

MANAGEMENT *Insight*

A NEWSLETTER ON EMPLOYEE RELATIONS
FROM THE LABOR RELATIONS UNIT

HUMAN RESOURCE SERVICES DIVISION, DEPARTMENT OF ADMINISTRATIVE SERVICES

APRIL 2000

ITEMS OF INTEREST

THE ERB RULES THAT CERTAIN TEMPORARY EMPLOYEES MAY BE ADDED TO THE OPEU'S BARGAINING UNITS

On March 17, the Employment Relations Board (ERB) issued a ruling which will allow certain state temporary employees to vote whether or not they wish to be represented by the OPEU. The Board, concluding that, "[I]t would be appropriate to add temporary employees to the existing [OPEU] bargaining units," reasoned as follows: "The considerations we find particularly meaningful are that temporary employees are performing substantially the same work and filling the same classifications as existing bargaining unit employees. They are often placed in the same salary ranges as unit employees, they work together at the same locations and share common supervision. ... we also are influenced by the fact that the existing units already include employees in some jobs that involve irregular, fluctuating work, and work of limited duration. Under these circumstances, where temporary employees share a sufficient community of interest with employees in the existing units, it is appropriate to apply our preference for larger or wall-to-wall units. And, we do so here."

Excluded from the proposed bargaining units are, "[S]tudent workers who are in student worker classifications; student law clerks; independent contractors; any temporary employees who are represented by another labor organization; retired State employees; casual labor temporary agency employees (e.g., Kelly, Manpower, Goodwill Industries, St. Vincent de Paul) not directly employed by [the state]; temporary employees in the exempt service...; school-to-work experience employees; persons hired under exchange programs with the State; prisoners; interns from bona fide educational programs who are fulfilling academic requirements of that program and are completing their degree; JOBS Plus program participants; and supervisory, managerial, or confidential employees...."

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Distribution:

Executive and Management Service Employees

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Board member Rita E. Thomas wrote a strong dissent to the ERB's majority decision.

Before the temporary employees in question may be added to the OPEU's bargaining units, an election must

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be held for eligible employees to express their preferences for or against OPEU representation. Those eligible to vote are classified and unclassified temporary employees hired under ORS 240.309 as employees of the State of Oregon, who were employed in jobs designated as positions and classifications in the two OPEU-represented units on March 17, 2000, and who are so employed at the time of the election's closing. The choices on the ballot will be: (1) OPEU and (2) no representation. The outcome is determined by a majority of the votes cast.

BOLI ISSUES REVISED OFLA REGULATIONS

The Oregon Bureau of Labor and Industries (BOLI) has issued revised Oregon Family Leave Act (OFLA) regulations. The revised regulations may be accessed through the Oregon Secretary of State Administrative Rules website, <http://arcweb.sos.state.or.us/banners/rules.htm>, by going to Division 9 of Chapter 839. BOLI has a Q & A website covering general information on the OFLA at www.boli.state.or.us/technical/taoflaqa.html. Look for a new edition of BOLI's useful handbook, *Family Leave Laws*, to come out sometime this year, probably during the summer.

The new OFLA rules contain numerous revisions made for purposes of clarification. Although most interpretations of the OFLA statutes remain unaffected, there are several changes which state managers should be familiar with. The revisions do not change the requirement that where collective bargaining agreement, OFLA and federal Family Medical Leave Act (FMLA) provisions overlap, an employer must apply the provision that is most generous to an employee's circumstances. For general information regarding the FMLA, the U.S. Department of Labor maintains a website at www.dol.gov/dol/esa/fmla.htm.

For state agencies, the new rules have not greatly changed the existing differences between the FMLA and the OFLA. In addition to the OFLA's coverage for parents-in-law, the family member definition is now expanded under the *Tanner* decision to include same-sex domestic partners (BOLI has issued a "same-sex domestic partner" advisory that may be accessed at www.boli.state.or.us/technical/tanner.html). The definition of "serious health condition" is now consistent between the two laws. The provision of sick child leave, unique to the OFLA, is clarified with regard to medical verification and as to its relationship with parental leave.

Highlights of the revised OFLA rules:

Family Member

Same-sex domestic partner and stepchild of the employee have been added to the OFLA's definition of family member.

Serious Health Condition

The definition of serious health condition has been modified to conform to the FMLA.

Intermittent Leave and Alternate Duty

A new section covering these subjects has been added. Among other things, the new section allows an employer to temporarily transfer an employee on intermittent or reduced work schedule OFLA leave to a different position with the same or different duties. This can be done for as long as necessary to accommodate the leave, provided that the transfer meets requirements set forth in the new section. A similar provision allows employees to be transferred to an alternate position as an accommodation, while recovering from a serious health condition (e.g., "light duty" positions). The regulations also clarify that, if the alternate position does not require a reduced work week, no OFLA leave should be charged against the employee's 12-week OFLA entitlement.

