

ARBITRATION DECISION NO.:

614

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Bureau of Workers' Compensation

DATE OF DECISION:

September 28, 1996

GRIEVANT:

Karen Probst

OCB GRIEVANCE NO.:

34-28-(95-08-16)-0132-01-09

ARBITRATOR:

Harry Graham

FOR THE UNION:

Ronald Synder

FOR THE EMPLOYER:

N. Eugene Brundige

KEY WORDS:

Interpretation of Contract

Minimum Qualifications

Promotion

Remedies

ARTICLES:

Article 17

-

FACTS:

The grievant was employed at the Ohio Bureau of Workers' Compensation (BWC) Office in Bridgeport, Ohio. In July, 1995 the grievant applied for a position as a Claims Service Specialist. Part One of the minimum class qualifications for the position of Claims Service Representative stated that an applicant must have completed an "undergraduate core coursework in business, humanities, social & behavior science, education or a related field; successful completion of one typing course or demonstrate ability to type 15 words per minute." Part Two of the minimum class qualifications provided that an applicant have "36 mos. exp. working in private insurance organization as claims representative or equivalent position." In between Parts One and Two is the word "or."

The grievant possessed an Associate's Degree in Applied Science with a major in Medical Assisting at the time the grievant applied for the position of Claims Service Specialist at the BWC. Prior to obtaining employment with BWC, the grievant had been employed for six years in two different doctor's offices. The grievant's application for Claims Service Representative at the BWC was rejected during the initial prescreening process. When the grievant was denied the position of Claims Service Representative at the

BWC, the position was awarded to another applicant.

UNION'S POSITION:

The Union argued that the Employer had violated Section 17.05 of the Agreement. Section 17.05 of the Agreement provides that the Employer fill vacancies with employees who "possess and are proficient in the minimum qualifications contained in the classification specification and the position description."

The Union claimed that the grievant met the minimum class qualifications found in Part One by way of the grievant's Associate's Degree. The Union further argued that the grievant met the minimum class qualifications found in Part Two by way of the grievant's six years of work experience at the doctors' offices.

EMPLOYER'S POSITION:

The State argued that the grievant did not possess the minimum class qualifications found in Part One because the grievant's Associate's Degree is not equivalent to "undergraduate core coursework". In addition, the State argued that the grievant did not meet the minimum class qualifications established in Part Two because the grievant did not have 36 months experience as a private insurance organization claims representative or an equivalent position.

The State read the phrase "or equivalent position" as referring to work in a private insurance organization. The State did not see "or equivalent position" as referring to experience in a doctor's office. Therefore, the State did not view the grievant's experience in the doctors' offices as having any bearing on meeting the minimum qualifications for the position.

ARBITRATOR'S OPINION:

The Arbitrator stated that the grievant did not meet the standards found in Part One of the minimum class specifications, but, for the purposes of the grievant's claim, it was not necessary for the Arbitrator to decide whether or not the grievant had completed an "undergraduate core" as described in Part One of the minimum class specifications. The Arbitrator stated that the grievant need not meet the requirements of Part One because Part One is not the sole consideration for the position of Claims Service Specialist.

The Arbitrator stated that the word "or" between Parts One and Two of the minimum class specifications meant that the educational standards set out in Part One are not the only way for an applicant to qualify for the position of Claims Service Specialist. An applicant can qualify for the position by way of the qualifications found in Part Two of the minimum class specifications, if that applicant does not meet the qualifications found in Part One.

The Arbitrator stated that the grievant met the minimum class specifications found in Part Two based on the grievant's work experience in the doctors' offices. The Arbitrator stated that if the State's interpretation of the language found in Part Two were followed then there would be no need for the phrase "or equivalent experience" to exist. The presence of "or equivalent experience" shows that the State has considered two ways for an applicant to satisfy the experience standard of Part Two. One way is through employment experience with an insurance organization, the other through some equivalent experience.

AWARD:

The grievance was sustained. The grievant was to be placed in the position of Claims Specialist at the BWC office in Bridgeport retroactive to the granting of that position to the other applicant. The Arbitrator stated that it was unjust to remove the applicant who was awarded the position instead of the grievant, but that removal was necessary in order to award the grievant the position. The grievant was to be paid the difference between the grievant's straight time earnings and the earnings the grievant would have earned but for the violation of the Agreement by the State.

