

**AMERICAN ARBITRATION ASSOCIATION  
OPINION AND AWARD**

In the Matter of the Arbitration  
between  
**WILMINGTON HOUSING AUTHORITY**  
and  
**OPEIU, LOCAL 32**

AAA Case No. 14 390 00608 10

Hiring an outside person for the position of Assistant Housing Manager

BEFORE: Barbara Zausner, Arbitrator

DATED: June 26, 2011

**APPEARANCES**

Young Conaway Stargatt & Taylor, LLP  
Attorneys for the Company  
By, Sheldon Sandler, Esq.

Mets Schiro & McGovern, LLP  
Attorneys for the Union  
By, Kevin P. McGovern, Esq.

**ISSUE**

Did the Employer violate Section 12.01 of the collective bargaining agreement by failing to promote a member of the bargaining unit to the position of Assistant Housing Manager in February 2010? If so, what shall be the remedy?

## RELEVANT CONTRACT LANGUAGE

### ARTICLE IV – AUTHORITY RIGHTS

4.01 The management of the business of the Authority and the direction of the personnel shall remain with the Wilmington Housing Authority, including the right to hire, transfer, promote, demote, layoff, suspend and discharge for just cause, to make reasonable rules of procedure and conduct, to determine working schedules and shifts, to decide the number of employees needed at any particular time and to be the sole judge of the qualifications of work required. None of the above rights shall be used as indirect wage deductions, nor shall any of these functions of the Authority be exercised in a manner inconsistent with the terms of this Agreement. If in the opinion of the Union any employee has been unfairly dealt with under the provisions of this clause, the Union may resort to the Grievance Procedure as set forth herein, and refer the matter to Arbitration. (J-1, P. 7).

### ARTICLE XI – PROMOTIONS AND VACANCIES

12.01 Whenever possible, promotions and vacant positions within the bargaining unit shall be filled from within the bargaining unit, if there are qualified employees to fill such positions. The Authority shall select the employees for promotion or to fill all vacant positions within the bargaining unit, on the basis of an employee's qualifications. When the relative ability of two or more employees is essentially equal, the employee with the greatest seniority will receive the promotion or fill the vacancy. Any employee selected for promotion or to fill the vacancy may decline such position without affecting his/her chances for future consideration for advancement. (J-1, P. 16).

## JOB DESCRIPTIONS

### Assistant Housing Manager

SUMMARY OF POSITION: The Wilmington Housing Authority, a public, non-profit, federally assisted agency, provides decent, safe and sanitary housing in a businesslike manner with concern for the quality of life for residents. The Authority's clients include low-income families, elderly and disabled individuals. The Housing Operations Department is responsible for effectively managing over 1,970 properties owned and operated by the Authority and is responsible for the centralized screening and selection of the Authority's public housing residents.

The Assistant Housing Manager and is responsible for assisting the Housing Manager in managing the daily operations of one or more Housing Authority developments. The incumbent will perform functions of a technical nature and routine office tasks.

#### MAJOR RESPONSIBILITIES

- Acts for the Housing Manager on all matters in his/her absence;
- Assists the Housing Manager in the daily operation of a housing development in accordance with established Authority policies and procedures and State and Federal regulations, including involvement with re-examination of current residents, interim examinations, preparation of eviction packages for court, taking and processing work orders, rental collections, and unit inspections and the enforcement of the provisions of the dwelling lease;
- Assists the Housing Manager with ensuring that Public Housing Assessment System (PI-IAS) or other performance standards are met, including Vacancy Number and Percentage, Rents Uncollected, Unit Turnaround, Outstanding Work Orders, Annual Inspection and Condition of Units and Tenant Account Receivables;
- Greets residents and visitors to the management office and assists in processing paperwork or directing them to the Housing Manager to ensure individuals are serviced in a timely manner;
- Utilizes a personal computer or CRT to input and retrieve data;
- Conducts new resident orientations reviewing rights and responsibilities under the lease agreement;
- Conducts move-in and move-out inspections and prepares the associated paperwork;
- Issues rent delinquency notices to residents in accordance with established procedures;
- Conducts grievance hearings and makes recommendations to the Housing Manager;
- Maintains continuing liaison with community organizations;
- Assigns subordinate employees daily work responsibilities and monitors work performance when applicable;
- Assists in the preparation of periodic reports and in the maintenance and upkeep of resident records;
- Types and mails basic correspondence, forms and reports and performs routine office duties;
- Schedules meetings, unit inspections and arranges resident activities;
- Performs other related duties as assigned.

