

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 DODGE COUNTY PROFESSIONAL EMPLOYEES, : Case 136  
 LOCAL 1323-A, AFSCME, AFL-CIO : No. 41884  
 : MA-5492  
 and :  
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 DODGE COUNTY :  
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Appearances:

Mr. James L. Koch, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, N7242 Winnebago Drive, Fond du Lac, Wisconsin, appearing on behalf of the Union.  
Mr. Ralph E. Sharp, Jr., Corporation Counsel, Dodge County Courthouse, Third Floor, 127 East Oak Street, Juneau, Wisconsin, appearing on behalf of the County.

ARBITRATION AWARD

Dodge County Professional Employees, Local 1323-A, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Dodge County, hereinafter referred to as the County, are parties to a collective bargaining agreement, effective January 1, 1987 through December 31, 1988, which provides for the final and binding arbitration of grievances involving the interpretation, application or enforcement of the collective bargaining agreement. Pursuant to a Request for Arbitration the undersigned was appointed by the Wisconsin Employment Relations Commission to arbitrate a dispute over the posting and filing of a Social Worker IV position. Hearing on the matter was held in Juneau, Wisconsin on May 25, 1989. A stenographic transcript of the proceedings was prepared and received by the undersigned on July 3, 1989. Post hearing arguments were received by the undersigned by July 28, 1989. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

ISSUE:

During the course of the hearing the parties agreed to leave framing of the issue to the undersigned. The undersigned frames the issue as follows:

"Did the County violate the collective bargaining agreement when it failed to post and fill a Social Worker IV position? If so, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS:

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ARTICLE III  
MANAGEMENT RIGHTS

Except as hereinafter provided, the Employer shall have the sole and exclusive right to determine the number of Employees to be employed, the duties of each of these Employees, the nature and place of work and all other matters pertaining to the management and operation of the County, including the hiring, promoting, transferring, demoting, suspending or discharging for cause of any Employee. This shall include the right to assign and direct Employees, to schedule work and to pass upon the efficiency and capabilities of the Employees and the Employer may establish and enforce reasonable work rules and regulations. Further to the extent that rights and prerogatives of the Employer are not explicitly granted to the Union or Employees, such rights are retained by the Employer. However, the provisions of this Section shall not be used for the purpose of undermining the Union or discriminating against any of its members. (Emphasis added)

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ARTICLE VII  
PROBATIONARY PERIOD

7.7 There shall be a maximum of six (6) Social Worker III

positions and a maximum of two (2) Social Worker IV positions. (Emphasis added)

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ARTICLE XV  
Seniority Rights

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15.7 Job Posting. Whenever a vacancy occurs or it is known that a new job will be created, the following procedure shall apply:

15.71 The job vacancy shall be posted on all shop bulletin boards for a period of five (5) workdays and Employees may apply for such positions during this period.

15.72 Selection of applicants to fill job vacancies shall be determined by the Employee's skill, ability and seniority. Where all factors are relatively equal, the Employee with the greatest seniority shall be entitled to preference.

15.73 When objections are made by the Employer regarding the qualifications of an Employee to fill a position, such objections shall be presented to the Union Committee for consideration. If there is any difference of opinion regarding the qualifications of an Employee, the Union may take the matter up for adjustment under the grievance procedure contained in Article XVI of this Agreement.

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ARTICLE XVI  
GRIEVANCE PROCEDURE

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16.3 Arbitration. If a satisfactory settlement is not reached as outlined above, the Union, within ten (10) days after the written answer is received or due for the Personnel and Labor Negotiations Committee, may request the Wisconsin Employment Relations Commission to appoint an arbitrator from its staff to hear the grievance, whose decision shall be final and binding on both parties. In rendering his decision, the arbitrator shall neither add to, detract from nor modify any of the provisions of the Agreement. (Emphasis Added)

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BACKGROUND:

The Union and the County have been parties to a series of collective bargaining agreements since at least 1981. In the negotiations which culminated into the 1981 collective bargaining agreement the Union sought specific reclassifications and adjustments for specific individuals it represented. In reaching agreement on the 1981 agreement the County agreed to twenty (20) reclassifications and/or adjustments. In particular, the parties agreed to reclassify Sandra Kaul from a Social Worker III to a Social Worker IV.

Commencing with the 1985-1986 collective bargaining agreement the parties agreed to the following provision:

"There shall be a minimum of six (6) Social Worker III positions and a maximum of two (2) Social Worker IV positions."

The above language has remained unchanged and is included in the current

collective bargaining agreement.

The instant matter arose when, on May 3, 1988 when the State of Wisconsin mandated that counties create a Director of Family Court Counselling Services position. The duties of this position are set forth in Section 767.11(2), Wis. Stats., and are as follows:

- DUTIES. A director of family court counseling services designated under sub. (1) shall administer a family court counseling officer if such an office is established under sub (3) (a) or (b). Regardless of whether such an office is established, the director shall:
- (a) Employ staff to perform mediation and to perform any legal custody and physical placement study services authorized under sub. (14), arrange and monitor staff training, and assign and monitor staff case load.
  - (b) Contract under sub. (3)(c) with a person or public or private entity to perform mediation and to perform any legal custody and physical placement study services authorized under sub. (14).
  - (c) Supervise and perform mediation and any legal custody and physical placement study services authorized under sub. (14), and evaluate the quality of any such mediation or study services.

On August 16, 1988 the County adopted a resolution mandating that the position of Director of Family Court Counselling be created, and, that the position be established no later than January 1, 1989. Thereafter, Sandra Kaul became the Director of Family Court Counselling Services. The position was not included in the bargaining unit represented by the Union. On February 13, 1989 the Union filed the instant grievance alleging that the County's failure to post the Social Worker IV position vacated by Kaul violated the agreement between the parties and, specifically, Article 6.8. The grievance was processed to arbitration in accordance with the parties collective bargaining agreement.