Holidays and days on which the employer's business is not in operation are not counted toward intermittent or reduced work schedule OFLA leave.

For purposes of intermittent leave, an employee's 12-week OFLA leave entitlement is converted to hours by multiplying the number of hours an employee normally works per week by 12 (e.g., an employee who normally works 40 hours per week is entitled to a total of 480 hours of intermittent OFLA leave). If an employee's hours vary from week to week, the employee's "normal" work week is the average weekly hours worked by the employee during the 12 weeks prior to the beginning of the leave period.

Eligible Employee

To determine whether an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. The new regulations also specify that all time worked for the employer, regardless of location—whether within or outside of Oregon—must be counted towards eligibility requirements. Finally, to determine whether the employee has worked an average of 25 hours per week, the employer should count actual hours worked using FLSA guidelines.

Job Protection

The new regulations make it clear that unless a collective

bargaining agreement states otherwise, an employee on OFLA leave is subject to layoff, the same as similarly situated employees not taking OFLA leave. The regulations also provide added details regarding OFLA leave benefit continuation and slightly modify the employer's obligation toward an employee who gives unequivocal notice of intent not to return to work.

Parental Leave

The new regulations expand the definition of parental leave to include time needed to effectuate the legal process required for the placement of a foster child or the adoption of a child. Unlike regular parental leave, such time need not be taken in one uninterrupted period.

Length of Leave and Other Conditions

An employee seeking to take both parental and sick child leave must take the entire 12 weeks of OFLA parental leave to qualify for the additional 12 weeks of sick child leave. An employee who uses less than 12 weeks of parental leave may not take additional sick child leave except for the unused balance of the initial 12 weeks.

The new regulations clarify that a female employee may take up to 36 weeks of OFLA leave, where she takes 12 weeks of pregnancy disability leave, followed by 12 weeks of parental leave, followed by 12 weeks of sick child leave. The regulations also clarify that in addition to the other enumerated exceptions, two family members working for the same employer may both take OFLA leave at the same time if they are each suffering from a serious health condition.

Medical Verification and Certification

The revised regulations now provide that employers, consistent with ORS 659.330, are responsible for out-of-pocket costs to employees for employer-requested initial medical certificates and verifications. ORS 659.330 provides an exception to the employer-pays rule where the medical examination or certificate is "required pursuant to a collective bargaining agreement, state or federal statute or city or county ordinance."

The employer must provide the employee with written notice of any requirement to provide medical

verification of the employee's need for leave, as well as the consequences of the employee's failure to do so. The employee must then be allowed a minimum of 15 days to provide the requested verification. The new regulations also provide that when an employee fails to secure a requested medical verification before commencement of OFLA leave, the employer may not delay the leave. The Employer may, instead, designate the leave as provisionally approved subject to medical verification.

For sick child leave, the rules clarify that the employer may require medical verification on the fourth day or subsequent occurrence of sick child leave within the leave year, after three separate days or partial days of such leave.

OFLA Leave Year

The new regulations clarify that the OFLA leave-year option may be designated in a collective bargaining agreement.



HELPFUL HINT . . .

OFLA Medical Certification

Under the OFLA, an employer may ask for medical verification in order to make a determination that leave qualifies for designation as OFLA leave (except for parental leave (OAR 839-009-0260 (1)); and sick child leave, until the fourth separate day or partial day's use of such leave within a leave year (OAR 839-009-0260 (6)). However, *under the FMLA, an employer is not allowed to question a medical provider directly about a serious health condition.* If a qualified provider states that the condition is a "qualifying condition," the inquiry must end there. If the agency disagrees with the provider's opinion, the agency may ask for the opinion of a second health care provider designated by the agency (at the agency's expense). While the employer may not contact the employee's health care provider directly, a health care provider representing the employer may contact the employee's provider, with the employee's permission, for purposes of clarification. Finally, if the agency requires a medical certificate and the employee does not obtain one, the absence does not qualify as FMLA/OFLA leave (and the employee may become subject to the consequences

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stemming from an unauthorized absence, depending on the terms of the applicable collective bargaining agreement). The FMLA's WH 380, "Certification of Health Care Provider" form is available at the Department of Labor's website, www.dol.gov/dol/esa/fmla.htm, under "forms."

BARGAINING CONCEPTS REMINDER

The Labor Relations Unit recently distributed a form to personnel managers which requests information about proposed agency bargaining concepts. This process provides agencies the opportunity to identify problem areas in their collective bargaining agreements and to propose solutions. It also allows agencies to suggest revisions and additions to their contracts. Agencies have

been asked to return bargaining concept forms to the LRU by April 15.

