

REGULAR ARBITRATION PANEL

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In the Matter of the Arbitration (Grievant: Class Action
)	
between (Post Office: Des Moines, Iowa
(P & DC
)	
UNITED STATES POSTAL SERVICE (USPS Case No: E00C-1E-C 05158220
)	
and (APWU Case No:0520006
)	
AMERICAN POSTAL WORKERS (
UNION, AFL-CIO)	
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BEFORE: MARK W. SUARDI, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:	Janet Ades, Labor Relations Specialist
For the Union:	James Spina, President, DMI
Place of Hearing:	Des Moines, Iowa P & DC
Date of Hearing:	December 5, 2006
Date of Award:	December 15, 2006
Relevant Contract Provision:	Articles 19, 33
Contract Year:	2000-2003
Type of Grievance:	Contract

Award Summary:

The grievance is denied. SO ORDERED.



MARK W. SUARDI, ARBITRATOR

ISSUE

Did Management violate the National Agreement when it awarded the position of Data Collection Technician to the most junior employee among those who were qualified for the Best Qualified Position? If so, what shall the remedy be?

BACKGROUND

This is a class action grievance which arises out of the Des Moines, Iowa P & DC. The grievance protests a bid award which was granted to employee Rita Harney following her selection as a Data Collection Technician, a position which was the subject of Job #7727197. The vacancy announcement (#DCT502) for the job is dated May 25, 2005. The announcement shows the Data Collection Technician job to be a Best Qualified Position.

Four (4) candidates (Ms. Harney, Ms. Omo, Mr. Hulst and Mr. Petty) submitted applications for the position. Three (3) basic elements went into the selection of the successful applicant. One of these elements was a typing examination, which all four (4) applicants passed. Another element was scoring on the Qualifications Rating Sheet for Best Qualified Position (PS Form 1796), which rated each applicant's responses on PS Form 991. The last element of the selection process was an interview with each candidate. The interview consisted of fourteen (14) questions of which five (5) were scored. All four (4) applicants were found qualified.

The three-person review committee (Karen Krebs, Chairperson, Gary Coil and Woody Swartzendruber) scored the applicants as follows:

NAME	SSN	CRAFT	714 Low Type	PS1796	INTERVIEW	TOTAL	SENIORITY
Rita Harney	232-70-8312	PTF Clerk (sic)	Qual	38	26	64	1/15/00
Natalie Omo	478-90-8522	LSS Assoc	Qual	40	20	60	9/27/97
Eldon Hulst	484-58-8637	SPBS	Qual	40	28	58	3/14/87
Kirk Petty	483-76-5681	Mailing Req Clerk	Qual	34	12	46	7/28/80

In coming to a decision, the Qualifications Rating Sheet (PS 1796) score was weighted at 50% and the interview was weighted at 50%.

Article 33.2 of the National Agreement provides as follows relative to the topic of craft promotions:

Qualifications shall include, but not be limited to, ability to perform the job, merit, experience, knowledge, and physical ability. Where there are qualified applicants, the best qualified applicant shall be selected; however, if there is no appreciable difference in the qualifications of the best of the qualified applicants and the Employer selects from among such applicants, seniority shall be the determining factor.

The Union takes the position that there was no appreciable difference between the competing applicants, and that seniority should have been the determining factor. This forms the gravaman of the grievance.

The grievance proceeded through the negotiated steps of the National Agreement where it remained unresolved at Step 1, Step 2 and Step 3. By letter dated December 8, 2005, the Union appealed the grievance to arbitration. An

arbitration hearing on the grievance was held at the Des Moines, Iowa P & DC on December 5, 2006. At that time, each side submitted its respective case through sworn testimony and various exhibits. At the conclusion of the hearing, each side offered a capable argument, with accompanying authorities.

UNION CONTENTIONS

All four (4) of the applicants for the Data Collection Technician position were qualified. There was no appreciable difference in the scores which each applicant received based on their 991s. If a six (6) point difference relative to the PS Form 1796 is truly an appreciable difference, then Mr. Petty should not even have been interviewed. But he was. Likewise, the fact that Ms. Omo was only four (4) total points behind Ms. Harney shows that there was no appreciable difference, even if Management's standard is applied.

The fact is the review committee placed much greater weight on each applicant's interview score, yet the interview was flawed. Also, the Union did not even receive the interview questions until two and one half months after the interviews took place.

Management's reliance on interview questions delving into attitude or personality traits do not reasonably relate to an applicant's potential success on the job. Had the committee placed proper emphasis on each applicant's responses to knowledge, skill, ability, and experience questions, the lack of any appreciable difference between the candidates would have been apparent.

