

ARBITRATION DECISION NO.:

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UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Ohio Department of Natural Resources

DATE OF ARBITRATION:

June 20, 1997

DATE OF DECISION:

July 7, 1997

GRIEVANT:

Howard Chunnic

OCB GRIEVANCE NO.:

25 12 (95 10 03) 08 01 06

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ARBITRATOR:

Harry Graharn

FOR THE UNION:

Bob Rowland, Staff Representative

FOR THE EMPLOYER:

Jon Weiser, Labor Relations Administrator

KEY WORDS:

Demonstrably Superior
Proficiency in Minimum Qualifications
Promotion
Seniority

ARTICLES:

Article 17 – Promotions , Transfers and Relocations

§17.05 - Selection

§17.06 – Proficiency Instruments

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FACTS:

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The grievant began his service with the Ohio Department of Natural Resources (ODNR) in 1979. In 1981, he started working at Grand Lake St. Mary', and operated a variety of equipment at the park, such as a forklift, riding mower, dumptruck, backhoe, and bulldozer. In 1989 he became a Dredge Operator 1. As a

Dredge Operator 1, his primary duty was to maintain dredge equipment in order to remove silt and other materials from channels and lakes. However, he continued to operate equipment of the sort named above because dredging operations are only conducted from April 1 to November 30.

In June, 1994, the Employer posted a vacancy for a Dredge Operator 2 position. The grievant, as well as a number of other employees, applied for the position. From the pool of applicants, the Employer selected an employee with less seniority than the grievant. As a result, the grievant filed this grievance alleging that the Employer violated Sections 17.05 and 17.06 of the Collective Bargaining Agreement (CBA).

UNION'S POSITION:

The Union argued that, according to the CBA, the Employer was required to award the Grievant, the senior applicant, the Dredge Operator 2 position. The grievant possessed the minimum qualifications. The Employer had to show that the Junior applicant's qualifications were demonstrably superior to those of the grievant in order for the Junior applicant to receive the position.

In Support of its claim that the grievant possessed the minimum qualifications required of a Dredge Operator 2, the Union pointed to the fact that changes were made in the tasks assigned to Dredge Operators with the arrival of the current administration. Prior to the arrival of the present administration, the grievant worked more hours on the dredging equipment than was subsequently the case; he had a great deal of experience working on the dredges at the park. This experience enabled him to meet the minimum qualifications found on the classification specification and position description. The Union also argued that the grievant was deserving of the promotion because he had consistently received good performance evaluations throughout his career with the State, and had not once been disciplined.

EMPLOYER'S POSITION:

The Employer argued that the grievant was not qualified for the Dredge Operator 2 position, therefore, it was not necessary for the Employer to show the qualifications of the junior employee who was awarded the position were "demonstrably superior" to those of the grievant. When referring to the classification specification and position description for the Dredge Operator 2, the requisite skills must be had at the time employment commences in that position. This is unlike the situation confronting an applicant for a Dredge Operator 1, who is permitted to acquire skills on the job.

The Employer argued that, although the grievant did have some experience operating dredge equipment, the fact remained that the grievant had never operated one piece of equipment, commonly referred to as a clamshell dredge, that is commonly used by the Dredge Operator 2. Meanwhile, the junior applicant operated this piece of equipment on a regular basis.

Furthermore, the Employer claimed that the Dredge Operator 2 position requires supervisory skills. The Operator 2 must direct the Operator 1. In the opinion of the Employer, the junior applicant had demonstrated more supervisory skills than had the grievant, and therefore the Employer awarded the Dredge Operator 2 position to the junior applicant.

ARBITRATOR'S OPINION:

In upholding the Employer's decision to award the junior employee the Dredge Operator 2 position, the Arbitrator pointed to Section 17.05A(l) of the Agreement. Section 17.05A(l) requires that applicants for promotion "possess" and "be proficient in the minimum qualifications contained in the classification specification and the position description." The Arbitrator found that the record in this case did not establish that the grievant possessed or was proficient in the minimum qualifications for the Dredge Operator 2 position. Therefore, it was not necessary for the Employer to show that the junior employee's qualifications

were demonstrably superior to those of the grievant. The Arbitrator stated that the two standards of possession and proficiency must be met by all applicants for the position they are seeking. Only if two applicants meet that standard and the Employer promotes the junior of those applicants is the Employer required to meet the "demonstrably superior" test found in Section 17.06A(I) of the Agreement.