TEXT OF OPINION:

In the Matter of Arbitration

Between

OCSEA/AFSCME Local 11

and

**The State of Ohio, Bureau of
Workers' Compensation**

Case Number:

34-28-(95-08-16)-0132-01-09 etc.

Before:

Harry Graham

-

Appearances:

-

For OCSEA/AFSCME Local 11:

Ronald Snyder

Associate General Counsel

OCSEA/AFSCME Local 11

1680 Watermark Dr.

Columbus, Ohio 43215

For Bureau of Workers' Compensation:

N. Eugene Brundige

Assistant Chief Human Resources Officer

and Labor Relations Administrator

Bureau of Workers' Compensation

30 West Spring St., 6th Floor

Columbus, Ohio 43266-0581

Introduction:

Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute 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 Karen Probst properly prescreened for the position of claims service representative, PCN 20130.0? If not, what shall the remedy be?

Background:

There is no dispute over the events that lead to this proceeding. The Grievant, Karen Probst, is an employee of the Bureau of Workers' Compensation. She works in the BWC office in Bridgeport, OH. In July, 1995 she applied for a position as a Claims Service Specialist, PCN 20130.0. Her application was rejected during the initial prescreening process. She subsequently applied for two other identical vacancies. As was the case with PCN 20130.0 her application was rejected at the initial stage of the selection process. Grievances protesting those rejections were filed. They were denied at each stage of the grievance procedure. For purposes of this hearing they were consolidated into one. The parties agree that they are

properly before the Arbitrator for determination on their merits.

Position of the Union:

In the opinion of the Union the Employer has violated the Agreement at Article 17, "Promotions, Transfers and Relocations." Section 17.05 A 1 provides that the Employer is to fill vacancies with employees who "possess and are proficient in the minimum qualifications contained in the classification specification and the position description." Turning attention to those minimum qualifications the Union insists that the Grievant meets them in several ways. The minimum qualifications for the disputed position provide (Jt. Ex. 9) that an applicant must have completed an "undergraduate core coursework in business, humanities, social & behavioral science, education or related field; successful completion of one typing course or demonstrate ability to type 15 words per minute." Ms. Probst meets these qualifications. She has an Associate Degree in Applied Science with a major in Medical Assisting. For that degree she took and passed courses in such areas as Medical Terminology, Human Anatomy and Physiology, Public Health and ICD/CPT Coding. All are related to the duties performed by the Claims Service Specialist.

The Department of Administrative Services conducts training for State employees in the proper manner in which to classify positions and applicants for positions. Union Exhibits 4 and 5 in this proceeding present the official "Minimum Qualification Conversion Table" used in determining the education and experience equivalencies of applicants. That table (p. 2-5) indicates "associate degree or undergraduate core program" indicating equivalence. As Ms. Probst has an associate degree she meets the undergraduate core requirement as it is considered as being equivalent to that level of education.

The Union also points to the second standard in the Minimum Class Qualifications and insists the Grievant meets it as well. The standard provides that an applicant have "36 mos. exp. working in private insurance organization as claims representative or equivalent position...." The typing requirement is also found. Ms. Probst meets this standard according to the Union. Prior to employment with the State she worked for six years in two different doctor's offices. In her position she was responsible for coding illness and injury using the relevant ICD and CPT codes. She filed insurance claims on behalf of patients. This included examination of health insurance policies for benefit levels. She dealt on a routine basis with insurance providers on such issues as extent of coverage, benefit denials and appeals of such actions. In the course of her tasks she often worked with staff of BWC. Consequently, she meets the stated qualification of "equivalent position."

The Union is aware the State will argue that the term "equivalent position" refers to "private insurance organization" earlier in the sentence. The Union disputes that interpretation of the language. It claims the concept of equivalency stands alone and does not relate to work in a private insurance enterprise.

When Ms. Probst was denied the disputed position it awarded to another applicant, Anthony Recinella. Should Ms. Probst prevail in this proceeding the Union urges that she be awarded the Claims Service Specialist position at Bridgeport with back pay as appropriate. Further, it urges that the incumbent, Mr. Recinella, not be displaced. In the Union's view the State violated the Agreement. Recinella should not be penalized by the action of the Union in defense of Ms. Probst and the agreed-upon language with respect to promotions in its view.

