

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration	:	
of a Dispute Between	:	
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PORTAGE COUNTY COURTHOUSE, HEALTH CARE	:	Case 104
CENTER, DEPARTMENT OF COMMUNITY HUMAN	:	No. 48735
SERVICES, AND LIBRARY SYSTEM EMPLOYEES,	:	MA-7693
LOCAL 348, AFSCME, AFL-CIO	:	
	:	
and	:	
	:	
PORTAGE COUNTY	:	
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Appearances:

Mr. Sam Froiland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Local 348, AFSCME, AFL-CIO.

Mr. Gerald E. Lang, Personnel Director, on behalf of Portage County.

ARBITRATION AWARD

Portage County Courthouse, Health Care Center, Department of Community Human Services, and Library System Employees, Local 348, AFSCME, AFL-CIO, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and the County of Portage, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The County subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on May 13, 1993, in Stevens Point, Wisconsin. A stenographic transcript was made of the hearing and the parties submitted post-hearing briefs in the matter by July 9, 1993. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The County has raised the following procedural issue:

Did the Union abide by the labor agreement when it notified Portage County on February 8, 1993 that it was processing the grievance to arbitration?

The parties stipulated to the following statement of the substantive issue:

Did the County violate the Collective Bargaining Agreement by refusing to allow Jan Musch to bump into the position of General Assistance Case Manager?

If so, what is the remedy?

CONTRACT PROVISIONS

The following provisions of the parties' 1992-1993 Agreement are cited:

ARTICLE 3 - MANAGEMENT RIGHTS

A) The County possesses the sole right to operate County government and all management rights repose in it, subject only to the provisions of this Agreement and applicable law. These rights include, but are not limited to the following:

. . .

3. To hire, promote, transfer, schedule and assign employes;

. . .

12. To determine the methods, means and personnel by which County operations are to be conducted;

. . .

ARTICLE 6 - SENIORITY RIGHTS AND LAYOFFS

. . .

C) Seniority Lists: There shall be four (4) separate seniority lists of the employees of the Courthouse, Health Care Center, Library, and "Community Human Services, Department on Aging, and Portage House."

D) Layoffs: The County shall first determine the department(s) and classification(s) where the reduction(s) will take place. Employees affected by the layoff will be given at least two (2) weeks' notice in writing (may be less if two weeks' notice is not possible) of the

anticipated beginning and ending dates of the layoff, and the impact, if any, on their fringe benefits. The oldest in point of bargaining unit seniority within the affected department(s) and classification(s) shall be retained if capable and qualified to perform the available work. Employees affected by a layoff of thirty (30) working days or less shall only be allowed to bump the least senior employee within their department, providing the employee is capable and qualified to perform the duties of the position. Employees whose layoff extends beyond the thirty (30) working days outlined above, and employees whose position is eliminated from the table of organization shall be allowed to bump the least senior employee in the same or lower classification within their department, provided the employee is capable and qualified to perform the duties of the position. The bumping process shall continue for each affected employee(s) until the allotted number of employees are laid off within the department affected by the layoff. Employees shall not be allowed to bump employees from other departments.

Rehiring of employees that have been laid off shall be in reverse order of laying off, providing the recalled employees are capable and qualified to perform the available work. Recalled employees shall return to their previous, or equivalent, positions, and a reverse bumping process shall take place. The recall period shall expire one (1) year after the layoff.

"Classifications" as used herein means those classifications (job titles) listed in Appendix A. "Departments" for purposes of this article shall be as follows: Health Care Center, Library, Courthouse, and "Community Human Services, Department on Aging, and Portage House".

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ARTICLE 7 - JOB POSTING

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B) Trial Period:

. . .

It is understood that the Employer has the right to set reasonable qualifications and post same. . .

. . .

ARTICLE 8 - GRIEVANCE PROCEDURE

. . .

D) Time Limitations: The time limitations specified in this procedure may be extended by mutual consent of the parties. Saturdays, Sundays and holidays shall be excluded in computing time limits.

E) Settlement of Grievance: Any grievance shall be considered settled at the completion of any step in the procedure if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next.

F) Steps in Procedure

Step 1: The grievance shall be presented in writing by the employee and/or their representative to the immediate supervisor no later than ten (10) days after the grievant knew or should have known of the facts upon which the grievance is based. In the event of a grievance, the employee shall perform their assigned work task and grieve the complaint later, except in cases affecting the employee's health or safety. The immediate supervisor shall within ten (10) working days orally inform the employee and the steward, member of the grievance committee or Union representative, where applicable, of his/her decision.

Step 2: If the grievance is not settled at the first step, the employee and/or representative may appeal the written grievance to the department head no later than five (5) days after receipt of the immediate supervisor's answer. The department head shall meet with the grievant and/or the representative at a mutually agreeable time within five (5) days and shall render a decision in writing, within five (5) days after said meeting.

Step 3: If the grievance is not settled at the second step, the employee and/or his/her representative may appeal the written grievance to the personnel committee within ten (10) days after receipt of the written decision of the department head. The personnel committee shall meet with the grievant and Union representatives at a mutually agreeable time. Following this meeting, the personnel committee shall respond within ten (10) days in writing.

G) Arbitration

1. Time Limit: If a satisfactory settlement is not reached in Step 3, the Union must notify the personnel committee in writing within ten (10) days that they intend to process the grievance to arbitration.

. . .

4. Decision of the Arbitrator: The decision of the arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to the interpretation of the contract. The arbitrator shall not modify, add to, or delete from the express terms of the Agreement.

. . .

BACKGROUND

The County maintains and operates the Portage County Courthouse, the Health Care Center, the County's Department of Community Human Services (CHSD) and the Library System. The Union is the exclusive collective bargaining representative of employes in a bargaining unit consisting of all of the County's non-professional employes in those facilities and departments.

