

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
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 WINNEBAGO COUNTY DEPARTMENT OF : Case 188
 SOCIAL SERVICES EMPLOYEES UNION, : No. 44449
 LOCAL 2228, AFSCME, AFL-CIO : MA-6305
 :
 and :
 :
 WINNEBAGO COUNTY :
 :

Appearances:

Mr. John A. Bodnar, Corporation Counsel, Winnebago County, Winnebago County Courthouse, 415 Jackson Street, P.O. Box 2808, Oshkosh, Wisconsin 54903-2808, appeared on behalf of the Employer.
Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719-1169, appeared on behalf of the Union.

ARBITRATION AWARD

On August 20, 1990, Local 2228, AFSCME, AFL-CIO and Winnebago County filed a joint request with the Wisconsin Employment Relations Commission to provide an arbitrator to hear and issue a final and binding award on a grievance pending between the parties. On September 4, 1990 the Commission appointed William C. Houlihan, a member of its staff, as arbitrator. A hearing was conducted on March 11, 1991 in the Winnebago County Courthouse, Oshkosh, Wisconsin. The proceedings were not transcribed. Briefs were filed and exchanged by June 5, 1991.

This grievance involves the right of employe Robin Lucareli to post and bid into a Social Work position.

BACKGROUND AND EVENTS LEADING TO THIS GRIEVANCE

Robin Lucareli, the grievant, has a Bachelor of Arts degree with a major in Sociology and she additionally has a Bachelor of Science degree with a major in Art and a minor in Sociology. Both degrees were received from the University of Wisconsin-Oshkosh. Her work experience is as follows: From October, 1987 to the present time, she is employed as a case manager in the Winnebago County Department of Social Services, in the Nursing Home General Relief program. Her duties include all aspects of case management relating to intake and maintenance of eligibility for medical assistance, food stamps, and Winnebago County general relief program duties, including the verification of income, assets and other specified vital records.

From October of 1982 through October of 1987 Ms. Lucareli was employed in the Income Maintenance unit of the Winnebago County Department of Social Services as an ongoing worker. Her responsibilities included the determination of ongoing eligibility for medical assistance, aid to families with dependent children and food stamps. Prior to that, in 1981-82 she was a teacher's aide for the Cooperative Educational Service Agency #13. A part of her duties with CESA 13 included working with emotionally-disturbed youth. In the summer of 1980 she worked as a social worker in the Omro Care Center where she wrote monthly patient evaluations and psycho-social evaluations and case histories. She participated in patient's monthly staffings and established long and short-term goals for social services on patient plan of care forms. From March 1979 to May of 1979 she worked for the Big Brothers and Big Sisters of the Fox Valley, Inc. Hers was an entry-level administrative position. Ms. Lucareli

has held a variety of other part-time and volunteer positions which I find to be unrelated to the position for which she has applied.

Ms. Lucareli has a number of publications, several of which have been submitted into this record. She has also participated in various research projects and has delivered a series of papers at various professional meetings. She provided a number of references and the recommendations supplied by those references have also been made a part of this record and are generally highly favorable.

In 1983 Ms. Lucareli applied for a Social Worker position in the Social Services Department of Winnebago County. Her application for this position was denied. The denial came in the form of a letter sent to her by Scott Seibert, dated November 8, 1983. The contents of this letter are as follows:

This letter will document our response to your request as to how you can meet the minimum qualifications for the position of Social Worker in the Social Services Department.

After carefully considering your work experience and educational qualifications we have determined that the following courses would minimally qualify you for a Social Worker position. Please note, that we are assuming you will be attending U.W. - Oshkosh, therefore, if you plan to attend another university, we may need to modify the courses required.

1. Complete your B.S. degree with a major in Sociology.
2. 93-400 Social Work Methods I (3 credits).
3. 93-401 Field Instruction I (6 credits).
4. 93-468 Social Welfare Policy (3 credits).

I trust that this documentation satisfies your request and if you have any further questions, please feel free to contact me.

Sincerely,

Scott D. Seibert /s/
Scott D. Seibert

Neither Ms. Lucareli nor the Union grieved the denial of her request to transfer into the Social Worker position.

