

**ARBITRATION DECISION NO.:**

567

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Ohio Department of Insurance

**DATE OF ARBITRATION:**

March 1, 1995

**DATE OF DECISION:**

March 14, 1995

**GRIEVANT:**

Linda R. Greene

**OCB GRIEVANCE NO.:**

19-00-(94-03-14)-0100-01-07

**ARBITRATOR:**

Harry Graham

**FOR THE UNION:**

John Gersper

**FOR THE EMPLOYER:**

Georgia Brokaw

**KEY WORDS:**

Minimum Qualifications

Promotion

Seniority

**ARTICLES:**

Article 17 - Promotions, Transfers, and Relocations

§ 17.01 - Policy

**FACTS:**

The grievant was employed as an insurance investigator for eleven years with the Ohio Department of Insurance. A posting was made in January, 1994 for the position of Insurance Contract Analyst 3. The grievant, and another employee who was also an Insurance Investigator 2, bid on the position but the grievant was denied the position because she failed to meet the minimum qualifications. Therefore, although the grievant had more seniority than the other applicant, she was not awarded the position.

**UNION'S POSITION:**

The union believed that pursuant to Article 17 of the contract, the grievant met the minimum qualifications for the Insurance Contract Analyst 3 position. Based on the classification specification, management sought someone with working knowledge of insurance and applicable state and federal law. Applicants were also

required to be able to analyze complex product submissions and perform various other duties. The applicant also needed experience in product development, which the Union believed was not necessary for the position because no entity of the state had any involvement in product development. The union believed that product development was a duty of insurance providers and, as such, was not relevant to the contract analyst position.

The union also contended that the grievant was qualified for the position based on her past investigative work relative to complaints about insurance and potential violations of the insurance law of Ohio. The grievant had also taken continuing education courses dealing with licensure as an insurance agent.

In sum, the union believed that based on the fact that the grievant had on-the-job experience, had taken continuing education courses, and was the most senior applicant, she should have been awarded the position of insurance contract analyst 3, and not the other applicant.

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

Management stated that product development included the duties of researching and analyzing competitive markets, drafting and writing contracts, etc. The finished product could be a rate, a rule, contract, guideline, or solicitation material. Management also stated that product development was an important aspect of the position based on the fact that the position was in a new section of the Department, which was concerned with Managed Care.

Management pointed out that when the grievant interviewed for the position, she stated that she had no experience in product development. The other employee applying for the position, however, had product development experience. In addition, the grievant's past experience was principally concerned with investigatory functions and her tasks have been concerned with enforcement duties. The other applicant, on the other hand, had a background in underwriting as well as investigative duties. He also had created new products. Since the applicant was the senior qualified bidder, management believed that he was rightfully chosen for the position, and the grievant was rightfully denied.

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

Based on management's definition of product development, applicants for the position of Insurance Contract Analyst 3 had to have experience of a specialized nature. The applicant who was awarded the position had more direct experience in insurance. The grievant, on the other hand, had a strong background in enforcement. Based on this analysis, the arbitrator held that the junior applicant was better qualified based on his experience. The grievant did not meet the minimum qualifications that were listed on either the classification specification or the position description. Furthermore, the applicant's experience as an underwriter more closely fit the requirements set out in the position description and, as such, he was rightfully chosen for the position.

#### **AWARD:**

The grievance was denied.

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

**In the Matter of Arbitration**

**Between**

**OCSEA/AFSCME Local 11**

and

**The State of Ohio, Department  
of Insurance**

**Case Number:**

19-00-940314-0100-01-07

**Before:**

Harry Graham

**Appearances:**

**For OCSEA/AFSCME Local 11:**

John Gersper  
OCSEA/AFSCME Local 11  
1680 Watermark Dr.  
Columbus, OH. 43215

**For Department of Insurance:**

Georgia Brokaw  
Office of Collective Bargaining  
106 North High St., 6th Floor  
Columbus, OH. 43215

**Introduction:** Pursuant to the procedures of the parties a hearing was held in this matter on March 1, 1995 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this case was closed at the conclusion of oral argument.

**Issue:** At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was the Grievant, Linda R. Greene, improperly denied  
a promotion to Insurance Contract Analyst 3?  
If so, what shall the remedy be?

**Background:** The events prompting this proceeding are straightforward. The Grievant, Linda Greene, has worked as an Insurance Investigator 1 and 2 for the Ohio Department of Insurance for the past eleven years. Prior to assuming her duties with the Department she had worked for Blue Cross of Central Ohio for approximately four years.

