

## **PROMOTIONS - SENIORITY VS. QUALIFICATIONS**

The conflict which arises in promotion cases involves the basic conflict between the union's preference that promotion be awarded based upon seniority considerations and the preference of management that promotions be awarded on the basis of merit or qualifications.

\_\_\_ Three types of "promotion clauses" when two or more employees may be seeking the same promotion or job award are:

Type 1- The award is made to the employee who has the greatest seniority.

Type 2- The award is made to the employee who has the greatest seniority, provided that the senior employee meets the minimum qualifications for the job.

Type 3- The award is made to the employee who has the greatest seniority only when the aspiring employees have relatively equal or substantially equal qualifications, otherwise the award is made to the more qualified employee.

Some agreements may contain "hybrid" clauses made up of the above three types of clauses, such as those where the promotion or award may be given to the "senior most qualified" employee.

\_\_\_ Collective Bargaining Agreements usually contain one of three types of clauses governing promotions. In some agreements one clause may govern promotions for lower labor grades (Type 2), while another clause may govern promotions for higher labor grades (Type 3), while recalls following a lay off may give preference to senior employees. Such arrangements or compromises tend to provide for satisfying the interests of both parties to some degree.

\_\_\_ Regardless of the type of promotion clause utilized, management may insist upon the "common-sense qualifier" and insist upon the following consideration when making promotions or job awards, namely: "An employee must be doing a good job/an acceptable job in the job the employee is currently occupying before being considered eligible for promotion."

\_\_\_ The above statement should be made when conducting job performance counseling sessions or when performing job performance evaluation reviews with employees who have job performance problems. The same statement should be contained in letters of formal corrective action or disciplinary action.

\_\_\_ Management representatives should reaffirm the "common-sense qualifier" when negotiating promotion clauses, when involved in union-management meetings, and when involved in the grievance and arbitration process.

\_\_\_ Whenever an employee is informed that a job performance problem area constitutes a "job promotion consideration factor" under the common-sense qualifier, the employee should be told, "While you may not automatically receive a promotion simply by improving your performance problem, you can be assured that if a promotion or award were available at this time, you would fail to meet this most basic qualifier with your current problem."

\_\_\_ In making job awards, supervisors should be required to summarize the reasons for their selection in writing for top-level management review, and supervisors should be able to clearly and convincingly show that there are differences in qualifications between the employees involved and support the decision with supervisory sensory facts.

\_\_\_ At all times supervisors should enter into employee records comments which identify outstanding performance, as such comments may be utilized to demonstrate the superior qualifications of an employee in future promotion or job-award situations.

## GRIEVANCES ARISING OUT OF PROMOTIONS

\_\_\_ In the traditional case where Employee "B" (lower seniority) is awarded a job in preference to employee "A" (higher seniority) on the basis of "superior qualifications or ability" of Employee "B", the following points should be considered:

- ... The grievance filed by Employee "A" is interesting and politically important to the union. The union usually intends to protect its claim that "seniority should be the governing consideration for a job promotion or job bid award."
- ... By acting on behalf of Employee "A" (to protect Employee "A"s interest AND THE UNION'S interest), a question may arise as to the "rights" of Employee "B" to be represented by the union.
- ... By supporting Employee "A"s grievance and, likewise, pursuing its political goal of seniority, the union is most likely sacrificing the interests of Employee "B", its constituent, in favor of the goal of perpetuation of the union's seniority preference criteria.

\_\_\_ This action may constitute the basis for a "duty to represent" case by Employee "B" against the union, especially if the union's efforts on behalf of Employee "A" result in removal of Employee "B" from the job.

\_\_\_ Historically, companies are named in accompanying suits whenever unions are charged by an employee in a "duty of fair representation" case, and the charge against the company in the separate, parallel case is "violation of the Agreement." The charge against the company is filed in order to illustrate that a condition existed which necessitated representation.

\_\_\_ The Smith vs. Hussman case in the Eighth Circuit Court is an excellent example of the type of conflict unions (and companies) can avoid if qualifications govern over seniority in job bid awards, ESPECIALLY WHEN THE AGREEMENT CLEARLY PROVIDES FOR THE QUALIFICATIONS CONSIDERATION RATHER THAN SENIORITY.

**NOTE:** In writing promotion or layoff Agreement clauses, the negotiators should clearly state whether preference is given to persons with 'greater' or 'lesser' seniority rather than simply using the phrase, for instance, "layoffs will be on the basis of seniority". A preferred writing would be clearer, such as, "layoffs will be on the basis of seniority, with the junior employee being laid off first". A similar preferred writing would be, "Employees will be recalled from layoff in order of seniority, with the employee with the highest seniority being recalled first."

## **CHECKLIST FOR CONSIDERATION IN QUALIFICATIONS VS. SENIORITY GRIEVANCES SURROUNDING PROMOTION OR ADVANCEMENT**

In the grievance process the company can take some steps to reduce the extent of its liability and involvement in the "duty of fair representation" case and in the possible parallel case of "violation of the Agreement" against the company.

- \_\_\_ Make all promotional considerations on the basis of demonstrable performance factors, knowledge, skills, and abilities, and on the results of job performance-related tests or demonstrations. Insofar as possible, base selection and promotion decisions upon "demonstrable" or "hands-on" qualification considerations.
  
- \_\_\_ Inform all unsuccessful bidders promptly as to the reasons they were not selected.
  
- \_\_\_ Do not meet with "interested parties" without union representation in matters relating to the specific grievance, unless the employee formally waives representation.
  
- \_\_\_ Use only bona fide union stewards as witnesses ("Weingarten representatives") in investigatory interviews and disciplinary proceedings even if employees involved are themselves stewards. Provide stewards with officer/steward representatives, also.
  
- \_\_\_ Use only bona fide union stewards to represent other stewards.
  
- \_\_\_ Attempt to schedule grievance meetings to permit the same steward to represent the multiple employees that may be involved, in order that all parties will be privy to the same information.
  
- \_\_\_ Abide by all time limits and only agree to "mutually" extend time limits or waive time limits strictly according to provisions of the Agreement and preferably in writing, and only with the approval of the Labor Relations Department.
  
- \_\_\_ Keep all interested parties abreast of the progress of any grievance arising out of promotions.
  
- \_\_\_ Share results of the grievance investigations (verbally unless otherwise required in the Agreement) with all interested parties.
  
- \_\_\_ Be especially wary of hasty union settlements that sacrifice specific involved-party interests.
  
- \_\_\_ Don't assume a grievance is dropped merely because the union exceeds a time limit and fails to notify the company.
  
- \_\_\_ Involve all successful and unsuccessful bidders as witnesses in job bid award arbitration cases where seniority vs. qualifications is the issue. Give all involved and affected employees the opportunity to be heard. Ask each job bidder, successful and unsuccessful, "Do you have any other relevant information or comment you would like to offer which you feel is significant in this matter?"
  
- \_\_\_ Do not swap and trade such grievances AT ANY STEP! Settle only on the merits of the case.