**REQUIREMENTS:** Associates Degree in Business Administration or Management, Human Services or other related field. Three years of administrative experience in housing or property management. Proficiency in the use of a personal computer and CRT or equivalent combination of education, training and experience that provides the required knowledge, skills and abilities as determined by the Personnel Department.

**Knowledge, Skills and Abilities:**

Demonstrated knowledge of housing management principles, practices, methods and techniques; Demonstrated knowledge of Federal, State and local regulations applicable to Public Housing. Working knowledge of basic building maintenance; Knowledge of basic counseling techniques; Demonstrated ability to maintain accurate files and records. Demonstrated ability to communicate effectively with staff, residents and the community-at-large both orally and in writing; Ability to mediate disputes; Demonstrated ability to supervise the work of others; Demonstrated ability to organize and prepare reports.

**SPECIAL REQUIREMENTS**

- Valid driver's license and insurable driving record.
- Ability to obtain a Public Housing Management Certification within one year of employment.
- Available to work flexible hours to be determined by the Authority from time to time.

**PREFERRED REQUIREMENTS**

- B.S. Degree in Business Administration or Management, Human Services or Sociology.
- Extensive administrative experience in a public housing setting working in housing management with some supervisory experience.
- Certified Public Housing Manager.

**Case Management Specialist**

**SUMMARY OF POSITION**

The Wilmington Housing Authority, public non-profit, federally assisted agency, provides decent, safe and sanitary housing in a businesslike manner with concern for the quality of life for residents. The Authority's clients include low-income families, elderly and disabled individuals.

The Section 8 Division of the Administration Department is responsible for administering Wilmington Housing Authority Section 8 programs. The Division determines applicant and participant eligibility, conducts annual recertifications, interim adjustments, enrollment interviews for current participants and applicants.

The Case Management Specialist is responsible for performing annual recertifications, interim adjustments for the Section 8 Program and enrollment interviews for current participants transferring.

#### MAJOR RESPONSIBILITIES

- Schedules and conducts annual recertification interviews, interim interviews and enrollment interviews for program participants;
- Determines need for interim rent changes and completing all established and required processing procedures;
- Conducts applicant interviews and conducts detailed briefings with applicants to provide information on the Section 8 Program and the private rental market;
- Reviews cases involving lease terminations and transfers;
- Verifies income, assets, family status and other relative information to determine continued eligibility in accordance with Federal regulations and agency policy; Computes Total Tenant Payments, and agency Housing Assistance Payments;
- Maintains complex files, both computerized and manually;
- Types general correspondence;
- Determines need for interim rent changes and completing all established and required processing procedures;
- Assists in researching, developing, maintaining and revising department forms, procedures and control systems as needed.
- Monitors and informs landlords of annual recertifications;
- Communicates with clients and general public through personal contact, telephone or in writing;
- Prepares statistical and narrative reports to illustrate short- and long-term goals, accomplishments and problems;
- Refers clients to social service agencies when necessary;
- Assists with other departmental functions for the Section 8 Program;
- Types general correspondence;
- Performs other related work as required.

#### REQUIREMENTS

Associate Degree in Business Management, Human Services or other related field; Three year's work related experience or equivalent combination of education, experience and training which provides the required knowledge, skills and abilities as determined by the Personnel Department.

#### Knowledge, Skills and Abilities

- Demonstrated knowledge of interviewing techniques;
- Demonstrated knowledge of Section 8 program regulations;
- Demonstrated skill in typing and utilizing word processing systems;
- Demonstrated ability to exercise independent judgment.
- Demonstrated ability to give group presentations;
- Demonstrated ability to communicate effectively verbally and in writing;
- Demonstrated ability to maintain complex files;
- Demonstrated ability to deal courteously with individuals from all socio-economic backgrounds;
- Demonstrated organizational skills.

#### PREFERRED REQUIREMENTS

Valid driver's license and insurable driving record.

### **BACKGROUND**

In December 2009 the position of Assistant Housing Manager (AHM) became available within the Wilmington Housing Authority (WHA). The deadline to apply was December 2, 2009. There were six applicants for the position. Five of the applicants were interviewed. The sixth candidate withdrew from the process. Four of those interviewed were already members of the bargaining unit. Autumn Mauk Gunter, was an outside candidate. She was selected for the position.

The Union filed a grievance on March 10, 2010 in accordance with the parties' Agreement. (J-2). The matter was moved to arbitration on March 23, 2010 and is now properly before me. (J-4). I held a hearing on April 8, 2011 and closed the record on receipt of the parties post hearing briefs.