Any state supervisor who has a concern with an area of bargaining should raise the concern through the appropriate management chain of command. If you did not get a bargaining concept form and would like to contribute to this process, please contact your agency's personnel department. It is not appropriate for management service personnel to address bargaining concerns directly with public employee unions or bargaining unit members. It is also inappropriate for union members to assist in the preparation of bargaining concept forms. These are confidential documents intended to assist management in preparing for 2001-03 collective bargaining negotiations. Those involved in their preparation, moreover, might subsequently be called upon to testify about bargaining intent at an arbitration hearing.

COLLEGE DEGREES WHICH MAY NOT BE USED IN OREGON

by Alan Contreras, Administrator
Oregon Office of Degree Authorization

Anyone involved in hiring or promotion of state employees has no doubt suffered from résumé overdose: after reading through so many sets of similar qualifications, candidates' backgrounds and credentials start to look the same. Unfortunately for the unwary manager, college degrees that all look the same are actually quite different, and the difference is sometimes a problem, especially if it is only discovered after a hire or promotion has been made. The Oregon Office of Degree Authorization (ODA), a unit of the Student Assistance Commission, can help agencies avoid such problems.

Oregon law (ORS 348.609) distinguishes among college degrees; some are legal for use in Oregon, some are not. In order to be used for any purpose in Oregon (with some religious exceptions), a degree must have been earned at a college that is either (a) accredited by an agency recognized by the U.S. Department of Education (or its foreign equivalent) or (b) approved by the ODA. Oregon public institutions are in another category but are all accredited. Common problems that arise in degree evaluation during the hiring process include:

Creative writing. A candidate lists a degree on his or her résumé but does not have it at all. This can take time and effort to catch, and can be avoided by calling the college in question or by asking finalists for an official transcript for confirmation. Some college registrars will provide basic information, such as the awarding of degrees, to anyone over the phone; others charge a fee or require a written request.

Substandard degrees. A person holds a degree from an institution that is real and is licensed by another state but which is not accredited by a federally-recognized agency. Some of these are even "accredited" by bogus accrediting entities and can sometime have names that sound like well-known legitimate institutions, *e.g.* the University of Santa Barbara (an illegal degree for use in Oregon) vs. the University of California at Santa Barbara (a legal degree).

Divinity. Some states (including Oregon) allow certain religious institutions to award degrees that are not reviewed and can only be used for religious purposes. Thus, a Master of Divinity degree from an accredited college can be used on a résumé for a job at a state agency, while a Master of Divinity degree from a "religious exempt" institution is considered a sectarian church credential and cannot be used for any other purpose.

Most mistakes in hiring and promotion involve substandard degrees. These are relatively easy for alert managers to catch because the ODA has lists of accredited institutions for the U.S. and can quickly find out about Canadian institutions. The U.S. Department of Education also has such lists available, and they are published annually in higher education directories.

Any agency (indeed, any Oregonian) can ask the ODA to determine whether a degree from a specific institution is legal for use in Oregon. It usually takes less than five minutes to get the answer. Although Oregon law allows for both criminal and civil action against users of unauthorized degrees [ORS 348.992, OAR 583-050-0031(4)], ODA operating policy is to first ask the person using the degree to cease doing so. No legal action is taken unless the person refuses to do so. This allows agencies to solve potentially difficult problems without the necessity of involving employees and managers in time-consuming and potentially costly litigation.

The reason why there is no interstate reciprocity in degree granting approval is that many states have little or no oversight of non-public institutions. Some states (Oregon, Pennsylvania, Michigan, New York and others) have strong standards that colleges must meet. Others (Wyoming, Alabama, Louisiana and others) have few standards or insufficient staff to enforce standards. Hawaii and Montana have no standards at all.

Some commonly seen institutions whose degrees are illegal for use in Oregon:

Institution:

Barrington
California Coast
Clayton
Columbia Pacific
Columbia Southern
LaSalle
Kennedy-Western
U. of Santa Barbara
U. of Santa Monica

Location:

Alabama, formerly Vermont
California
Alabama
Hawaii, formerly California
Alabama
Louisiana; not the same as LaSalle of Pennsylvania, which is legal
Wyoming, formerly California
California; not the same as UC Santa Barbara, which is legal
California; not the same as Santa Monica College, which is legal

For more information or questions, please contact:

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1500 Valley River Drive No. 100
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Information: <http://www.osac.state.or.us/oda>
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ARBITRATION SUMMARIES



In the Matter of the Arbitration between the State of Oregon, DOC (SRCI) and AFSCME Local 2376 (Arbitrator, Sylvia Skratek; August 13, 1999).

The grievant's discharge was upheld despite a lack of prior progressive discipline, since the grievant's rule violation constituted a serious safety breach and since the grievant had recently received training which included a review of the rule in question and the potential penalty for its violation.