On May 7, 1990, the County posted a Social Worker for the Children/Family Team - Oshkosh. The job posting specified 13 general qualifications. Those qualifications are:

GENERAL QUALIFICATIONS:

1. B.S./M.S. degree in Human Services field, preferably Social Work, and highly related experience.

2. Thorough knowledge of laws, regulations and practices pertaining to federal and state public social service programs.
3. Ability to gather information, organize facts and clearly present, verbally and in writing, recommendations to the Court.
4. Thorough knowledge of resources and their availability and application to children suffering from abuse or neglect.
5. Thorough knowledge of state children's code relative to mandated duties of protective service staff and specific statutes which define grounds.
6. Good working knowledge and understanding of "systems" approach in working with families.
7. Ability to communicate effectively and professionally both verbally and in writing with fellow employees and with resources in the community.
8. Ability to make social diagnosis and to develop and initiate appropriate social casework treatment.
9. Considerable knowledge of community organization principles and methods.
10. Possess good workload "organization" skills.
11. Ability to work within the agency structure and to accept constructive supervisory and/or consultative help.
12. Ability to establish and maintain effective working relationships with fellow employees, clients, volunteers, and the general public.
13. Possess valid Wisconsin driver's license and have access to an automobile.

Ms. Lucareli applied for the vacant Social Worker position. Mark A. Quam, the Director of the Department of Social Services, responding to her application, indicated that she would not be placed in the Social Worker position, but rather, the County will be looking at "additional" candidates. Quam's letter is dated May 17, 1990. The next day, May 18, 1990, Ms. Lucareli filed a grievance over the denial of her application. In part, her grievance claims the following:

"I was the only applicant for the Social Worker position in the C7S-South Unit, from this department. I have a Sociology Bachelor's degree from UW-O, 1983 along with related work experience."

Quam denied the grievance by letter dated May 22, 1990. The letter indicates:

"You are currently employed as a Case Manager in Financial Assistance, receiving pay and performing duties within that classification range. The position you applied for is in a completely separate classification and pay range, with correspondingly different duties. As such, you have very limited posting rights to this position since you haven't been accepted yet in the classification.

Instead, your situation is that you are in competition with other Social Workers on the market for such positions. At this time, we wish to interview other applicants and search to see what they may bring to this department. You have the right to apply for Social Work vacancies, but this is on an equal basis with persons of similar background from outside the agency."

On May 31, 1990 the grievance was appealed to step 3. That step involves the Director of Personnel, William J. Wagner. Mr. Wagner's response to the grievance included the following:

"After reviewing the response of the Director of Social Services at step 2, I have referred the grievance back to him with a request that the Department review Ms. Lucareli's qualifications relative to the requirements of the job. Once this review is completed, I have asked that a follow-up letter at step 2 be prepared and presented to Ms. Lucareli and the Union. I expect that such a review and response can be completed within two weeks."

The matter was sent back to Mr. Quam for his further review.

By letter dated June 11, 1990, Quam responded to Wagner. His response is set forth in its entirety:

June 11, 1990

Bill Wagner, Personnel Director

Dear Mr. Wagner:

This is in response to your letter of 6/8/90 asking for more information regarding Robin Lucareli's posting to a social work position. You asked for a review of her qualifications: Robin Lucareli is currently employed as a para-professional in the Financial Assistance Unit and has never entered the social worker employment classification here. Based on review of her resume, personnel file and oral interview she does not appear to be qualified to assume a professional position as a social worker today. Were she to prepare herself a bit more professionally her future consideration would of course be possible, however. The weaknesses in her qualifications as they

pertain to the position she posted for are as follows:

1) She possesses no particular training or experience in Wisconsin's Children's Code and its application.

2) She possesses no particular training or experience in working with child abuse; neglect victims; or sexual abuse.

3) She possesses sociology education in family therapy but has no training or experience in its application.

4) She possesses no formal training in individual couple, family, or group counseling.

5) She possesses no training or experience in working with juvenile delinquents.

6) In a similar vein, she has no college level training as a social worker, especially working with children and families. Her sociology degree is acceptable for consideration as a minimal college degree; however she must demonstrate that either by training or personal experience she has prepared herself for practical application of her college degree in a professional capacity with children.

In 1983 Ms. Lucareli raised a similar question regarding her posting rights to a social work position.

At that time the Personnel Department provided written guidance to her regarding the preparation she needed to do to be considered for a social work opening. Since that time she completed her sociology degree per the Personnel Department's suggestion. She did not begin the suggested training for preparation as a social worker and has no intentions to do so, from our understanding.

Entry into a professional position entails obligations to minimally meet the standards of that profession. Applicants from outside the bargaining unit abound who have applied themselves to meeting normal professional admission requirements to the profession of social work. Persons already employed within this bargaining unit shouldn't be excused from meeting customary standards of the profession; rather the employer should carefully guard that persons admitted are of the expected professional qualifications.