### **DISCUSSION AND OPINION**

Cynthia Ritzie was employed by the WHA as a temporary employee in 2003. She

became permanent in August 2004 and has worked as a Case Management Specialist (CSM) since that time. She works in the voucher program helping low income clients to find appropriate housing. Her primary responsibility is to verify information provided by the tenants for their annual recertification. Verified information includes: "income, assets, family status and other relative information to determine continued eligibility in accordance with Federal regulations and agency policy; Computes Total Tenant Payment, and agency Housing Assistance Payment". (U-1).

Ms. Ritzie said she learned of the promotional opportunity on November 23, 2009, the same day the vacancy was posted. As specified in the posting, Ritzie sent an e-mail to Kathi Sulksy in Human Resources the following day to express interest in the position. (J-9, p. 31). Ritzie testified she believes the daily functions of the AHM are comparable to those of the CSM, and which she already performed on a daily basis including: use of a computer, conducting interviews with residents and landlords, scheduling meetings, verifying information, maintaining files, preparing monthly reports and conducting grievance hearings for tenants. She has been working for the WHA for 5 years and has the necessary computer training listed in the job description.

On December 22, 2009 she was interviewed for the position of AHM by Francis Lewis, Pam Clark and Sandra Rosmini. She assumes she met the minimal qualifications for the position because in her experience with the Authority, the only candidates interviewed for vacancies are those meeting the specified qualifications.

Ritzie said she next received a letter dated February 2, 2010 stating the WHA was unable to offer her the position. (U-3). On March 8, 2010 she received an e-mail

announcement that Autumn Mauk Gunter had received the position. (J-11).

Ritzie acknowledged that she does not perform several of the duties listed in the AHM job description including preparing budgets, enforcing provisions of the leases, collecting rent and unit inspections nor does she have experience in private sector housing.

LaKeisha Watson works for the WHA as an Asset Manager for South Bridge, Amp 2 and serves as a shop steward for the Union. Ms. Watson is familiar with the responsibilities of an AHM because she worked in the title for several years. She was also involved with a compensation grievance filed on behalf of the CMS classification. The employees in that title wanted to have their position and salary reviewed because they felt they perform duties similar to that of the AHM. After reviewing the two job descriptions she noted a great deal of overlap of the duties.

Watson is familiar with the Authority's directive to change to an asset management model and understands that it will require some changes in responsibilities. She noted that to date, few changes have been made to the AHM's responsibilities except that they must now enter work orders.

Kathi Sulsky is the Chief of the Human Resources department for the Authority. She has worked in Human Resources for twenty-one years and has been in her current position for fifteen years. Ms. Sulsky testified that the WHA owns and operates 275 scattered sites. There are seven Asset Managers assigned to oversee the scattered sites and they all report to Sandy Rosmini, the Housing Management Chief. The AHM involved in the instant grievance reports to Pam Clark, one of the Asset Managers.

According to Sulsky there have been other occasions when the Authority has filled a vacancy with someone outside of the bargaining unit. In October 2010, a CMS position became available. In that case there were four internal candidates and one external. The Authority hired the external candidate, Gail Jameson, and the Union did not file a grievance.

Sulsky described the process she followed for filling the AHM position. She completed an Employment Requisition on November 17, 2009. (J-6). The position was then posted internally for five working days. At the same time, the position was sent out to other social service agencies and community centers. HR received several in house applications which were reviewed and scheduled for interviews. Ritzie, Dana Mitchell-Jackson and LeKeisha Hawkes were members of the bargaining unit. Wendy Congo was a former member of the bargaining unit but was not employed by the Authority in December 2009. Neither was Mauk Gunter.

Sulsky originally was scheduled to assist with the interviewing process but was unable to do so. Fran Lewis, her assistant, took her place. Also present for the interviews were Pam Clark and Sandy Rosmini. The Human Resource role in the interviews is that of facilitator. They also provide all the necessary documentation (such as applications and job description). The other two participants rate the candidates using structured interviewing questions. (J-9).

A summary of the ratings was created. (E-2). Mauk Gunter received the highest rating in seven categories. She also received the greatest number of total points of the five interviewed candidates. (E-2, p.8). The interviewers initially recommended Ritzie

based on the belief that they were required to hire someone from within the bargaining unit.

The appropriate information was forwarded to Executive Director Fred Purnell, for the final decision. Mr. Purnell interviewed Mauk Gunter and decided that she was the most qualified candidate for the position. She accepted the position and has been in the position since March 8, 2010. She did very well on her probationary evaluation and is now a member of the bargaining unit.