Facts: The grievant (Employee) worked as a Corrections Plant Maintenance Worker at the Department of Corrections' Snake River Correctional Institution (Employer). During his first three months on the job, the Employee received the equivalent of one month of training which included reviews of department-wide and Snake River policies and procedures. It also included an eight-hour class on the supervision of inmates. Four months after completing this training, an incident occurred while the Employee was supervising a crew of inmates. At the end of the workday in question, the Employee decided to discard a pair of his boots which he found to be uncomfortable. As he was carrying them to a dumpster, one of the inmates asked him if he could have the boots. The inmate stated that if the Employee threw them away he would simply climb into the dumpster and retrieve them.

The Employee then gave the boots to the inmate and advised him to check with his dorm officer to verify that he was authorized to have them. Two months later, the boots were discovered in the possession of the inmate during a “shakedown.” When he learned of this, the Employee informed his supervisor that he had given the boots to the inmate. The Employee was subsequently dismissed for, “ ‘actions that represented a serious breach of the rules governing employee/inmate relations.’ ” Prior to this incident, the Employee had never been subject to any disciplinary action.

Question presented: Was the grievant dismissed without just cause?

Discussion and Ruling: Arbitrator Skratek began her analysis by identifying two “areas of proof” in discharge and discipline arbitrations: proof of wrongdoing and the appropriateness of the penalty assessed. As to the first issue, “There is no dispute that [the Employee] provided the...boots to the inmate and failed to report the matter in a timely manner to his supervisor.” This constituted a violation of Rule 33, which prohibits Department of Corrections employees from knowingly engaging in personal or business transactions with inmates, including, “[G]iving or accepting personal gifts, favors, and special considerations of any kind, no matter how trivial they may seem.”

Turning to the question of the appropriateness of the penalty assessed, the Arbitrator explained that she should not substitute her judgment for that of the employer, “[U]nless the employer has acted unfairly given the circumstances of the case.” In this instance, the Employee had recently completed a training program which, “[E]mphasized in part the importance of adherence to Rule 33....” Included in this training was the concept of “ ‘fish testing’ ,” which is a method inmates use to “set-up” employees. To accomplish this, “An inmate who asks for and receives items that are not supposed to be given, such as the...boots, can then engage in a form of blackmail with the employee who provided the item which in turn leads to a breakdown in the security which is critical to the operation of a correctional facility.”

In this case, “The magnitude of the potential harm was considerable, the employee had knowledge about the rules and penalties, and the impact of the degree of punishment on other employees is critical to maintain the security of the facility. While this is the first offense by the Grievant, the rule violated by the Grievant has as its very basis the safety of employees. It is well established that some offenses are so serious as to justify immediate termination.”

In response to the Union’s contention that dismissal was too harsh a penalty in this case, the Arbitrator noted that, “If an employee violates a rule less than four months after the conclusion of his training, the Employer has reason to assume that further training would be ineffective. The Arbitrator will not invalidate the Employer’s assumption in this case.” Moreover, after reviewing an outline of discipline issued by the Employer during the three-year period prior to this incident, Arbitrator Skratek found that she, “[C]annot conclude from this document that the discharge of [the Employee] is disproportionate to the discipline issued in similar matters.”

The fact that a panel established by the Employer to review this case had recommended a level of discipline less severe than discharge does not invalidate the action taken by the Employer. The Employer was not bound by the panel’s recommendation and was entitled to reach a different conclusion regarding the appropriate level of discipline. Finally, finding against the Union’s argument that the employee’s short tenure was being held against him, the Arbitrator concluded that, “[T]he Employer is within its rights to discharge an employee who violates a substantive rule within months of being put on notice of [it].... The rule violation in this case threatened the security of the facility and thereby constituted a serious safety breach.”



HELPFUL HINT . . .

Going Straight to Dismissal

When may an agency dismiss a represented employee for inappropriate conduct without first going through the progressive discipline process? In general, the misconduct must be serious enough that immediate dismissal is a reasonable and foreseeable response to the offense (*i.e.*, “the punishment fits the crime”). In the usual case, agency past practice should support the invocation of immediate dismissal for the conduct in question. The PECBA, however, provides an exception to this general rule by noting that, “Some misconduct is so egregious that no employee can reasonably rely on past treatment for similar offenses as a justification or defense to discharge or other discipline” (ORS 243.706 (1) (a)). While each case will depend on the facts presented, the following are some examples of conduct which might justify immediate dismissal: Conviction of a job-related crime; conviction for off-duty conduct which is connected to a job-related activity (*e.g.*, assault by a caregiver; theft or forgery by an employee who occupies a position requiring trustworthiness); serious threats to the safety of coworkers or supervisors; bringing a loaded firearm to work; serious harassment or assaultive behavior; insubordination so serious that the agency cannot

allow the employee to remain on the premises; abuse of a client; stealing from the employer; falsifying important employer documents; intentional destruction of valuable employer property; release of statutorily confidential information; serious mistreatment of a member of the public; and lying about matters that go to the heart of the employee's job or the agency's mission.

