

IN THE MATTER OF THE ARBITRATION BETWEEN

MINNESOTA TEAMSTERS PUBLIC	)	MINNESOTA BUREAU OF
AND LAW ENFORCEMENT	)	MEDIATION SERVICES
EMPLOYEES UNION,	)	CASE NO. 07-PA-0948
LOCAL 320,	)	
	)	
	)	
	)	
Union,	)	
	)	
and	)	
	)	
	)	
THE COUNTY OF BECKER,	)	DECISION AND AWARD
	)	OF
Employer.	)	ARBITRATOR

APPEARANCES

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On July 19, 2007, in Detroit Lakes, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Union against the Employer. The grievance alleges that the Employer violated the labor agreement between the parties by failing to promote the grievant, Sharlene R. Legenhausen, to a

vacant position. Post-hearing briefs were received by the Arbitrator on August 26, 2007.

#### FACTS

The County of Becker (the "Employer") is located in north central Minnesota. The Union is the collective bargaining representative of the non-supervisory employees who work in the Employer's Department of Human Services (the "Department"). The grievant was hired by the Employer in April of 1992 to work in the Department as a part-time Account Technician. Since then, she has worked in that classification, usually about twenty-eight hours per week.

In late December of 2006, the Employer posted a vacant full-time position in the Department's Financial Support section in the classification, Financial Worker. The parties refer to this position by its job title, "Financial Eligibility Specialist." On December 22, 2006, the grievant submitted an application for the position, accompanied by a resume and letters of reference. The Employer received timely applications from additional candidates, including one from Christi J. Helmke, the applicant who was eventually selected for the position.

During the following weeks, Sandra ("Sam") M. Pierson, Financial Support Manager, and Susan M. Kent, Financial Unit Supervisor, administered a selection process that used several selection criteria to select from eight applicants who were determined to be at least minimally qualified for the position. Among the selection criteria was the test score received by each applicant when tested under the Minnesota Merit Selection System.

On February 15, 2007, Pierson sent the grievant a letter informing her that Helmke had been selected for the position and had accepted it. On February 16, 2007, the grievant asked Pierson for the reasons she had not been selected, and on February 20, 2007, Pierson sent the grievant a letter giving the reasons for Helmke's selection in preference to the grievant.

On February 21, 2007, the Union brought the present grievance. It alleges that, because the grievant has greater seniority than Helmke and equal or better qualifications for the position, the failure to select her in preference to Helmke violated Articles X and XXI of the parties' labor agreement.

The grievance and the parties' arguments make the following provisions of the labor agreement relevant:

Article III. Definitions

Section 3.15. Part-Time Employee: An employee scheduled on a continuing basis working less than forty (40) hours per week or less than eight (8) hours per day.

Article V. Employer Authority

Section 5.1. The Employer retains the full and unrestricted right to operate and manage all manpower, facilities, and equipment; to establish functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct and determine the number of personnel; to establish work schedules; and to perform any inherent managerial function not specifically limited by this Agreement.

Section 5.2. Any term and condition of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish or eliminate.

Article X. Seniority

Section 10.1. There shall be three types of seniority established by this Agreement:

- A. Service Seniority, which shall be the total length of continuous service with the Employer.

- B. Department Seniority, which shall be the total length of service within a specific department of the Employer.
- C. Classification Seniority, which shall be the total length of service within a work classification.

Section 10.4. Where all other qualifications are equal, seniority shall apply to full-time employees in accordance with the employee's length of continuous service. This shall include preference on any vacancies or newly created positions.

Article XI. Job Postings - Promotions

Section 21.1. Permanent vacancies shall be posted. Employees shall have seven (7) calendar days after posting to complete application for such vacancies. The applicant with the highest seniority and qualifications shall be chosen for the vacancy.

The posting for the vacant position at issue, which is dated December 19, 2006, lists its required qualifications, duties and hours, as follows:

**Qualification:** Candidates must qualify under the Minnesota State Merit System register. Applicants must be qualified or transferable at the time of filing deadline. Minimum qualifications: Three years of clerical experience or experience working with the public, or some combination of the two, totaling three years. Or Two years of study at an accredited two or four year college or university or similar institution, with emphasis in the behavioral sciences, business or closely related subjects (at least 23 quarter credits or 16 semester credits). Or Successful completion of the technical college Public Welfare Financial Worker diploma program (applicants must be within six months of completion of the program). Or Successful completion of the technical college Public Welfare Financial Worker certificate program will substitute for one year of the required clerical experience or experience working with the public.