Sandy Rosmini began working for the WHA in June of 1983. She is currently the Housing Management Division Chief and has been in that position since May 2009. Her responsibilities include overseeing the property management and leasing staff and insuring compliance with HUD rules. Ms. Rosmini testified about the recent change by HUD to an asset based model rather than a centralized management model. This change requires more direct responsibility at each of the sites which means changes to the duties of the housing management staff responsibilities.

Rosmini was involved in the hiring process for the AHM vacancy. She received the appropriate documents from Human Resources along with standardized questions and ratings sheets for each candidate. She testified that Mauk Gunter's overall ranking was highest, followed by Mitchell-Jackson and then Ritzie. She ranked Mitchell-Jackson higher than Ritzie because of her private sector housing experience. Upon completion of the interviews and receipt of supervisor recommendations, Rosmini had a conversation with Ms. Clark. She testified that Clark was under the impression that they were required to promote from within the bargaining unit even though Mauk Gunter had the highest

overall rating. She said that she left it to Clark to make the final decision since she was the one who would directly supervise the position. It was Clark's recommendation that the position should go to Ritzie.

Frederick Purnell, Sr., is the Executive Director of the WHA and has been in that role since March 8, 2000. He testified that he always takes an active role in the hiring process for all positions. He reviews the ratings and recommendations made by the hiring panel, the resumés of the candidates, and then conducts his own interview with the top rated person before reaching a final decision.

Purnell testified that he is familiar with the collective bargaining agreement. It is his understanding that management has sole responsibility when it comes to personnel decisions. He reviewed the recommendations, ratings and resumes of the candidates for the AHM position found the panel's recommendation "inconsistent with the evaluations, ratings and rankings". He was informed that the panel believed they were required to hire an internal candidate if one existed. After he interviewed Mauk Gunter he concluded that she was most qualified for the position, she had experience in the private sector with asset management and had the highest overall rating.

Purnell explained that experience in the private sector is important because of the new asset management model that HUD is requiring. He said that each site would operate separately and would be required to make a profit or it could be removed from their inventory.

Purnell described the difference between the property management staff and the case managers. He said that the case managers focus more on the eligibility requirements

of the tenants. The property management staff is involved in the day to day operation of the property including rent collection, resolving tenant disputes, representing the Authority in court and the overall maintenance of the facilities.

HUD's decision to move to an asset management model also involves a change in how funding for each site is supplied. Rather than receiving a lump sum of money for all of its sites, each property receives money based on its occupancy rate. When filling the AHM position Purnell wanted to have someone who is experienced in the asset management model.

Autumn Mauk Gunter was selected for the AHM position at issue in this case. She testified that she previously worked as a property manager for Cyntellex Properties and as a part-time bookkeeper with Morgan Properties. She became familiar with the asset management approach while working in her previous positions. She has experience working on budgets. She said that the goal of the property management team is to make as much revenue as possible.

Mauk Gunter filled out an application on December 2, 2009. (J-9, p. 2). She was interviewed by Fran Lewis, Sandy Rosmini and Pam Clark. She was then called in for a second interview with Mr. Purnell and was offered the job at the end of that interview.

The Union argues that the language in Section 12.01 of the collective bargaining agreement is clear and unambiguous. If a member of the bargaining unit meets the posted qualifications for the vacancy, the Authority is required to select that person. It argues that the "term 'shall' imposes an obligation on the employer to promote from within. (U Br. P. 8).

Furthermore, the Union argues, the grievant in this case meets the requirements as listed in the AHM job description. The Union asserts that Ritzie has been doing same or similar work in her role as a CMS. If she, in fact meets the qualifications, it is possible to promote her to the AHM position. Finally, the Union contends that there is no language in the contract that permits the Authority to hire the “most” qualified candidate for the position.

Both parties refer to Barbers Point Federal Credit Union. The Union points out that at issue in that case were internal candidates who failed to meet the qualifications. The Union asserts the case is “distinguished from this case, in which every management representative who testified acknowledged that Ms. Ritzie was qualified for the promotion.” (U. Br. P. 12).

Barbers Point is also distinguishable in the Union’s view because the language in that agreement “preserved the employer’s discretion as to when to promote from within because mandatory terms such as ‘will’, ‘shall’ or ‘must’ were absent from the provision.” (U Br. P. 13).

The Authority’s argument is that Mauk Gunter was “by far the best candidate” based on her overall score by all of the interviewers. “She had three years of business administration education and three years of private sector property management experience that included managing properties for lease to lower income tenants.” (Er. Br. P. 5). The Authority argues that Ritzie’s experience as a CMS is not similar to the AHM job in that she lacked experience with actually managing a property of any kind. The Authority argues that Ritzie would have required significant training and could not “hit

the ground running”. (Er. Br. P. 8).

