

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between: *
*
QUINCY HOUSING AUTHORITY *
*
-and- *
*
AFSCME, COUNCIL 93 *

ARB-15-4696

Arbitrator:

Aaron Swinderman, Esq.

Appearances:

Kier Wachterhauser, Esq. - Representing Quincy Housing Authority
Jaclyn McNeely, Esq. - Representing AFSCME, Council 93

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The Employer did not violate Article 7, Section 3 when it appointed Joan Murphy to the position of Accounts Payable Clerk and therefore the grievance is denied.

Aaron Swinderman, Esq.
Arbitrator
February 12, 2016

INTRODUCTION

On July 9, 2015, AFSCME, Council 93 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Aaron Swinderman, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a hearing at the Department's Boston office on October 27, 2015.

The parties' briefs were received by December 4, 2015.

THE ISSUE

Did the Employer violate Article 7, Section 3 when it appointed Joan Murphy to the position of Accounts Payable Clerk? If so, what shall the remedy be?

RELEVANT CONTRACT LANGUAGE

The parties' July 1, 2014 through June 30, 2017, Collective Bargaining Agreement (CBA) contains the following pertinent provisions:

Article 1 – Management Rights

Except as otherwise provided herein, the Employer shall retain all rights, functions and prerogatives of the Employer formerly exercised or exercisable by the Employer and remain vested exclusively in the Employer.

These rights, whether exercised or not, include all rights and powers given to the Employer by law, the right to operate, manage and contract the Quincy Housing Authority and its activities, and to direct and control the work of its employees and the use of its properties, facilities and equipment; to determine the hours, schedules and assignments of work, and work tasks within the employee's classification; the right to establish, change or discontinue methods, facilities, operations, processes, services and techniques to require reasonable standards of performance and the maintenance of discipline, order and efficiency; to determine methods and

procedures and to direct the employees; the assignment or work within the employees classification; the right to obtain from any source, and to contract and subcontract for materials, supplies and equipment; the right to select, hire, suspend, evaluate, transfer, promote, demote and lay off employees for just cause; the right to require reasonable overtime work in the case of need; the right to promulgate and enforce all reasonable rules relating to operations, safety measures; and all other rights pertaining to the operation or management of the Authority; the right to have supervisory employees, not in the bargaining unit, perform work done by members in the bargaining unit, providing that in so doing, it will not displace employees of the bargaining unit. The failure by the Employer or Union to exercise any of its rights shall not be construed as a waiver of those rights.

Article 7 - Seniority, and Job Posting and Bidding (In Part) –

Section 3 – Vacancies (In Part)

In the case of permanent job vacancies in AFSCME bargaining unit positions, the Authority shall post notice of such vacancies for a period of one (1) week in an appropriate place within the Authority's offices. Bargaining unit personnel, if qualified, shall be appointed to permanent job vacancies. When two (2) or more bargaining unit employees appear equally well qualified for any position, preference shall be given to the employee with the greatest seniority.

FACTS

The Union and the Quincy Housing Authority (Employer) were parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. The grievant, Kathleen Moran Shannon (Shannon), works in the finance office of the Employer and is a member of the bargaining unit.

On May 4, 2015, the Employer posted a job vacancy for the Accounts Payable Clerk position. Shannon submitted her application on May 7, 2015, and three other employees also applied to the position, Joan Murphy (Murphy), Jing Hang Feng (Feng), and Lien Kim Nguyen (Nguyen). All four applicants are bargaining unit members. Murphy was the only applicant not to submit references. The Employer did not contact any references or conduct any background checks

because all of the applicants were already employees. After completing its selection process, the Employer selected Murphy for the Accounts Payable Clerk position.

At the time of the job posting, Shannon had held the position of Junior Bookkeeper, also known as Bookkeeper 1, in the Finance Department since 2002. Prior to working in the Employer's Finance Department, Shannon worked in the Support Services Department since 2001. Before Shannon worked for the Employer, she had administrative experience working for the National Guard and the State of Maryland since 1990.