The review committee's failure to properly evaluate the applicants must be remedied. Also, Management's claim that an appreciable difference existed in the applicants should be rejected. The grievance should be sustained. The award of Job #7727197 should be rescinded and the selection process re-done.

POSTAL SERVICE CONTENTIONS

The National Agreement requires that the best qualified applicant fill the job in question. Ms. Harney was the best qualified applicant. In coming to its decision, the reviewing committee was allowed to combine point totals from the Form 1796, individual interview results, and other pertinent information. As the testimony indicated, the review committee did so.

Each of the applicants was asked the same questions. The review committee had a right to assess how each applicant responded orally. The interview questions served to supplement the content of each applicant's Form 991. Oral interviews were necessary, as the written application could have been prepared with the assistance of others.

Management's witnesses credibly described how some of the applicants' knowledge, skill, and ability answers did not have a direct relationship to the job. Ms. Harney, on the other hand, answered questions in a comprehensive manner. She also provided detailed answers during her interview. Her score reflects an appreciable difference between the qualifications of the qualified applicants.

The review committee's decision should be upheld. The grievance should be denied.

DISCUSSION

The underlying difficulty with the present grievance (and other "best qualified" disputes like it) is that no single test result or interview answer can ever guarantee success in a new position. The most the selection process can do is provide an approximation of the likelihood of success among one or more competing, and admittedly qualified applicants, all of whom "meet all of the requirements" at the threshold level.

The above state of affairs necessarily makes subjectivity a part of the selection process. As the Arbitrator has previously held, subjectivity can provide a valid criteria for the selection of competing applicants, provided that the subjective criteria bears a rational relationship to the job in question.¹

Applied here, the review committee's evaluative process was based on both a subjective and objective review of the competing candidates. The selection procedure was governed by Section 728.3 of the EL-312, where the "final recommendations or final determination of the best qualified applicant" is to be based on a consensus, one which takes into account "interview results" and "point totals from Forms 1796-B (and other pertinent information)." See, EL-312, Section 728.321. Insofar as the review committee used what Section 728.3 expressly allows, the Arbitrator cannot fault the committee for weighting the Form 1796 scores and interview results on a 50/50 basis. It follows that any testimony regarding appreciable differences due to variations in the

¹See USPS Case No. 299D-6Z-C 03158857/APWU Case. No. MN-01-031 (2004) at p. 9, fn. 2: "Subjective criteria necessarily and legitimately enter into personnel decisions . . ." *Chapman v. Al Transport*, 229 F. 3d 1012, 1034 (8th Cir. 2000), citing *Risher v. Aldridge*, 889 F.2d 592, 597 (5th Cir. 1989).

applicants' scores on *either* the Form 1796 *or* their interview is of limited probative effect. Rather, it is the total score of each applicant which carries the most weight and obviously did so during the review committee's deliberations.

Without doubt, the score difference between Ms. Harney and Ms. Omo is only four (4) points. Nonetheless, the Arbitrator is persuaded the review committee could take such variation into account and still find that an appreciable difference existed. Such was the creditable testimony at the hearing. Here, the Arbitrator notes that the right to make distinctions between qualified applicants belongs to Management in the first instance. See Arbitrator Dorshaw in Case G90C-1G-C 95030090, et. seq. BT95CK23, et. seq. at p. 5. Similarly, even a slight variation in point totals can support a finding that an appreciable difference exists. See Arbitrator Burton so held in Case No. F98C-1E-C 992170000/EVP14.²

The facts here are that each member of the review committee found an appreciable difference between Ms. Harney and the other applicants for a variety of reasons, all as described at the hearing (i.e., non-performance-related statements about the position versus detailed job-related interview answers, ability to communicate, and enthusiasm, among others). In the Arbitrator's opinion, the fact the review committee opted to both credit and score Ms. Harney higher than the other applicants was neither arbitrary, capricious, or unrelated to the position in question. Where, as here, subtle

²The case decided by Arbitrator Benn (I90C-41-C 95052365) and cited by the Union is distinguishable. In that case, the competing applicants had *identical* qualifications and rating sheet scores. The matter was grieved, and following a subsequent evaluation the chairman of the review board admitted that the candidates were "fairly close" or "extremely close." Likewise, in Case No. 53-059 and 060, decided by Arbitrator Gamser, Management placed undue emphasis on prior experience in the desired position. Such is not the case here.

differences between applicants can render a qualified applicant the "best" qualified, the Union bears a heavy burden in proving that Management was wrong. All things considered, the record does not support the Union's claim of error or an abuse of discretion in the review committee's decision to select Ms. Harney.

AWARD

The grievance is denied. SO ORDERED.

Signed in the County of St. Louis this 15th day of December, 2006.



MARK W. SUARDI, ARBITRATOR