At the hearing in the instant matter the County did not refute the Union's claim that in 1981 when Kaul was reclassified from a Social Worker III to a Social Worker IV, the cost of the reclassification was costed against the collective bargaining agreement's total package costs. The County also did not refute the Union's claim that since the inception of the agreements language concerning a maximum of five (5) Social Worker III's, the County has always employed five (5) Social Worker III's. At the hearing the Union did not refute the County's claim that when Kaul left to become the Director of Family Court Counseling Services, she took ninety (90) percent of her Social Worker IV duties with her.

#### UNION'S POSITION

The Union asserts that the County has violated the current collective bargaining agreement. The Union points out there has been a pay rate and classification for the Social Worker IV position since 1981. The Union argues that no special language was negotiated for Social Worker IV job postings, promotions or other methods of advancement, while there are specific exceptions in the agreement for certain positions.

The Union also argues that the County's claim that Social Worker IV positions can only be filled through negotiations contains no merit. Here, the Union points out, Social Worker III positions have been filled through the posting process. Further, that vacancies have always been filled by the job posting language.

The Union also points out that all negotiated reclassifications and wage adjustments are costed against the total package. The Union argues that the Social Worker classification in itself is a generic classification and that all Social Workers, after a reasonable amount of time perform similar, if not equal, duties and responsibilities. The Union points out that movement from a Social Worker I to a II is automatic, whereas movement from a III to a IV can only be attained through Article 5.7 Job Posting. The Union avers that since the introduction of the negotiated Social Worker IV in 1981 there have always been two employes who have filled these particular positions. That although during subsequent negotiations positions have been filled during the process of negotiations, such a fact in no way negates the County's obligation to follow the agreement's seniority and job posting provisions.

Here, the Union acknowledges, the instant matter is the first time a Social Worker IV position has become vacant. However, the Union points out that Social Worker III positions have become vacant. The Union asserts there is no dispute that Social Worker III positions have always been filled, either

through job postings or negotiations. The Union also points out that the total number of Social Workers has not decreased. The Union contends the County has filled the Social Worker IV vacancy with a lower classified employe. The Union argues the County's actions are an attempt to circumvent the intent and purpose of the collective bargaining agreement by alleviating the costs of a Social Worker IV position despite the fact that costs related thereto were costed against the package. The Union asserts that rather than complexity of work loads, only seniority and/or educational achievement distinguish the higher paid Social Worker classifications.

The Union concludes by pointing out that there is no provision in the collective bargaining agreement which limits the filling of Social Worker IV positions to the negotiations process.

#### COUNTY'S POSITION

The County acknowledges that there is a job classification of Social Worker IV. However, the County asserts there is no evidence that in the past vacated Social Worker IV positions have been posted and filled as professional opportunities for employes from within the bargaining unit. The County argues that the Union has in the past unsuccessfully attempted to negotiate a provision in the collective bargaining that would provide for career progression from Social Worker I through Social Worker IV. The County also argues that the Union has in the past unsuccessfully attempted to negotiate a provision in the collective bargaining agreement which would mandate a specific number of Social Worker III and IV positions. Here the County points out that the Social Worker IV position has always been specific to a certain person and has always

been a negotiated position. The County also points out that there is no evidence that there was any agreement to post or promote to the higher classifications. The County contends the Union is in effect attempting to obtain through grievance arbitration something which it was unable to obtain through negotiations.

The County argues that the undersigned does not have the authority to re-write the collective bargaining agreement. The County asserts the language of Section 7.7 of the agreement is clear, there will be a maximum of two (2) Social Worker IV positions. The County contends there is no provision that requires there be a minimum of two (2) Social Worker IV positions. The County concludes that it therefore exercised its rights under the Management Rights clause of the collective bargaining agreement when the County determined that there no longer existed a need for a Social Worker IV position when the position's incumbent and the duties assigned to her transferred out of the bargaining unit.

#### DISCUSSION

The undersigned finds that the language of Article VII, Section 7.7, is clear and unambiguous. This language mandates that there be a maximum of two (2) Social Worker IV positions. This language does not mean that there will be two (2) Social Worker IV positions, but that the greatest possible number of Social Worker IV positions will be two (2).

The undersigned also finds that the evidence introduced by the Union concerning bargaining history and the Social Worker IV position previously occupied by Sandra Kaul does not lead to a conclusion that the parties mutually agreed there would be two (2) Social Worker IV positions. At most, this evidence demonstrates that the parties agreed that the duties performed by Kaul would be compensated at the Social Worker IV rate of pay. Further, as the County has pointed out, the County has the right under Article III, Management Rights, to determine when a vacancy occurs. The record demonstrates that when Kaul left the bargaining unit to become Director of Family Court Counseling Services she took ninety (90) percent of the duties she performed as a Social Worker IV with her. The Union presented no evidence which would refute the fact that when Kaul transferred she took the majority of her duties with her. Thus the undersigned finds the County's decision that there was no vacancy to fill supported by the record.

Therefore, based upon the above and foregoing, and the evidence, testimony and arguments presented by the parties the undersigned concludes the County did not violate the collective bargaining agreement when it did not post and fill a Social Worker IV position after Sandra Kaul transferred out of the bargaining unit. The grievance is therefore denied.

#### AWARD

The County did not violate the collective bargaining agreement when it failed to post and fill a Social Worker IV position.

Dated at Madison, Wisconsin this 19th day of September, 1989.

By \_\_\_\_\_  
Edmond J. Bielarczyk, Jr., Arbitrator