Prior to being selected for the Accounts Payable Clerk position, Murphy served as a receptionist in the Quincy Housing Authority Administrative Department since July 2014. Prior to working for the Employer, Murphy worked as an administrative assistant, a collection specialist, assistant controller, and office manager/bookkeeper for approximately 18 years.

The Employer interviewed each of the four candidates on or about May 14, 2015. Candidates met with a panel of Employer representatives, including Director of Finance Grace McAuliffe (McAuliffe) and Director of Administration Kathy Healy (Healy). The Employer asked each candidate the following seven questions and gave them an opportunity to respond in their interviews:

1. Tell us why you want this job?
2. Talk about your computer skills and how they have helped you to conduct financial analysis in the past.

3. What are the key components of a Vendor file? What type of information should be kept in that file?
4. What is the difference between a W-2 employee and a 1099 employee?
5. Someone from another QHA department shows up in Finance and says, I need a check cut right now for a tile layer that's working in Apt 106 upstairs. He won't finish the job until I pay him..... what do you do?
6. What are some of the signs that a vendor may be in financial trouble?
7. What should we know about you that has not been asked on the application or in this interview?

There were additional follow-up questions that differed for each applicant depending on their responses to these seven questions. Although Healey did not take notes during Murphy's interview because it turned into a conversation between the two sides rather than a formal interview, McAuliffe did take notes. The Employer thought that Murphy came across as very energetic and excited during her interview. In comparison, the Employer perceived Shannon to be very nervous throughout her interview.

After the interviews, but prior to making her decision, McAuliffe met with Healy and the Employer's Executive Director Jim Lydon (Lydon) to discuss the candidates. Healy suggested to McAuliffe that Murphy was the most qualified candidate because of her background, her interview, and Healey's experience working with Murphy. After the Employer selected Murphy for the position, McAuliffe then met with each candidate to inform them of the Employer's decision. When McAuliffe met with Shannon, she explained that the Employer selected

Murphy because of her background.¹ In addition, on May 20, 2015, McAuliffe announced to all four applicants via e-mail that the Employer had selected Murphy to fill the Accounts Payable Clerk position. The Employer based its decision on a totality of each candidate's background, experience, prior interactions with McAuliffe and Healy, and the interview itself. Murphy received a pay increase for her move to the Accounts Payable Clerk position on week of May 28, 2015.

On May 22, 2015, Shannon filed a grievance over being bypassed for the Accounts Payable Clerk position. On May 28, 2015, McAuliffe emailed Union Steward Michelle Calvert (Calvert) an answer to the grievance. On June 4, 2015, Calvert wrote a letter to the Lydon requesting to move the grievance to Step 2 of the grievance procedure. On June 23, 2015, Lydon met with Calvert and Shannon as part of Step 2 of the grievance process and heard Shannon's grievance.²

POSITIONS OF THE PARTIES

THE UNION

The Employer's decision to award the Accounts Payable Clerk position to Murphy was arbitrary and capricious because Shannon was more qualified and

¹ Shannon stated that McAuliffe told her that the Employer also selected Murphy because she has a degree in accounting. McAuliffe denies making such a statement and denied making such a statement at Step 1 of the grievance process. However, I do not find it necessary to rule on the credibility of Shannon or McAuliffe on this dispute as it is immaterial to my decision.

² Shannon stated that at this meeting, Lydon denied the grievance right away and told Shannon that she could not ask any questions. Lydon denies both of these allegations and stated that his denial came on June 25, 2015, when Lydon emailed Calvert the Employer's denial of Shannon's grievance at Step 2 of the grievance process. However, I do not find it necessary to rule on the credibility of Shannon or Lydon on this dispute as it is immaterial to my decision.

had more seniority than Murphy. Shannon's experience was more applicable to the Accounts Payable Clerk position than Murphy's. Additionally, Shannon had a better interview than Murphy. Furthermore, the Employer's selection process was not impartial because it did not call Shannon's references, it did not take as many notes during Murphy's interview, and Murphy was the only applicant that did not send a "thank you" e-mail after her interview. Finally, the reasoning that McAuliffe provided to Shannon when she notified Shannon that the Employer had selected Murphy changed during the arbitration. Accordingly, Shannon's grievance should be allowed, and she should be appointed to the Accounts Payable Clerk position and made whole for all wages and benefits lost as a result of this error, dating back to the week of May 28, 2015.