Enclosed for your review are her resume; the job posting qualifications, and your Department's earlier correspondence on this matter.

Sincerely,

Mark A. Quam /s/
Mark A. Quam
Director

Ms. Lucareli, responding to Mr. Quam's letter, replied by letter dated June 15, 1990. That letter goes to great pains, in an item-by-item fashion, to take issue with and/or refute the claims made by Mr. Quam as to Ms. Lucareli's deficiencies. Additionally, Ms. Lucareli's letter claims that a number of people - approximately 7 - lack the qualifications laid out in Mr. Quam's letter. Ms. Lucareli contends that based upon the prior hiring of those individuals, she is being "held to a standard of qualifications and experience that have not been applied to other individuals hired for comparable social work positions in the past".

In response to a request by Wagner, Quam supplied yet further documentation in support of his decision. By letter dated June 22, 1990, Quam indicated that the Winnebago County Department of Social Services had altered its minimum qualifications policy as of November 16, 1983. The criteria adopted in 1983 were maintained and were the same criteria applied to Ms. Lucareli in 1990. Quam's letter points out that a number of the individuals alleged to have been hired under a lower standard were hired prior to 1983. The balance of the individuals addressed by Ms. Lucareli's letter are alleged to have the qualifications, training and experience required by the department.

Following receipt of all of this information, Wagner, by letter dated July 11, 1990 and sent to Mr. Gregory N. Spring, Staff Representative, indicated that it was his opinion that Mr. Quam was "correct in his determination that Ms. Lucareli has not yet met all of the training/education requirements for placement into the position of Social Worker, for which she has applied". Wagner thereafter denied the grievance.

At the hearing, Mark Quam testified that in his view, if an individual did not possess a degree in social work they needed either 1) highly relevant experience or 2) field instruction. According to Quam, those individuals possessing a social work degree have already been put through a supervised field instruction experience as a part of securing their degree. That instruction consists of 192 hours of actual supervision. According to Quam, 384 hours is more typical of the amount of field work done by a Social Work degree candidate. It was Mr. Quam's view that highly-related experience, as a substitute for the social work degree, should relate to the position a person is applying for. Mr. Quam indicates that he followed the criteria in the 1983 County memo in evaluating Ms. Lucareli's background. Under adverse exam, Mr. Quam indicated that the only relevant experience he believed Lucareli to possess was the time period she worked as a Social Worker in a nursing home. She performed geriatric service there for a period of one summer, and Quam indicated that he would consider that three months highly-related experience. His conclusion with respect to that left her 9 months short of the one-year standard previously set by the County. Quam testified that after the County took over delegation of the filling of its position, no non-professional employees have posted into professional positions. According to Quam, most of the people pointed out in Ms. Lucareli's letter had been hired prior to 1983. The balance had either a degree in social work or had very relevant work experience and a degree in sociology.

The County called two witnesses, both of whom it qualified as experts in the area of social work. The first, Betty Baer, is the director of the social work program at the University of Wisconsin-Green Bay. Ms. Baer testified as to the superiority of a social work degree as measured against a sociology degree. According to Ms. Baer, sociology is a liberal arts degree whereas

social work is an applied professional discipline. Among other things, Ms. Baer indicated that a social work graduate would need to complete at least 400 hours of practicum, i.e., field placement within an agency. Ms. Baer reviewed the position in question and the resume and supporting credentials of Ms. Lucareli and following that review, indicated that in her opinion, Ms. Lucareli was not minimally qualified to fill that position. It was Ms. Baer's view, expressed on cross-examination, that the departmental decision to permit a person with a sociology degree to perform as a social worker was "a mistake".

Ms. Baer indicated that Ms. Lucareli has no relevant experience as measured against the job for which she has applied.

The second expert called was Jane Ward. Ms. Ward is an assistant professor of social work at the University of Wisconsin-Oshkosh. She testified that sociology is a research-oriented program. In contrast, social work is an applied discipline. It requires 30 hours of skills counseling and 420 hours of field experience. The field experience required by a social work degree requires the student to turn theory into practice. There are students who are incapable of so doing. It was Ms. Ward's conclusion that based upon her paper credentials, Ms. Lucareli was not qualified to perform a job in social work. It was Ms. Ward's conclusion that Ms. Lucareli has no highly-related experience as measured against the job for which she had applied.

ISSUE

The parties stipulated to the following issue:

Did the County violate the collective bargaining agreement by failing to consider the grievant for the Social Worker I (General - Children/Family) position?