The Authority points to Section 4.01 of the collective bargaining agreement quoted above. It is this language, the Authority argues, that allows them to determine exactly who is qualified for vacancies they need to fill. The Authority points out that the arbitrator in Barbers Point “took the position that ‘qualified’ meant qualified at time of the decision as opposed to ‘trainable’. (Er. Br. P. 13). The same situation exists for this grievant. Mauk Gunter had prior experience and could fill the job immediately with little or no training.

***Conclusions***

The controlling contract provision is Article XII, 12.01 (Promotions and Vacancies). Article IV, 4.01 provides that none of the “functions of the Authority [shall] be exercised in a manner inconsistent with the terms of this Agreement.” If the Authority’s decision to hire an outside candidate is inconsistent with Section 12.01, the grievance must be sustained.

Under 12.01, “whenever possible” vacancies “within the bargaining unit shall be filled from within the bargaining unit, if there are qualified employees to fill such positions.” “Whenever possible” indicates that the procedure set forth is the preferred one and should prevail unless it is not possible to fill the vacancy from within the unit. The issue here is whether the internal candidate(s), specifically Ritzie, met the qualifications as listed in the job description.

My review of the position description for the AHM (J7) convinces me that Ritzie meets the basic requirements. Neither Mauk Gunter nor Ritzie has an Associates Degree.

Both have “administrative experience in housing or property management and are proficient in computer use. Mauk Gunter has three years of college courses and Ritzie also has college experience. Both candidates have administrative experience working in housing or property management. Mauk Gunter’s experience before coming to work at the Authority was at a higher level than Ritzie’s, but Ritzie had more overall time working in housing.

The job description for AHM also lists several “preferred requirements”, including, “extensive administrative experience in a public housing setting working in housing management with some supervisory experience.” Ritzie has that experience as reflected in her application and rating sheets as well as in the position description for her current job.

I conclude that it was “possible” to fill the AHM position from within the bargaining unit because Cynthia Ritzie was “a qualified employee.” The “relative ability” clause does not apply in this case because that speaks to the relative ability of “two or more employees.” Mauk Gunter was not an employee at the time the decision was made in this case.

It is worth noting that in assessing the outside candidate’s relative ability as compared with Ms. Ritzie’s, Ms. Clark, who would supervise the successful candidate, is said to have recommended Ritzie for the job.

As the Union points out, the contract language is clear and unambiguous in dictating that vacancies such as the one at issue **shall** be filled from within the bargaining unit as long as there is a qualified internal candidate and it is otherwise “possible.” It is

undisputed that Ms. Ritzie was qualified when she applied. In fact, she was rated the second best qualified by two evaluators. Executive Director Purnell made his decision by selecting the candidate he viewed as best qualified but that is not consistent with the collective bargaining agreement.

The Employer claims that Ms. Ritzie would have “required significant training” but there is no testimony in the record to that effect. There is also no evidence about what training the successful candidate required when she started the job.

The Barbers Point case is distinguishable from the instant matter. In that case, the employer concluded that the internal candidates were not qualified for the vacant position. The decision in the instant case was based on relative qualifications; that is, which candidate was the best qualified. The language in Barbers Point is also couched in different terms.

Based on the record before me, I conclude that the Employer violated the collective bargaining agreement when it failed to award the vacant bargaining unit position to a qualified bargaining unit member.

The Union’s proposed remedy seeks to protect Ms. Mauk Gunter from the adverse effect of granting Ms. Ritzie the Assistant Housing Manager position she should have been awarded on about March 8, 2010. The Employer opposes that remedy and notes that sustaining the grievance will necessarily “cause the current occupant of the position to be removed.” (Employer, Br., p. 14).

In my opinion, the remedy should restore the status quo ante and not reach beyond that point. Therefore, I shall sustain the grievance and direct that Ms. Ritzie be

offered an AHM position within ten business days of the date of this award and shall be compensated for the difference between her salary as a CSM and the salary of the AHM position from March 8, 2010.

#### **AWARD**

The grievance is sustained. Cynthia Ritzie shall be offered an AHM position within ten business days of the date of this award and shall be compensated for the difference between her salary as a CSM and the salary of the AHM position from March 8, 2010. I shall retain jurisdiction over this matter in the event there is a disagreement about the remedy portion of the award.

A handwritten signature in cursive script that reads "Barbara Zausner". The signature is written in black ink on a light-colored, textured background.

By:

Barbara Zausner, Arbitrator