THE EMPLOYER

The Employer did not violate the parties' CBA when it selected Murphy for the position of Accounts Payable Clerk. The Employer awarded the Accounts Payable Clerk position to Murphy because she was the most qualified person for the position. Consequently, it did not need to consider the applicants' seniority. Because of the Employer's careful review process and analysis of the candidates' relevant background experience, qualities, and abilities, there was nothing arbitrary or capricious about the Employer's selection process or its decision to appoint Murphy to the Accounts Payable Clerk position. The Union has not and cannot meet its heavy burden of demonstrating that the Employer's selection of Murphy was arbitrary and capricious. As such, the grievance should be denied.

OPINION

The issue before me is: Did the Employer violate Article 7, Section 3 when it appointed Joan Murphy to the position of Accounts Payable Clerk? If so, what shall the remedy be? For the reasons stated below, the Employer did not violate the CBA when it hired Murphy to fill the Accounts Payable Clerk position over Shannon. The grievance is denied.

The Union argues that the Employer's selection process was not impartial because 1) Healy did not take notes of Murphy's answers during her interview; 2) the Employer did not call Shannon's references; and 3) Murphy was the only applicant that did not send a "thank you" e-mail after the interview. I am not persuaded by any of these arguments, and I find that the Employer's selection process was impartial. Healy's rationale for not taking notes during Murphy's interview was that the interview became more of a conversation than an interview, and so she did not feel notes were necessary. Additionally, McAuliffe did take notes during Murphy's interview so the Employer was able to refer to Murphy's interview responses when it made its decision. Furthermore, the Employer did not call any of the applicants' references because all four of the applicants were already employees of the Employer. Also, sending a "thank you" e-mail was not stated as a requirement, so whether one applicant did or did not send such an e-mail does not make the process partial.

The parties' CBA states that the Employer only needs to take into consideration an applicant's seniority if it views two candidates as equally qualified. The Union argues that Shannon was not only as qualified, but even more qualified for the position than Murphy. In a promotional bypass case such as this, the Union

must show that there is no reasonable basis in fact that for the Employer's decision. It made no such showing here. Rather, the evidence showed that the Employer reviewed all of the applicants' background experience, prior interactions, and interviews in making its decision. This evidence is enough to show that the Employer had a reasonable basis in fact for its decision to hire Murphy to fill the Accounts Payable Clerk position.

The Employer's selection of Murphy over Shannon was driven by Murphy's broad experience as an administrative assistant, collection specialist, assistant controller, and office manager/bookkeeper. While Shannon worked for the Employer longer than Murphy, her overall experience was not as broad as Shannon's. Additionally, the Employer preferred Murphy's responses during the interview and her energy and excitement in comparison to Shannon's responses and nervous demeanor.

Additionally, I am not persuaded by the Union's argument that McAuliffe's reasoning for the Employer's selection of Murphy over Shannon changed during the arbitration and shows that the decision was arbitrary. The fact that McAuliffe gave a more thorough explanation at the arbitration of why the Employer selected Murphy over Shannon does not make the Employer's decision lack a reasonable basis.

Finally, since the Employer decided that Murphy was more qualified than Shannon, it did not need to take into consideration the applicants' seniority.

For the reasons stated above, I find that the Employer did not violate Article 7 Section 3 of the Collective Bargaining Agreement when it appointed Joan Murphy to the position of Accounts Payable Clerk. The grievance is denied.

Aaron Swinderman, Esq.
Arbitrator
February 12, 2016