**Duties:** Act as Case Manager for clients to monitor their financial, medical, and social needs. Determine initial eligibility and ongoing eligibility for MFIP [Minnesota Family Investment Program], GA [General Assistance], MSA [Minnesota Supplemental Aid], RCA, GRH [Group Residential Housing], Food Stamps, Child Care Assistance and Medical programs. Work closely with other agencies within the County to help meet the needs of clients.

**Hours:** Full-time; 40 hours per week.

The Financial Eligibility Specialist has a usual case load of about 270 clients. The Minnesota Merit System Position Description states a more detailed list of the programs administered by the Financial Eligibility Specialist and the position's duties and needed skills, including "full knowledge of MAXIS and MMIS systems" (computer programs for entering and organizing information). On November 28, 2006, the Department began the process of filling the vacant position by presenting the County Board with a Personnel Request, which includes the following "Position Justification":

Welfare Reform of 1996 has changed the culture as to how we deliver services to our customers. The Financial Eligibility Specialist no longer simply determines program eligibility. The Financial Eligibility Specialist must evaluate, assess and discuss with the customer their options, their opportunities and their situations. We empower the customer to resolve his or her own situation. The customer must take personal responsibility to determine their needs, their goals and their outcomes using the available resources both community and agency. The Financial Eligibility Specialist must counsel, coach and motivate the customer toward their goal. The goal is self-sufficiency. The case management is tailored to each customer. We coordinate numerous services in case management allowing the customer to obtain and retain his or her goals. We avail extensive communication and people skills to explain and gain acceptance by our customers of new "welfare" systems. . . .

On December 22, 2006, the grievant presented a resume with her application for the position, which I set out below:

**OBJECTIVE:** A Financial Worker position utilizing my skills in working with people to help with their financial, medical and social needs.

**HIGHLIGHTS:**

- Over 13 years experience with Becker County Human Services
- Proficient in Microsoft Excel & Word, AS400, Maxis & Prism software programs
- Effective interpersonal skills; ability to work and provide excellent client service

to all types of diverse socio-economic populations

- Ability to diffuse hostile clients and redirect behavior
- Excellent time management skills; ability to prioritize tasks accordingly
- Collaborate well with other departments; ability to maintain positive working relationships with colleagues, clients and outside agencies

- EXPERIENCE:** Becker County Human Services Account Technician April 16, 1992 to Present
- Perform billing and collecting of payments for county transit system
  - Prepare audit reports for county board approval
  - Set parental county fees for dependents in foster and juvenile care
  - Process and issue EBT cards for clients
  - Receipted child support payments
- Beckerus, Schott & Co., Ltd.  
Tax Preparer 1990 - 1992
- Prepared income tax return forms for individuals and small businesses
  - Reviewed financial records, such as prior tax return forms, income statements and documentation of expenditures to determine forms needed to prepare return
  - Interview client to obtain additional information on taxable income and deductible expenses and allowances
- Kramer & Associates, Ltd.  
Administrative Assistant/Account Clerk  
1986 - 1990
- Processed payroll on computer system
  - Prepared quarterly payroll reports
  - Completed bank reconciliations
  - Coded checks for financial statement preparation
- EDUCATION:** Mankato State University  
Bachelor of Science in Social Work  
1980 - 1981  
Southwest State University  
Associate of Arts in Secretarial Administration  
1970 - 1972

The grievant also presented three letters of reference with her application.

On December 22, 2006, Helmke presented her application for the position with the following resume:

**OBJECTIVE:** I am seeking a position in an organization that can benefit from my skills and abilities and provide me with a comfortable and challenging work environment.

**EMPLOYMENT:** **SUPPORT ENFORCEMENT AIDE** - January 15, 2006 to present - Becker County Human Services - Child Support duties including. maintaining client files, meeting with clients, excel spreadsheets, adhering to data practices, supporting child support officer's daily work.

**OFFICE SUPPORT SPECIALIST** - May 18, 2005 to January 15, 2006 - Becker County Human Services  
Office support duties including, secretarial duties, type legal correspondence from draft copy, answering telephones, adhering to data privacy practices, photocopying.

**CLOSING ASSISTANT** - April 7, 2003 - May, 2005  
Becker County Title Services, Inc.  
Title insurance determination, secretarial duties, maintain client files, closing assistant, answer telephones, greet clients.

**BOOKKEEPER** - December, 1999 - March, 2003  
Vergas State Bank  
Bookkeeper duties including data entry, maintaining the bank database. reports, balancing and maintaining bank books. Bank teller duties including customer service and balancing cash drawer.

