 2, in the Remote Computing Section.

The Department of Human Resources has reviewed the addendum to your application and determined that you do not meet the necessary minimum qualifications to be granted an interview for this position. This determination was based on the minimum qualifications in the Ohio Classification Specifications and done in accordance with pre-screening procedures.

You do not meet the minimum qualifications in the following area(s):

6 months experience as Programmer Specialist 1, 64141. (& mathematical concepts from use in computer science deleted, emphasis ours)

-Or systems analysis & design concepts from use in computer science.

Should you have any questions regarding this matter, please feel free to contact me at (614) 466-0780."

It might be noted that the position was posted on June 18 and the deadline date for sign-up was listed as June 27, 1991. It is revealed that seven people became applicants but that only one was certified for an interview. It is apparent that the one that was certified for interviews was certified on July 8, 1993. The grievant was not even certified for an interview and the only person who received the interview appointment finally became the successful candidate. As a result the grievant filed a protest. That protest revealed the following:

"On August 13, 1991 Kelly received a letter from Human Resources stating that he did not meet the minimum qualifications in his application for PCN 2025.0, Programmer Specialist 2. The Union contends that Article 17 has been violated because the grievant has shown beyond a doubt that he is indeed qualified for the position and yet Human Resources refuses to accept his application and allow him to bid under 17:05 A&B."

The labor relations officer of the agency from which the job was offered denied the grievance on the following basis:

"Brian Galloway, Programmer Systems Manager, Information Systems, assisted Joan Smith with the screening of applications for this position. Mr. Galloway stated that the minimum qualifications specify that applicants must possess 6 months experience as a Program Specialist 1 or 10 months training or 30 months experience in computer science which included computer & programming techniques, operation of computer hardware & peripheral equipment, systems analysis and design, computer software package programming & mathematical concepts from use in computer science. Mr. Galloway stated that Mr. Munnerlyn was deficient in the areas of systems analysis and design. The course work which was listed by Mr. Munnerlyn was not sufficient to allow the employee to conduct a competent systems analysis. Mr. Galloway stated that the course work which Mr. Munnerlyn has taken includes good informational topics but it does not qualify the applicant for this position. The experience Mr. Munnerlyn discussed was reviewed by Mr. Galloway, but was found not to be sufficient to qualify him for the position."

The employer further stated by way of findings, the following:

"FINDINGS

Based upon the facts presented at this hearing, I fail to find a contract violation. Article 17 reflects application grouping and selection. The issue surrounding this grievance lies in whether or not the applicant met the minimum qualifications for the position. Based upon the testimony provided by both parties, I find that the applicant does not meet the minimum qualifications. The employee specifically stated that the only course work which he has taken were out service training courses which, when combined, consisted of only twelve days. In addition the employee failed to show how his work experience has provided the experience necessary to qualify him for this position.

For these reasons I am denying this grievance in its entirety."

In the final analysis the bureau at which a position was sought and posted revealed that the grievant was deficient in the following:

"6 months experience as Programmer Specialist 1, 64141.

-Or systems analysis & design concepts from use in computer science."

There is no doubt that the grievant did not have six months experience as a programmer specialist 1, position number 64141. The only area of contention is whether the grievant was proficient in a systems analysis and design concepts for use in computer sciences. The grievant placed into the record a full listing of his computer training courses and they revealed the following:

COMPUTER TRAINING COURSES COMPLETED

- | 1. <u>LOTUS 1-2-3 TRAINING:</u> | <u>LENGTH OF TRAINING:</u> |
|---|-----------------------------------|
| 1. Introduction to Lotus 1-2-3 | One Day |
| 2. Intermediate Lotus 1-2-3 | One Day |
| 3. Advance Lotus 1-2-3 | Two Days |
| 4. Financial Analysis 1-2-3 | Two Days |
|
2. <u>MICROSOFT WORD TRAINING:</u> | |
| 1. introduction Microsoft Word | One Day |
| 2. Intermediate Microsoft Word | One Day |
| 3. Advance Microsoft Word | Two Days |
|
3. <u>MS-DOS TRAINING:</u> | |
| 1. Introduction MS-DOS | One Day |
| 2. Intermediate MS-DOS | One Day |
| 3. Advance MS-DOS | One Day |
|
4. <u>PERSONAL COMPUTER TRAINING:</u> | |
| 1. Introduction to the Personal Computer | Half Day |
|
5. <u>DATABASE TRAINING:</u> | |
| 1. Introduction to Dbase | Two Days |
| 2. Introduction to Rbase | Two Days |
|
6. <u>NETWORK TRAINING:</u> | |
| 1. Intro. to LANs (Locate Area Network) | Five Days |
|
7. <u>DATA COMMUNICATION TRAINING:</u> | |
| 1. Intro. to Data Communication Concepts | Four Days |
|
8. <u>DESKTOP PUBLISHING TRAINING:</u> | |
| 1. Introduction to Harvard Graphics | One Day |
| 2. Introduction to Aldus PageMaker | Two Days |
|
9. <u>WORKING KNOWLEDGE OF SOFTWARE (ON-THE-JOB-TRAINING):</u> | |
| 1. PCTools (Version 6) | |
| 2. Microsoft Windows | |
| 3. Sidekick Plus, | |
| 4. Norton Utilities | |
| 5. Qic Tape Utilities | |
| 6. Lotus Release 3.0 | |
| 7. Lotus Release 3.1 | |
| 8. Microsoft Word 5.5 | |
| 9. Central Point Backup | |