Position of the Employer:

The State disagrees with interpretation of the classification minimum qualification phraseology set proffered by the Union. The requirement for "undergraduate core coursework" deals with study leading to a Bachelor's degree. An Associate degree is not equivalent to undergraduate core coursework in the State's opinion.

Similarly, the State views the words "or equivalent position" in the sentence "36 mos. exp. in private insurance organization as claims representative or equivalent position..." (Emphasis supplied) as referring to experience in a private insurance organization. They do not refer to work in a medical office, experience brought by Ms. Probst to her application. As that is the case her experience in physician's offices is of no

value to her in the selection process.

Should the Union prevail in this proceeding the State has a different view of the proper remedy than does the Union. It views the authority of the Arbitrator to be limited. The only proper remedy would direct the State to make appropriate back pay to the Grievant and place her in the disputed position. The incumbent, Mr. Recinella, would necessarily be returned to his prior position.

Discussion:

In the final analysis the Employer determines the qualifications it desires for applicants for specific positions. For the disputed position the State determined it was necessary that an applicant complete the "undergraduate core coursework in business, humanities, social & behavior science, education or related field." It is not necessary for purposes of this proceeding to determine if Ms. Probst has completed an undergraduate core. Her coursework is not in the fields specified by the minimum class qualifications for employment. It may be true that the education of the Grievant has qualified her for the claims service position. That is not for the Arbitrator to determine. It is clear from the record in this proceeding that Ms. Probst does not have the requisite coursework in any of the fields specified as being required. The State properly denied her application based on the educational standards set for the job.

That is not the sole consideration. The minimum class specifications continue in the second paragraph which starts with the word "or." That word means the educational standards set out in the first paragraph are not the only way an applicant can qualify. If an applicant meets the standards in the second paragraph that applicant may be qualified as well. The language bears reiterating. It provides that a person is considered as meeting the minimum class qualifications if they have "36 mos. exp. working in private insurance organization as claims representative or equivalent position...." The interpretation placed upon the phrase "or equivalent position" by the State may charitably be considered as being unusual. More accurately, it is strained, convoluted, tortured and without support in the record or in the English language. To recall, the State asserts the phrase "or equivalent position" refers to work in "a private insurance organization." There would be no need for the phrase if the State's view were correct. The first sentence of the second paragraph of the minimum class qualification could then read, "36 months experience in private insurance organization as claims representative." Under the interpretation advanced by the State there is no need for the concluding phrase "or equivalent position." That it exists means that the State itself has contemplated and accepted the notion that an applicant may qualify by virtue of experience in a private insurance organization or some other, .. equivalent" experience. Otherwise, why the phrase in the sentence? Even if the view of the Employer was communicated to the Union that does not mean it was agreed upon. The language, issued by the State, stands as written. It indicates without susceptibility of doubt that the State contemplates two ways of satisfying the experience standard. One, employment with an insurance organization; the other, some equivalent experience.

In this case, the Grievant meets the equivalency test. She has six years experience in medical offices performing tasks very similar to those done by the claims specialist at Workers' Compensation. That they were not done for an insurance organization is irrelevant. The concept of ."equivalent position" requires that it is the task, not the organization for which the task was performed be the test.

If it were the function of an arbitrator to make the theological "just" award the position of the Union with respect to remedy would be embraced. The State has violated the Agreement. Mr. Recinella, the incumbent, should not be harmed by virtue of that violation. He is truly the innocent bystander in this situation. He played the game according to the rules set out by the State and was erroneously awarded the disputed position. No penalty should be imposed upon him by virtue of equitable considerations. Those considerations do not control the nature of remedy in this case. Should the position of the Union be adopted the State would have an additional claims specialist at Bridgeport. In the opinion of those responsible, such a position is not needed. The Arbitrator has no authority to direct the State continue a position it deems unnecessary in these circumstances.

Award:

The grievance is sustained. The Grievant is to be placed in the position of Claims Specialist at the Bridgeport, OH. Bureau of Workers' Compensation office retroactive to the award of that position to Anthony Recinella. She is to be paid the difference between her straight time earnings and those she would have earned but for the violation of the Agreement found to have occurred in this instance. That payment is to be made from the date of Mr. Recinella's appointment to the date of this award.

Signed and dated this 28th day of September, 1996 at Solon, OH.

Harry Graham
Arbitrator