In the Matter of the Arbitration Between OPEU and the State of Oregon, DOE

(Arbitrator, Howell L. Lankford; January 7, 2000).

Under the applicable OPEU agreement, overtime hours do not count toward satisfying the 1040 hours of trial service required for part-time employees.

Facts: The grievant (Employee) was hired as a part-time employee by the Oregon Department of Education (Employer) on September 28, 1998. He was terminated on April 4, 1999, after working 1033 regular hours and 37 hours of overtime. The applicable collective bargaining agreement provides that the trial service period for part-time employees is 1040 hours. Removals from trial service are not subject to the contract's grievance and arbitration procedure.

Question presented: In light of his overtime hours, was the Employee still on trial service at the time of his removal?

Discussion and Ruling: In order to prevail in this contract interpretation case, the OPEU (Union) must show that the parties to the contract, more likely than not, agreed that overtime hours would count toward the completion of a part-time employee's trial service. Three types of evidence help in proving what the parties to an agreement probably understood the agreement to be: "[T]he contract language itself, how the parties explained that language to one another when they were bargaining it (aka, 'bargaining history'), and what the parties have done in the past in situations where their understanding of that language might have made a difference in their action (aka, 'prior administration' or 'past practice')."

The first factor, the contract language, "[D]oes not substantially favor the Union's proposed interpretation." The contract provides that the trial service period for *full-time* employees shall not exceed six full months, and the parties agree that overtime hours do not count toward the six-month trial service for these employees. The fact that the contract also provides an hourly figure—1040 hours—for *part-time* employees does not imply

that completion of the 1040 hours could be satisfied by work time that would not count if the employee were full-time. Rather, "The most immediately obvious reason for restating in hours the length of the trial service period for part-time employees is to show that the six-month period is to be translated in terms of work-hours, and not in terms of time elapsed (i.e., six calendar months will not get a *part-time* employee past trial service)."

The bargaining history also fails to support the Union's position. In fact, the subject was neither addressed in negotiations nor, as far as the record shows, was it ever considered by either party *away* from the table.

Finally, the contract's prior administration, "[O]ffers no support for the Union." Rather, "As far as the record shows, the State's administration of this language has been quite consistent with its proposed interpretation and quite inconsistent with the Union's."

Arbitrator Lankford thus concluded: "Overtime hours do not count in satisfying the 1040 hours of trial service required for part-time employees...and, therefore [the employee] was a trial service employee at the time of his termination."

In the Matter of the Arbitration Between the State of Oregon, EOTC and OPEU

(Arbitrator, Sylvia Skratek; September 30, 1999).

The applicable OPEU contract provides that the most senior regular employee who requests a transfer to a vacant position in the employee's classification shall be selected for the position if the employee has the special qualifications to perform the job. It was held that the employer violated this provision by making comparisons among employee-applicants rather than simply selecting the most senior applicant having the minimum competency to perform the job.

Facts: The State of Oregon, Eastern Oregon Training Center (Employer) operates five residential cottages for adults with developmental disabilities and mental retardation. The grievant (Employee) was initially hired by the Employer in 1990 as a Habilitative Training Technician 1 (HTT1). His prior employment included positions as Manager at Taco Bell and Skippers Seafood restaurants. As of 1998, the Employee's experience with the Employer included positions at three of the five cottages, including the last six years at "Alder" cottage. During one of his years at Alder cottage, his responsibilities included daily meal preparation. In 1998, the Employee applied for and was offered an HTT1/Food Service

position at “Court” cottage. He chose, however, to turn down the position and to remain at Alder cottage. Subsequently, the Employer posted an HTT1/Food Service position at Alder cottage. The Employee applied for the position and was interviewed. The position, however, was offered to another employee with a hire date of 1992.

The collective bargaining agreement between the Employer and the OPEU (Union) provides that for a transfer to a vacant position within an applicant’s classification, “[T]he most senior regular employee... who has the special qualifications to perform the job... shall be selected.”

Question presented: Did the Employer violate the collective bargaining agreement by failing to transfer the Employee to a vacant position for which he was the most senior applicant?

Discussion and Ruling: Arbitrator Skratek began her analysis by reviewing the relevant bargaining history and past practice of the parties, to determine their intent as to the language in dispute. Regarding the bargaining history, “[T]he Arbitrator finds that the Employer unsuccessfully attempted to obtain in the 1987 negotiations a change in the transfer process that would have placed an emphasis upon ability to do the job. The Union had retained the concept contained within the previous collective bargaining agreement that had guaranteed that the most senior employee who applies shall be selected if they meet the special qualifications The language has remained substantively unchanged since 1987.” As to past practice, “Although there was testimony at the hearing regarding the past practice between the parties regarding the language in dispute, the testimony was contradictory and the Arbitrator cannot find that there was an agreement that a practice existed that was clear and consistent, long standing, acceptable to the parties, and that had been mutually acknowledged.”