**LEGAL SECRETARY** - October, 1998 - December, 1999 - Sinclair and Hunt  
Legal secretarial and receptionist duties including type legal correspondence and court documents from draft copy, dictation, maintain client files, photocopying, answering telephones and greet walk in clients.

**EDUCATION:** Northwest Technical College - 1999  
Accounting Courses  
Metropolitan State University - 1997-1998  
Business Courses  
Northwest Technical College - 1993-1995  
Legal Administrative Secretary AAS Degree

**SKILLS:** WordPerfect 5.1 and 6.0, Microsoft Word, Excel, Oracle, Calculator, Excellent Organizational and Teamwork Skills.

**COMMUNITY:** Student Senate Representative - Northwest Technical College, Vergas Community Club, Perham Area Jaycees - Treasurer, Vergas Fire and Rescue.

**References:** Attached.

Pierson testified that the qualifications of the applicants were measured by the following criteria:

1. The score received by the applicants on the Minnesota Merit Selection System test.
2. Performance on a typing test and a keyboarding test.
3. Performance during an interview of those considered to be the top applicants.
4. Performance during a "situational exercise," in which applicants were scored by Pierson and Kent for the responses they gave to hypothetical questions relating to the work of a Financial Eligibility Specialist.
5. The scoring of the applicants, by Pierson and Kent, on a "matrix." The matrix lists the scores of the applicants on the first four criteria, above. The matrix score, however, is derived only from scoring determined by quantification of the judgments of the scorers, Pierson and Kent, about four components -- the experience of the applicant and her performance during the situational exercise and interview, with respect to "self-direction and motivation," "concepts" and "inter-personal skills."

Pierson and Kent each scored the eight top applicants on the matrix. The total matrix scores for the eight are set out below with the Minnesota Merit System score of each:

	<u>Merit System Score</u>	<u>Pierson's Matrix Scoring</u>	<u>Kent's Matrix Scoring</u>
Shelly Larson	83	27	15
Christi Helmke	96	40	28
Sadie Jensen	95	40	18
Shar Legenhausen	79	25	17
Monica Redman	86	35	22
Sheila Hannon	91	27	13
Michelle Bjorgen	89	29	22
Kathleen Branden	96	40	24

Below are set out the scores Pierson and Kent gave to the grievant and Helmke for the four components -- experience, "self-direction and motivation," "concepts" and "inter-personal skills" -- that make up the total matrix score:

By Pierson

	<u>Helmke</u>	<u>The Grievant</u>
Experience	14	9
Self-Direction & Motivation	9	6
Concepts	8	4
Inter-Personal Skills	9	6
TOTAL	40	25

By Kent

	<u>Helmke</u>	<u>The Grievant</u>
Experience	8	6
Self-Direction & Motivation	8	4
Concepts	6	3
Inter-Personal Skills	6	4
TOTAL	28	17

After Pierson and Kent determined these scores, they met, considered the available information and decided that Helmke was the most qualified applicant for the position. As noted above, the grievant initiated the present grievance after Helmke was selected for the position.

DECISION

The parties' arguments raise two primary issues. First, they disagree whether the labor agreement requires the Employer to consider the grievant's seniority in the selection process. Second, they disagree whether the grievant or Helmke was better qualified for the position.

Seniority. The Union argues that the role of seniority in the selection process is controlled by Section 21.1 of the labor agreement, which provides that "[t]he applicant with the highest seniority and qualifications shall be chosen for the vacancy." According to the Union, this provision requires that

both seniority and qualifications be considered when selecting for a vacant position.

The Employer argues that Section 10.4 of the labor agreement limits the general statement in Section 21.1. The Employer urges that, in Section 10.4, the parties used clear language to limit to full-time employees any advantage that seniority might give in the process of selecting for a vacant position, thus implying that the seniority of a part-time employee would not be considered in that process, thus:

Where all other qualifications are equal, seniority shall apply to full-time employees in accordance with the employee's length of continuous service. This shall include preference on any vacancies or newly created positions.

I make the following interpretation of the labor agreement. Presumably, the parties when writing the agreement intended all of its provisions to have meaning. The statement in Section 10.4 that seniority "applies" to full-time employees in the selection process must necessarily mean that seniority does not apply to part-time employees -- in accord with the legal maxim that the expression of one thing excludes the other.

Under similar principles of contract interpretation, the particular statement in Section 10.4, to have meaning, must prevail over the general statement in Section 21.1. If the agreement were read to give effect to the general statement in Section 21.1 that "the applicant with the highest seniority and qualifications" is to be selected, even when selection of a part-time employee is being considered, the particular statement

in Section 10.4 would have no meaning -- a result contrary to principles of contract interpretation.