In examining the position description of the Dredge Operator 2, the Arbitrator pointed out that the Dredge Operator 2 "acts as a lead worker" forty percent of the time. The actual operation of equipment consumes thirty percent of the employee's workday, and maintenance takes up an additional twenty percent of the workday. Meanwhile, seventy percent of the Dredge Operator 1 position is actual operation of the necessary equipment. Therefore, it is important to consider an applicant's supervisory experience when awarding the position of Dredge Operator 2.

The Arbitrator agreed with the Employer that the junior employee had significantly more supervisory experience than did the grievant, who did not indicate any supervisory experience on his application. Because of this lack of supervisory experience, the Union was unable to show that the grievant met that particular requirement of the Dredge Operator 2 position description.

Additionally, the grievant made no reference on his application to his familiarity with the clamshell dredge. At the hearing, the grievant testified that he had not operated the clamshell dredge. The position description and classification specification are specific in calling for skill in such operation.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

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In the Matter of Arbitration

Case Number:

25 12 (10 03 94) 08 01 06

Between

Before: Harry Graham

OCSEA/AFSCME Local 11

and

The State of Ohio, Department of Natural Resources

Appearances: For OCSEA/AFSCME Local 11:

Bob Rowland Staff Representative OCSEA/AFSCME Local 11,
1680 Watermark Dr.
Columbus, OH. 43215

For Department of Natural Resources:

Jon Weiser
 Labor Relations Administrator
 Ohio Department of Natural Resources
 1930 Belcher Dr.
 Columbus, OH. 43224

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 case was closed at the conclusion of oral argument on June 20, 1997. Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was Howard Chunnic improperly denied a promotion? If so, what should the remedy be? **1**

Background: The parties agree upon the events giving rise to this proceeding. It is the interpretation of those events that is disputed. The State of Ohio, Department of Natural Resources, Division of Parks and Recreation, operates a number of parks throughout the State. One such facility is Grand Lake St. Marys. That park includes the largest man made lake in the State. The lake is shallow and requires constant dredging. There are three dredges of different configuration on the lake. These are crewed by people classified as Dredge Operator 1 and Dredge Operator 2. The Grievant, Howard Chunnic, began his service with the State in 1979. In 1981 he commenced work at Grand Lake St. Marys. He operated a variety of equipment at the park. This included such items as a forklift, riding mower, dumptruck, backhoe and bulldozer. In 1989 Mr. Chunnic became a Dredge Operator 1. As such, he worked a great deal of the time on various dredges. Specifically, he worked on dredges known as the Little Turtle and the St. Marys. He continued to operate equipment of the sort itemized above. This was due at least in part to the fact that dredges do not operate year round. They are in service from April 1 to November 30 yearly. When not on the dredges, Mr..Chunnic utilized other types of equipment.

In June, 1994 the Employer posted for a vacancy as a Dredge Operator 2. The Grievant, as well as a number of other **2**

employees, applied for the position. In due course the Employer selected another applicant, one Gary Pittard. Mr. Pittard has less seniority than Mr. Chunnic. In the opinion of the Grievant and the Union selection of Pittard was improper under the Agreement. A grievance protesting the selection of Mr. Pittard was filed. It 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: The Union points out that with the arrival of the current Park administration changes were made in the tasks assigned to Dredge Operators. They were given more specialized duties within the classification. Thus, Mr. Chunnic came to spend more time on heavy equipment, eg. bulldozers, the backhoe, the forklift and tandem dump truck. Gary Pittard was assigned more time on the dredges. Prior to arrival of the present administration the Grievant worked more hours on the dredges than was subsequently

the case. Nonetheless, he has a great deal of experience working on the dredges at the Park. This enables him to meet the minimum qualifications found on the classification specification and position description.

When the Employer came to interview candidates for the vacant Dredge Operator 2 position Mr. Chunnic and Mr. Pittard **3**

were both interviewed. As the Union interprets the interviewers comments they are inconsistent. Thus, for example, interviewer Ron Pyles gave Mr. Pittard a high score on the first question, indicating he was proficient in maintenance. On the fourth question he expressed his opinion that Pittard was "somewhat limited on operating and repairs." This is indicative of flaws in the interview process according to the Union.

Mr. Chunnic is a veteran of many years of service with the State. He has compiled a good record. During his tenure he has not once been disciplined. He has had good performance evaluations. Given these circumstances the Union urges the grievance be granted. It seeks a remedy awarding Mr. Chunnic the position of Dredge Operator 2 and back pay at the appropriate rate retroactive to the date the position was awarded to Mr. Pittard.