10. SOFTWARE APPLICATIONS REVIEWED:

1. Alpha Four
2. Paradox
3. Microsoft PowerPoint
4. Excel for Windows

NOTE: I have a wide range of computer experience and background which consist of user support, installation of hardware and software, training and programming.

From all of that, it is apparent that the grievant had approximately thirty days of formal training. Some of that time was spent in the learning process at a primary level of systems analysis and design. The grievant did not have any advanced college courses nor advanced training in any of the systems and design concepts which would have triggered a favorable response, at least according to management testimony. Management did offer testimony by and through the grievant's supervisor revealing that in the last two years the grievant's abilities have substantially grown; that at the time he applied for the position involved in this particular matter in 1991, he did not have sufficient knowledge to be considered favorably for the position; that the personnel officer did not make the decision alone but in concert with a professional in the field in which the position was sought and that as such the grievant did not meet the minimum requirements as indicated necessary for the vacancy.

The union on the other hand indicated and stated that the grievant did meet the minimum requirements as listed on the vacancy; that he has taken many courses of formal training although not a sustained college course and that he worked in a system design at the facility, the design never being used because of a withdrawal of it when near completion on the part of the employer. The grievant further indicated and stated that he was employed as a data systems coordinator and that there are many overlapping duties between that classification and the work classification sought. The grievant further stated that he was the most senior on the list of applicants to which the employer agreed.

It was upon those facts that this matter rose to arbitration for opinion and award.

III. OPINION AND DISCUSSION

In order for a person to obtain a position under the terms of the contract between the parties, the applicant must meet the minimum requirements for the position sought. The grievant was never employed as a programmer specialist 1 and therefore did not meet the six month test. Nor did the grievant have any formal training in the advanced system and design that the position requested as a basic, in order to be considered for programmer specialist 2.

The grievant appears bright, fast to learn, but at the time that the position became available he was short on knowledge. That became very evident when various employer witnesses testified that the grievant while acting as a trouble shooter had no serious knowledge of system analysis and design. When the grievant ran into trouble in the trouble shooting, he sought aid and assistance from the very people who testified on behalf of the employer. The fact of the matter is, the evidence does not reveal that the grievant had sufficient knowledge to be acceptable for the position as posted at the time of the posting.

The grievant completed approximately thirty hours of formal training; the grievant worked as a trouble shooter but not as a system design and analysis; the grievant had some overlapping duties as a programmer specialist 2 but had never served as a programmer specialist 1; the determination of a turn down from the grievant in 1991 was coordinated with the grievant's supervisor, who was cognizant of the grievant's ability. The grievant simply did not have the knowledge then, that he currently possesses.

After the examination of the evidence including the application, the addendum, the formal workload that the grievant took by way of courses from various sources and an examination of my notes relevant to the testimony of the experts that testified, it is my firm belief that the grievant was short on sufficient knowledge to have minimum qualifications in order to serve as a programmer specialist 2 in 1991. It is my understanding that the grievant will presently begin such duties in August of 1993, because the grievant has

met the test and was favorably considered for that open position. Suffice it to say, this grievance, while it will not be granted has sparked the employer during its pendency, into paying close attention to the grievant so as to be aware that the grievant has sought the position which he will now hold in August of 1993, through all of the coordinated efforts that the grievant made along the way.

For all of these reasons however the grievance must be denied.

IV. AWARD

Grievance denied.

MARVIN J. FELDMAN, Arbitrator

Made and entered
this 15th day
of August, 1993.