If so, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 1

MANAGEMENT RIGHTS

Through its management, the Employer retains the sole and exclusive right to manage its business, including but not limited to the right to direct its work force, to hire, assign, suspend, transfer, promote, discharge or discipline for just cause, to maintain discipline and efficiency of its employees, to determine the extent to which the Employer's operations shall be conducted, the size and composition of the work force, the number of offices and locations of such offices, equipment requirements and location of such equipment and the right to change methods, equipment, systems or processes, or to use new equipment, products, methods or facilities and to reduce the work force if, in the Employer's sole judgment, the new equipment, methods, systems or facilities require fewer personnel. In no event shall the exercise of the above rights and responsibilities of the Employer violate the terms and conditions of this Agreement.

. . .

ARTICLE 11

JOB POSTING

A job vacancy shall be defined as a position not previously existing in the job classification plan attached to and made a part of this Agreement or a vacancy in a position in the said job classification plan due to termination of employment, promotion or transfer, death or disability of existing personnel, and, in the judgment of the Employer, the need to fill such job vacancy continues to exist. In the event the Employer determines not to fill any job vacancy in the job classification plan, the Employer agrees to post a notice of job discontinuance for a period of five (5) working days.

The job requirements, qualifications and salary range shall be a part of the posting. Regular employees who have passed their probationary period and who desire to apply for such vacant position are to make application in writing through the Department.

The Employer shall determine the qualifications of the applicants. If, in the opinion of the Employer, two (2) or more applicants for a single vacancy are in all respects equally qualified to fill such vacancy, it shall be filled by the employee among such equally qualified applicants having the longest continuous service within the Social Services Department. If, in the opinion of the Employer, one (1) of such applicants is better qualified to fill such vacancy than any other applicant, it may be filled by such better qualified applicant. The Employer agrees that if a selection is to be made from such posting that it will be made within thirty (30) working days after the close of the aforementioned posting. The period of time may be extended by mutual agreement of the parties. Should such employee not qualify within a sixty (60) day period or should the employee desire to return to the former position at any time within the said sixty (60) day period, the employee shall be reassigned to the former position without loss of seniority. This sixty (60) day job trial period may be extended on a case by case basis by mutual agreement of the parties.

Temporary vacancies or work assignments of thirty (30) calendar days or longer, if filled from within the bargaining unit, will be assigned to the most senior qualified volunteer from a unit(s) designated by the County. In the event no employee volunteers for such assignment, the County shall assign the least senior qualified employee in the designated unit(s) to the position.

QUALIFICATIONS DISPUTES. If there is any difference of opinion as to the qualifications of an employee, the Employer or the Union may take the matter up for adjustment through the grievance procedure.

The Employer reserves the right to make

immediate temporary assignments to fill any vacancy in the job classification plan, attached hereto and made a part hereof, until such time as said vacancy is filled pursuant to the procedures outlined herein.

POSITIONS OF THE PARTIES

Union

Initially, Lucareli was not advised that she was not qualified for the position. Quam's May 22 letter advised the Grievant that she was in competition with other Social Workers. The Union views this as an acknowledgement of her qualifications and that as an inside applicant she was entitled to the position, regardless of the quality of outside competition.

The Union believes Wagner acknowledges this by referring the grievance back to Quam to secure a review of Lucareli's qualifications. In the view of the Union, Quam conceded that Lucareli was qualified but for one year of "highly-related experience." The Union takes issue with the Departmental assessment in this regard, believing Lucareli to have substantial highly-related experience.

The Union believes the Department acted in an arbitrary, capricious and unreasonable manner. There was no initial assessment of Lucareli's qualifications. They were only evaluated when that evaluation was directed by Wagner. Once the Department realized that Lucareli was not in competition with outside applicants, it countered with an ever-changing statement of her shortcomings.

In the view of the Union, there is a concerted effort to disclaim any academic accomplishment. Relevant work experiences at Big Brothers and Big Sisters and as a teacher's aide were undervalued.

The fact that Lucareli previously applied for and was denied a Social Work position should not serve as a bar to her future application for such a position.

In the view of the Union, the expert witnesses called by the County demonstrated a bias against non-social workers. It is not surprising to the Union that two social work professionals would testify to the superiority of social work. In the eyes of the Union, their testimony is irrelevant to the contractual question of whether or not the Grievant was minimally qualified.

The County's desire for a more qualified applicant cannot supercede the Grievant's contractual rights.