Position of the Employer: The State points to Section 17.05 A 1 of the Agreement in support of its selection of Mr. Pittard. That Section requires that applicants for promotion "possess" and "be proficient in the minimum qualifications contained in the classification specification and the position description." When referring to the classification specification and position description for the Dredge Operator 2, the requisite skills must be had when the person **4**

steps into the job. This is different from the situation confronting an applicant for a Dredge Operator 1, who is permitted to acquire skill on the job.

The Grievant has operated the Little Turtle and St. Marys. There is another dredge on the lake. It is a bucket operated from a boom. In essence, it is similar to a landbased crane. This apparatus is on a barge which is moored to the dredge site. The boom is moved, throwing the spoil in the area where it is to be deposited. In the terminology of the Park, this is a clamshell dredge. Mr. Chunnic has not operated it. The Dredge Operator 2 must do so. Mr. Pittard operates that vessel regularly.

The Dredge Operator 2 position has about it elements of supervision. The Operator 2 must direct the Operator 1. In the opinion of the Employer, Pittard has demonstrated more supervisor skills than has Chunnic.

These considerations prompt the initial argument of the Employer: that the Grievant is not qualified for the Dredge Operator 2 position.

Should it be determined that the State was wrong in its assessment of Mr. Chunnic's qualifications, the State urges that the grievance be denied on other grounds. Section 17.06 A 1 permits the State to select a junior bidder if that person is "demonstrably superior to the senior employee." **5**

That is the case in this instance in the State's opinion. When it evaluated the bidders it concluded that Pittard had superior mechanical skills to Chunnick. He has more supervisory experience than the Grievant. As that is the case, the State meets the contractual test of "demonstrably superior." Hence, the grievance should be denied according to the Employer.

Discussion: At Section 17.05 A 1 the Agreement sets forth the initial hurdle for applicants for promotion. They must "possess" and "be proficient" in the minimum qualifications required for the position they are seeking. The twin standards of possession and proficiency must be met by all applicants for promotion. Only if two applicants meet that standard and the State promotes the junior, is the State required to meet the "demonstrably superior" test found in Section 17.06 A 1 of the Agreement.

Examination of Joint Exhibit 4B shows that the Dredge Operator 2 "acts as a lead worker" as the principle component of the position. (40%). Actual operation of equipment is 30% of the position, maintenance is 20%. Seventy percent (70%) of the Operator 1 position is actual operation. In the opinion of the Employer Mr. Pittard was superior to Mr. Chunnick on the supervisory aspects of the position. That opinion is backed by evidence. Mr. Pittard's application shows two years

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as a group leader at DAB Industries in Bellfontaine, OH. He supervised 5 employees. No such supervisory experience is evident on the application of Mr. Chunnick. Hence, it is not shown by the Union that he meets a major requirement of the Dredge Operator 2 position description.

On his application for the Dredge Operator 2 position the Grievant indicated that he had "worked and operated a suction dredge for 3 years...." (Joint Exhibit 6A). No reference is made by him to operation of the clamshell dredge. At the hearing the Grievant testified that he considered himself to be proficient in operating the St. Marys, semi proficient in operating the Little Turtle and had not operated the clamshell dredge. The position description and classification specification are specific in calling for skill in such operation. It may be that at the time of the vacancy it was believed by the Grievant and the Union that the position was specific to the St. Marys. Given the position description and classification specification specification that is not determinative. They call for ability to operate all of the equipment, including the clamshell dredge. It was not indicated to the Arbitrator that the Grievant possesses such ability. On the day of the hearing it will be recalled all participants toured the various dredges. Mr. Pittard, the successful bidder, was operating the clamshell dredge. He has

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done so regularly.

The Agreement in Sections 17.05 and 17.06 sets out a twofold test for promotions. In order to be considered applicants must "possess" and be "proficient in" the minimum qualifications required for the position. (Section 17.05). Only if all are qualified does attention turn to the "demonstrably superior" standard enunciated in Section 17.05. The record in this case does not establish that the Grievant, an excellent employee, possesses or is proficient in the minimum qualifications for the Dredge Operator 2 position. No attention thus need be directed to the "demonstrably superior" criterion. Award: The grievance is denied.

Signed and dated this 7th day of July, 1997 at Solon, OH.

Harry Graham
Arbitrator

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