Turning to the question of the alleged contract violation, the Arbitrator began by observing that for represented employees, seniority serves as the basis for many aspects of the employment relationship, including transfers. Collective bargaining agreements often modify seniority rights. Typically, such modifications take one of three forms: “1. ‘Sufficient ability’ seniority clauses require that job preference be given to the senior employee who has sufficient ability to do the job; 2. ‘Relative ability’ clauses make seniority the determinative factor if the senior and junior employees’ abilities are substantially equal; 3. A hybrid clause requires a comparison of both seniority and ability.” In this case,

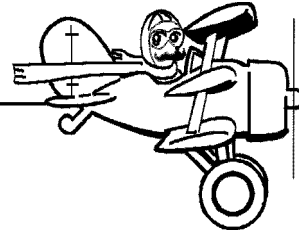
Arbitrator Skratek determined that, “[T]he language in this dispute meets the criteria of a ‘sufficient ability’ clause.” The language at issue in this arbitration, “[S]tates that ‘...the senior regular employee...who has the special qualifications...shall be selected.’ It does not state ‘who has the *best* special qualifications’. One must simply have the special qualifications or ‘sufficient ability’ to do the job.” (Emphasis in original.)

Comparisons among employees are “improper” under a “sufficient ability” clause, “[S]ince the only question is whether the senior employee has the minimum competency.” In this case, “[T]here is no doubt that [the Employee] met the special qualifications. He had previously been offered the cook’s position at Court cottage. That fact in itself would have eliminated the need for an interview in this particular process. That is not to say that the Employer may not interview employees to determine if they meet special qualifications. Only that an interview is not necessary, nor should one be conducted, when it is already established that a senior employee has met the special qualifications. Such establishment may occur through prior performance, performance reviews, prior experience, and/or trial periods on the job. If, after a review of these factors, it cannot be established that an applicant meets the special qualifications for a position, then an interview may be conducted, however, the interview must be an objective process that is designed to determine if an applicant meets the special qualifications.”

Two of the interviewers in this case testified that the Employee scored high enough in the interview process to be hired for the Alder cottage position. However, “The Employer simply determined that [another applicant] was ‘better fit’ and ‘better suited’ for the position.” Such a “subjective determination,” found Arbitrator Skratek, “[I]s improper under the Agreement.... If the Employer must conduct an interview to determine whether someone meets the special qualifications, it must do so in a manner that focuses solely and objectively on the special qualifications without a comparative scoring process. In this case, the Employer not only scored the responses of the employees for comparison purposes, the Employer also provided extra points for seniority and experience. Such a process would be appropriate under a ‘relative ability’ seniority clause but not under the ‘sufficient ability’ clause that is contained within this Agreement. The question in this case, is simply, does the employee meet the qualifications or not. If so, then the most senior employee shall be selected.”

In light of her determination, Arbitrator Skratek ordered that the Employee, “[B]e transferred to the cook’s position at Alder Cottage effective immediately,” and that he recover any lost back wages and benefits that may be due him.

BACK TO BASICS



TIPS FOR NEW SUPERVISORS

Just promoted? Are you supervising the same people you used to know socially? If you find yourself struggling with the change from worker to supervisor, remember:

1. Don't be upset if one or two of your subordinates appear to resent your promotion. Concentrate on doing a good job. If you are successful, their resentment will probably disappear. If it doesn't, you may have to have a showdown. You can't put up with disloyalty. But go slow. Give the balky subordinate every opportunity to snap out of such an attitude. In most cases, he or she probably will, particularly if you meet the employee half way.
2. Take a hard look at yourself. What are your strong points? Your faults? Be sure you make the most of the former and face up to and do something about your weak points—they can cause setbacks.
3. Pay attention to communications. Let employees know right away that you intend to be as objective as possible. Show by your actions that you don't play favorites and your decisions are based on qualifications and performance.
4. Be honest with former associates. You're new on the job, and you don't have to know all the answers. So admit it when you don't—but show that you plan to quickly acquire the information you need. If you are open with subordinates, you'll soon get their respect and support.
5. Explain your goals. That will give employees a better understanding of your decisions. If you are honest with subordinates about the reasons behind your decisions, you will have more positive relations with them.
6. Be objective. Do not let past associations, friendships, or animosities influence your relations with any employee. If you lose your objectivity, you lose the ball game.
7. Understand that promotion brings social change. You don't have to give up old friends simply because you

move upward. But you can't be as free and open on some things as you were in the past. Good judgment and tact are needed.