County

It is the County's view that Articles 1 and 11 of the Collective Bargaining Agreement clearly preserve the Employer's right to determine qualifications for a position. It is the Union's burden, unsatisfied in this proceeding, to prove arbitrary, discriminatory or bad faith employer conduct.

The job qualifications are long-standing and have been consistently applied. Lucareli had been told seven years earlier that she would need certain Social Work courses to be considered for a Social Work position. She failed to pursue those courses.

Professor Baer testified that the County job qualifications are neither arbitrary nor capricious. Furthermore, according to Baer, only a Social Work

degree would qualify someone to work as a Social Worker. Professor Ward offered corroborative testimony. Both professors noted that Lucareli's work with children was so dated (7-8 years prior to application) and different in kind as to carry little weight. Mark Quam, Director of Social Services, testified that Lucareli was not minimally qualified for lack of highly-relevant experience.

Absent minimum qualifications, the County cites authority for the proposition that it has no obligation to respect seniority by placing an unfit employe into a position. Article 11 is not a minimum qualifications clause. Seniority applies only if applicants possess equal ability.

DISCUSSION

Article 11, which sets out the job posting procedure provides: "The Employer shall determine the qualifications of the applicants." That paragraph, which talks about the selection of applicants for a vacancy goes on in two other places to address the qualifications of applicants. Both make reference to "in the opinion of the Employer" in assessing qualifications criteria of applicants. Clearly, this paragraph vests the Employer with substantial discretion with respect to the determination of qualifications of competing applicants, or any individual applicant. Given the degree of employer discretion, the real question arises, "Has the Employer exercised this discretion in an arbitrary or capricious fashion?" Both briefs argue the application of this standard.

The key issue presented is whether or not general qualification number 1, "B.S./M.S. degree in Human Services field, preferably Social Work, and highly related experience" is satisfied by the grievant. Quam testified that the application of this standard is to require either a degree in Social Work or a Sociology-like degree plus either one year relevant experience or field training. I find nothing inherently arbitrary about the standard. The testimony from Mr. Quam and from the two experts was to the effect that experience and practical application is highly desirable in the social work position. I find that to be an entirely rational view. The real question turns on whether the application of this standard has somehow been offensive as applied to Lucareli. What I find from this record is the consistent application of that standard. Lucareli herself got the same result for the same reason in her application in 1983. At that time the County put her on notice of what it would expect her to accomplish to be a successful applicant for a social work position. She neither satisfied the expectations nor challenged the Employer's construction of its newly-enacted criteria for promotion. Since that time a number of employes have been hired into Social Work positions under that same standard. In the intervening seven years, the Union has not challenged the standard.

Ms. Lucareli has neither a Social Work degree nor field experience. The question as regards her application is whether or not she has one year of relevant experience. In this dispute, the Employer's real position is that non-professional work doesn't count. It takes that same position with respect to academic research/writing. It appears that the Employer has, at least as applied to this case, adopted a standard that experience has to be in a professional position in an area related to the work akin to that the employe seeks to be hired into. I find nothing inherently arbitrary about this standard, either. It is exclusionary. However, it is not arbitrarily or capriciously so. The distinction drawn by the Employer between professional and non-professional work is in the greater degree of accountability, judgment, responsibility for the work product and independence exercised by the professional. The County seeks evidence of these attributes in the experience

standard it has established.

Quam did not initially indicate that Lucareli was unqualified. I do not regard his failure to do so as an admission of her qualification. Neither do I regard Wagner's direction back to Quam as a de facto indication that Lucareli was qualified. I don't know what Mr. Quam's moTive was in not doing so initially. Perhaps it was easier for him to simply ignore the issue for the time being in the hope that it resolved itself at some future point; perhaps not. However, the department had previously found Ms. Lucareli to be unqualified for the same reasons advanced in this proceeding. I think it is unfair to characterize the County's actions in this matter as somehow being inconsistent with respect to Lucareli's qualifications.

The Employer has, as the Union argues, discounted Ms. Lucareli's academic background. However, it does so, it seems to me, for the same reason it discounts her Sociology degree. The Employer demand here is for the applied, and not the academic. For the Employer to take the position that it wants something beyond academic application is entirely internally consistent. I find this demand to be rational.

AWARD

I do not believe that the Employer has acted in an arbitrary, capricious or bad faith manner in finding that Ms. Lucareli is not minimally qualified for a position as a social worker. Therefore, I would deny this grievance.

Dated at Madison, Wisconsin this 13th day of December, 1991.

By William C. Houlihan /s/
William C. Houlihan, Arbitrator