Thus, because the grievant was a part-time employee, Section 10.4 removes seniority as one of the standards for selection that would otherwise apply, leaving the other standard established by Section 21.1, "qualifications," as the sole selection standard.

Qualifications. The Union argues that, notwithstanding the scoring by Pierson and Kent, which found Helmke's qualifications superior to those of the grievant, the grievant was better qualified for the position than Helmke. It argues 1) that the grievant, with a Bachelor's degree, was better educated than Helmke, who had an Associate's degree, 2) that the grievant had superior relevant experience to that of Helmke, and 3) that the tests used in the selection process were arbitrary, barely relevant and redundant.

The Employer argues that Helmke showed clear superiority to the grievant in the test scores and that, though the grievant had a Bachelor's degree while Helmke had an Associate's degree, the grievant had little post-degree experience that is relevant to the work of a Financial Eligibility Specialist, while Helmke did have such experience. The Employer argues that, overall, the tests used for selection were relevant and the scoring, fair and impartial and not redundant.

For the following reasons, I find that the evidence supports the Employer's decision that Helmke was more qualified for the position than the grievant. As the Employer argues, the

labor agreement does not specify how superiority of qualifications is to be determined, and, therefore, under Article V of the agreement, the Employer has a reserved right to establish and administer the process of making that determination, provided that the Employer does so fairly and not arbitrarily.

The Union challenges parts of the process as being subjective, and it urges that the use of the matrix gives redundant emphasis to the subjective parts of the process. I rule that the criteria used to judge the qualifications of the grievant and Helmke were sufficiently objective to avoid any indication of an arbitrary preference of Helmke. That some subjectivity is necessary in the selection process is clear. Those who select the successful applicant must necessarily judge the ability of each applicant with respect to several factors relevant to qualifications, such as education and, in this case, the four components of the matrix score -- the experience of the applicant, "self-direction and motivation," her facility with "concepts" and her "inter-personal skills."

Clearly, these judgments, formed partly from the applicants' performance during the interview and the situational exercise, are, by their nature, subjective. Nevertheless, if they are buttressed by what some arbitrators call objective tests that are relevant and fairly administered, they are not considered arbitrary and discriminatory. See Elkouri and Elkouri, How Arbitration Works, 882, et seq. (6th Ed.).

Someone must judge which experience and which educational background make a candidate better qualified to perform a

particular job. Those judgments are fair and not arbitrary if they are based on relevant facts and are reasonably related to the issue at hand -- which set of skills, experience and education will enable an applicant to better succeed in the job. The judgments made by Pierson and Kent were supported by their evaluation of the performance of the grievant and Helmke during the interviews and the situational exercise. The evidence shows that the interview questions and the situational exercises were fairly structured to give information relevant to the vacant position. There is no evidence that Pierson or Kent exercised bias in their evaluations of the performance of the grievant or of Helmke. In addition, the explanation given by Pierson for giving greater weight to Helmke's education and experience was reasonable. Finally, the decision to select Helmke rather than the grievant was supported by the wide disparity between Helmke's score of 96 and the grievant's score of 79 on the Minnesota Merit Selection System test.

The evidence shows that the grievant's score on the typing test was inaccurate, but that the person administering the test may have erred because she was new to the job. The score obtained by the grievant on the keyboarding test, a separate but similar test, appears to be accurate. I do not regard the error in scoring the typing test as significant, because the evidence shows that the typing test was not a determinative factor in selecting for the position.

The Union argues that the use of the matrix gave unfairly redundant weight to its four components -- the experience of the

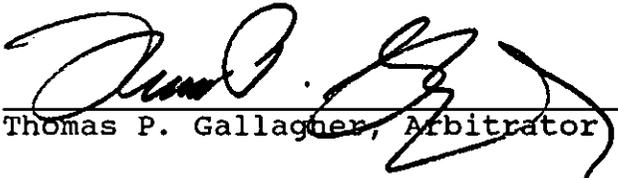
applicant, "self-direction and motivation," her facility with "concepts" and her "inter-personal skills." It appears, however, that the matrix was nothing more than a means of summarizing the evaluations by Pierson and Kent of those factors and that they did not give double consideration to the same factors.

The Union argues that the decision to select Helmke rather than the grievant was influenced by an inappropriate financial consideration -- that selection of Helmke, who had fewer years of County employment than did the grievant, would place her at a lower step on the wage schedule, thus saving the Employer the difference that would have been payable to the grievant if she had been selected. There is, however, no evidence to support this argument.

AWARD

The grievance is denied.

October 15, 2007

  
Thomas P. Gallagher, Arbitrator