8. As a general rule, don't discuss your changed status and its implications with subordinates. Let your actions speak, and they will tell your story. Of course, if you have a close friend in the group whom you can trust, you may be able to talk with him/her about your problems.
9. Your progress is evidenced by the functioning of your work group. For example, if efficiency has improved, absenteeism and accident rates declined, quality is better and quantity is up, you can reasonably assume you are making progress. Intangible evidence is hard to check. But, it too is a guide to how you are doing. For example, has the cooperation and coordination between your work group and other work groups improved? Has morale improved? Is there less bickering within the work group? If the answers are "yes", then your leadership is getting results.

PERSONALITY + FOR SUPERVISORS

What qualities do employers want most in supervisors? This question comes up in a lot of supervisory training sessions. There seems to be a pattern to how people respond.

Technical or other job "know how" is important, but basic personal traits others like and respect are what most often make one person a leader others are willing to follow.

Honesty. Truthfulness and a bit more. Be able to admit errors when they happen. Accept the blame when it's due. Don't duck the issue, make lame excuses or try to cover up. Phoniness shows through.

Loyalty. Believe the best about people. Stand shoulder to shoulder with each member of the team. Accept and support people, knowing every person has weaknesses as well as strengths.

Cooperation. Be helpful, unselfish and reliable—willing to accept the ideas, objectives and plans of others. Actively help the other person be a winner.

Tact. Each person is the center of his/her own universe. Develop quick sensitivity to others' feelings. Choose a course of action that will get desired results without stepping on toes or bruising egos. Courtesy pays.

Poise. The confidence that comes from knowing what needs to be done shows. Confidence in one's self inspires confidence in others. Be modest, not arrogant. Keep an even keel under stress.

Patience. Give people and things a chance to work out. Don't be quick to criticize or condemn. Let people learn and grow.

Fairness. Treat people as individuals, but treat them alike. Don't play favorites. Avoid taking or giving special privileges based on personal familiarity. If trouble comes, listen before you talk too much or decide what to do.

Optimism. Be upbeat. Accentuate the positive. Don't ignore problems, but think and talk about solutions. Dwell on what's right, not what's wrong. See the good in people and situations. Figure out ways to build or make things better.

Open Minded. This is more than a willingness to listen. It is a genuine interest in better ways and suggestions for improvement. Be eager to consider new ideas.

Firmness. Set reasonable, realistic standards. Keep things simple. People need to know where they stand. Expect compliance. Rubber rules are worse than no rules at all.

COMMUNICATE FOR RESULTS

Everyone admires the person who is able to say the right thing at the right time. This is not simply a matter of intuition, it is the practice of skills developed through experience. No two people communicate in exactly the same way, and each has to adapt the techniques to his/her own particular personality and ability. But a sincere effort to apply the guidelines that follow and to work at sharpening communication skills will result in improved employee relations, which should be ample evidence of success.

Plan your communications. Build communication planning on facts, straight thinking, valid conclusions,

and mature judgment. Develop a clear concept of what you want to communicate. Keep your immediate and long range goals in perspective. Know the person who is to receive the communication—what type of individual they are, how receptive they will be, what they are most interested in, what their personal values are, and what approach will be effective with them.

Know your abilities and limitations. Consider your strengths and limitations when determining your most effective approach. Make notes. Don't leave important details to chance. Aim for lasting results. A response is no proof of understanding.

Clarify your ideas before trying to communicate them to others. Someone once said, "I don't advise you to start talking until you have begun thinking. It's no good opening the tap if there's nothing in the tank."

Consult with others. If your communication could affect others outside your department, it would be wise to seek advice before proceeding.

Communicate for tomorrow as well as today. Although it is necessary to meet today's goals and needs, you should not ignore the long range goals nor should you delay communication of disagreeable information, since delay only makes it more difficult and distasteful.

Make it original, colorful, and interesting. Use the most effective tone, words, time, occasion and media to ensure the most effective reception.

Gain attention and interest first. Remember that before you can communicate you must have both the attention and interest of the receiver.

Execute thoroughly. Plan and execute communication with great care in order to convince and to get response.

Communication is not an end in itself, it is only an instrument. If it does not achieve the desired result, it has served no useful purpose. Communication must be an everyday affair to be successful. It should not be something the supervisor does only at intervals when he/she has time. Employees must believe they can depend on the supervisor and on management to furnish correct information. Remember you state your intent through communication, but you demonstrate it through follow-up action.