On January 4, 1994 the Department posted notice of a vacancy for an Insurance Contract Analyst 3. Ms. Greene and others bid on the position. Interviews were held with the Grievant and another candidate, Dirk Rader. Mr. Rader was also an Insurance Investigator 2. Mr. Rader ultimately was awarded the job. He is junior in state service to Ms. Greene. She viewed that award to represent a violation of the Collective Bargaining Agreement and filed a grievance on March 17, 1994. That grievance was processed through the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

**Position of the Union:** Article 17 of the Agreement is concerned with "Promotions, Transfers and Relocations." In particular the criteria for selection outlined by the Agreement provides that bidders must meet the minimum qualifications for the vacancy. The Union claims that Ms. Greene met that standard. Joint Exhibit 4 in this proceeding contains the classification specification for the Insurance Contract Analyst 3, it provides that people in that position have a working knowledge of insurance and applicable state and federal law, so that they be able to review standard product submissions. The posting, Joint Exhibit 3, provides that bidders must be able to analyze complex product submissions and performs various other duties. Of significance to this dispute is that the Department sought a person with experience in "product

development." This was due to the fact that the position was to be in a new section of the Department of Insurance, the Managed Care Division. The Department had created this Division in response to changes in the health insurance market. The Union asserts that experience in product development is a bogus requirement of the position, notwithstanding its placement in the Managed Care Division of the Department. No entity of the State has any involvement in "product development." That function is the province of insurance providers. They sell a product and are regulated by the State. The State itself does not provide or sell any form of insurance. As that is the case, the notion that the successful bidder possessed experience in product development and Ms. Greene did not is irrelevant according to the Union.

Ms. Greene is experienced in the field of insurance. She has performed a great deal of investigative work relative to complaints about insurance and potential violations of the insurance law of Ohio. She has taken continuing education courses during her tenure with the Insurance Department. These include courses for licensure as an insurance agent and LOMA Courses I - IV. These courses cover various aspects of life and health insurance. By virtue of both her on-the-job experience and continuing education the Grievant met the minimum qualifications for the disputed position according to the Union. As she is senior to the person who was awarded the vacancy she should prevail in this proceeding in the opinion of the Union.

**Position of the Employer:** The State points out that it is the Union that bears the burden of proving its case in this instance. That is due to the fact that this is a contract interpretation dispute, not a discipline case. The Union cannot meet its burden the State insists.

In this situation the Employer interviewed both Ms. Greene and Mr. Rader. When it did so it furnished to them its definition of "product development." For purposes of awarding the vacant position the State defined "product development" as:

"The process of developing a product includes: researching and analyzing competitive markets, financial impact, risk factors, and contract language implications to the managed care entity. The process also includes drafting, writing and editing contracts, manual rules, solicitation materials etc. The product may be a rate, rule, contract, guideline, solicitation material etc. or any portion thereof. Complete products or portions thereof are submitted to the assigned division (i.e, Managed Care) at which time they are referred to as product submissions."

The Department was particularly interested in establishing whether or not any bidder had experience in "product development" as defined above. This was due to the fact that the position was in a new section of the Department, that concerned with Managed Care. When interviewed on February 16, 1994 Ms. Greene indicated she had no experience in product development. The notes of Mr. Rader's interview, also conducted on February 16, 1994, indicated that he had met the criteria of understanding product development.

Examination of Ms. Greene's experience shows her to have been principally concerned with investigatory functions. Her tasks have been related to enforcement. Mr. Rader has a background in underwriting in addition to his investigative duties with the State. He has performed some tasks for his various previous employers that might meet the definition of "product development." It was his work in creating new products that led the interviewer to conclude that he was the only applicant who fully met the requirement for understanding the concept of "product development." As he was the senior qualified bidder, the State urges that Ms. Greene's grievance be denied. In its opinion, she does not meet the minimum qualifications for the vacant position.

**Discussion:** In disputes of this nature the burden placed upon the Union is great. It must demonstrate that the Grievant, who is invariably senior to the person awarded the job, meets the minimum qualifications of the classification specification and the position description. To meet those tests poses a high hurdle for the Union.

In this situation the State acted with scrupulous fairness during the selection process. The person who conducted the interviews of bidders, Kay Thompson, acknowledged forthrightly that she knew all applicants

personally. She took pains to prevent favoritism from coloring the selection process. To this end she administered the same interview to all applicants. (Joint Ex. 10). In that interview Ms. Greene indicated that she had no product development experience. Mr. Rader "fully understood what product development is." The Union is correct to point out that the State does not develop insurance product. That fact is of little utility in determining this dispute. For purposes of filling this vacancy the State developed a definition of product development different from that which might be used by the proverbial man in the street. As defined by the State, the concept has a specialized nature. Ms. Thompson determined that Mr. Rader more nearly met the criteria specified by the State's definition than did Ms. Greene. The Arbitrator agrees. As set forth in his application, Mr. Rader's background is more directly concerned with insurance than is Ms. Greene's. Her strength is in enforcement. This is not to conclude that he is better suited for all possible vacancies than she. He is better qualified by his experience for the vacancy at issue in this dispute.

The vacancy in question involves work with the developing phenomenon of "managed care" delivery of health care. Examination of Ms. Greene's application shows her expertise in this area to be limited at best. The evidence indicates that she does not meet the minimum qualifications for the position found on either the classification specification or the position description. Mr. Rader's application shows that by virtue of his experience as an underwriter he more nearly meets the minimum qualifications on the position description for the position than does Ms. Greene. As that is the case and no taint of impropriety attaches to the selection process the Union cannot prevail in this dispute.

**Award:** The grievance is denied.

Signed and dated this 14th day of March, 1995 at South Russell, OH.

Harry Graham  
Arbitrator