The preceding three articles are reprinted, with permission, from the Local Government Personnel Institute March 2000 Newsletter

LABOR RELATIONS CONTRACT ADMINISTRATION ASSIGNMENTS

Eva Corbin, Deputy Administrator 378-8321

AFSCME:

Oregon State Fire Marshal (OSFM)
Oregon State Police (OSP Support Unit)

OSPOA:

Oregon State Police (OSP)

Craig Cowan, Sr Labor Relations Mgr 378-5611

AEE:

Department of Forestry (DOF)
Department of Transportation (ODOT)
Parks and Recreation Dept (OPRD)

AFSCME:

Building Codes Division (BCD)
Employment Department (EMPL)

OPEU:

DHS Agencies Coalition:
Employment Department (EMPL)

ODOT Coalition:

Department of Forestry (DOF)
Department of Transportation (ODOT)
Parks and Recreation Dept (OPRD)

Special Agencies Coalition:

Consumer & Business Services (DCBS)
Department of Education (ODE)
Special Schools (OSSB & OSSD)

STEAA:

Department of Education (ODE)

Cathy Schuh, Sr Labor Relations Mgr 373-7608

AFSCME:

Dept of Land Conservation & Dev (DLCD)
Department of Justice (DOJ-OAJA)

CIA:

Department of Justice (DOJ)

OPEU:

DHS Agencies Coalition:
Adult & Family Services (AFS)
Director's Office (DO)
Senior & Disabled Services (SDSD)
Services to Children & Families (SCF)
Vocational Rehab Division (VRD)
Mental Health Division (MHDDSD)
Health Division

Special Agencies Coalition:

Bureau of Labor & Industries (BOLI)
Dept of Administrative Services (DAS)
Department of Justice (DOJ)
Public Employees Retirement Sys (PERS)
Com College & Workforce Dev (DCCWD)
Oregon Student Assistance Com (OSAC)

Mark Hunt, Sr Labor Relations Mgr 378-3967

AFSCME:

Dept of Corrections (DOC-Strike Permitted):
Board of Parole (BOP)

Corrections Central

Dept of Corrections (DOC-Strike Prohibited):

Corrections Institutions

Oregon Military Department (OMD)

AOCE:

Dept of Corrections (DOC-Strike Prohibited,
OSP, Mill Creek, Forest Camp, OSCI)

KFAFFA:

Oregon Military Department (OMD)

IAFF/Washington County:

Oregon Military Department (OMD)

OPEU:

DHS Institutions Coalition:
Dept of Corrections (OSCI-Strike
Permitted)

Tom Perry, Sr Labor Relations Mgr 378-4201

AFSCME:

Real Estate Division (REA)
Dept of Pub Sfty Stndrds & Trng (DPSST)
Dept of Corrections (DOC with Mark Hunt)

AOCE:

Dept of Corrections (DOC with Mark Hunt)

OPEU:

DHS Institutions Coalition:
Dept of Corrections (DOC with Mark Hunt)

Jan Weeks, Sr Labor Relations Mgr 378-6483

AFSCME:

Physicians at Mental Health Division
Dentists at Dept of Corrections (DOC)
Nurses at Oregon State Hospital (OSH)
State Operated Community Prog (SOCP)
Fairview Training Center (FTC)
Oregon Youth Authority (OYA-JPPOs)

GCU:

Dept of Administrative Services (DAS)

ONA:

Mental Health Div (FTC, EOTC, EOPC, SOCP)

OPEU:

DHS Agencies Coalition:
Oregon Youth Authority (OYA)

DHS Institutions Coalition:

Oregon Youth Authority (OYA)
Oregon State Hospital (OSH)
Eastern Oregon Training Ctr (EOTC)
Eastern Oregon Psych Ctr (EOPC)

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Department of Administrative Services
Human Resource Services Division
Labor Relations Unit
155 Cottage Street NE
Salem OR 97310

LRU Assignments cont...

Michael Halpern, Sr Labor Relations Mgr 378-2705

AFSCME:

Dept of Environmental Quality (DEQ)
Construction Contractors Board (CCB)
Oregon Liquor Control Commission (OLCC)

OPEU:

DHS Agencies Coalition:

Health Licensing Office (HLO)

Special Agencies Coalition:

Commission for the Blind
Health Related Licensing Boards
Department of Agriculture
Water Resources Dept (WRD)
Oregon State Library (OSL)

Oregon State Fair (OSF)
Oregon State Treasury (OST)
Dept of Veterans Affairs (DVA)
Department of Revenue (DOR)

Topic Coordinators

Interim Bargaining for New/Revised Classifications–
Jan Weeks
Supervisory/Confidential/Managerial Exclusions
from Bargaining Units–Michael Halpern
FLSA–Michael Halpern
ADA–Michael Halpern or Mark Hunt
FMLA–Mark Hunt or Michael Halpern

About the Labor Relations Unit . . .

The Labor Relations Unit is a part of the Human Resource Services Division in the Department of Administrative Services. The Administrator of the Division is Dan Kennedy. Currently, the LRU negotiates and administers 31 collective bargaining agreements with 11 different labor organizations, covering over 30,000 employees in the Executive Branch of Oregon State Government.