In the beginning of 1990, the Financial Services Division of the CHSD was reorganized. There had been two separate sections, one performing only employment and training functions and one performing only income maintenance functions. The two sections were merged and the employes were cross-trained in the different functions. The employment and training staff were being paid at a higher rate than the income maintenance staff at the time. The parties were in the midst of negotiating a successor agreement and when the sections were merged the parties agreed to bring the income maintenance staff up to the higher rates.

Also at the time of the merger of these two sections, the duties of the general assistance staff in the Division also underwent a change. Due to those changes, the following was the position description for the General Assistance Case Manager (GACM) position in May of 1990:

PORTAGE COUNTY POSITION DESCRIPTION

- (1) Employee Name: Lori Gawlik (2) Position No.: HS-31907-A2
- (3) Classification: Fin Serv Spec 1 (4) Working Title: General Assistance Case Manager
- (5) Regular Hours or Shift: 40 Hours (6) Department: Community Human Services
- (7) Supervisor's Name: Jim Riggerbach (8) Bargaining Unit: AFSCME  
Title: Program Manager
- (9) Approx. Date Duties Began:  
1-1-90

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Supervision Exercised Over this Position Is: Does this position supervise permanent positions?

( ) Close ( ) Limited ( x ) General ( ) Yes ( ) No

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Position Summary (Describe the major responsibilities of this position)

This position is responsible for case management duties for the General Assistance and Food Stamp Employment and Training Program. Employee responds to client needs by assessing those needs and providing financial resources. The employee develops case plans to assist client in returning to/achieving self-sufficiency; implements and monitors the Job Search Program; makes appropriate

referrals; and provides client support and advocacy. Knowledge of state laws and codes and State Division of Economic Support policies and practices is essential. Experience in identifying barriers to employment and self-sufficiency and case management skills are necessary.

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DESCRIPTION OF DUTIES

Entry Level	Full Perf.	% of Time	Objectives and Tasks/Knowledge, Skills and Abilities
		50%	<p>A. Determination of initial and continued eligibility for the General Assistance Program.</p> <p>A1. Interviews clients and explains program features and requirements of eligibility.</p> <p>A2. Verifies and documents age, identity, citizenship, income, expenses, and resources according to state guidelines.</p> <p>A3. Decides need for emergency benefits.</p> <p>A4. Decides non-financial eligibility.</p> <p style="text-align: center;">. . .</p> <p>A16. Assists in computer assessment and develops changes for referral to programmer.</p>
	40%		<p>B. Case Management and Assessment.</p> <p>B1. Interviews clients to assess general functioning and skill levels.</p> <p>B2. Implements and monitors active Job Search program.</p> <p>B3. Assesses client needs.</p> <p>B4. Identifies barriers to self-sufficiency.</p> <p>B5. Develops individualized case plans to achieve client employment and related goals.</p> <p>B6. Arranges support services and counseling as appropriate for participants.</p> <p>B7. Coordinates needs with community resources.</p> <p>B8. Monitors client participation and makes adjustments as necessary.</p> <p>B9. Maintains communication with job site supervisors.</p> <p>B10. Initiates vouchers for various support services as needed.</p> <p>B11. Maintains case record information through written and data entry processes.</p>

- 5% C. Pursues and Updates Working Knowledge
  - C1. Studies state regulations on an on-going basis to maintain proficiency.

. . .

- 5% D. General Duties
  - D1. Represents agency in legal proceedings and gives necessary testimony.

. . .

Knowledge, Skills and Abilities

Knowledge of eligibility criteria for the General Assistance program. A1-14, B1-3, C1-4, D1-4.

Knowledge of other programs and services provided by other private, local, county, state, and federal agencies. A1, A3, B1-9, C1-4, D3-4.

Knowledge of guidelines for ethics and professional conduct. A1, A8, A10, B1-11, C1, C3-4, D1-4.

Ability to keep accurate and organized records. A2, A13, B1, D1, E2.

Ability to communicate with angry, difficult or emotionally distressed clients. A1, A3, B1-11, C1-4, D2.

Ability to use handbook, manuals, and other reference materials effectively. A1-14, B1-11, C1-4, D1-4.

Ability to accurately set priorities in dealing with messages and tasks. A1-14, B1-3, C1-4.

Ability to read and apply laws and regulations. A1-14, B1-11, D1-4.

Ability to evaluate and analyze interview information. A1-14, B1-11, C1-4, D1-5.

Ability to represent the agency in a professional capacity in dealing with other community professionals, other agencies, county court system, private organizations, etc. B1-11, C3, D1, D3, D4, D6.

Ability to make crucial decisions independently and to exercise judgment in interpretation of information provided by both clients and state agencies. A3-5, A10-11, B1-11, C2, C4.



Ability to communicate clearly in oral and written form. A1, A8, A10, A13, B1-11, C1-4, D1-4.

Ability to operate computer terminal with few errors. A9-11, A13, B11.

Knowledge of area labor market and job seeking skills. B2.

In April of 1992 the General Assistance Case Worker position 1/ was posted and the posting listed the duties and qualifications for the position. The position description for the GACM had been revised in March of 1992 in that it added the following:

Required:

Two years experience in identifying barriers to employment, self-sufficiency, and case management or two years post-secondary education with emphasis in human services field.

One year experience in recordkeeping documentation, reporting, or bookkeeping.

That change was reflected in the "qualifications" listed on the posting for the position. The successful bidder for the GACM position was Linda Weiler who continued to hold the position at the time of hearing. Weiler has a B.S. in Public Administration and Policy Analysis, with a minor in Psychology meeting the educational alternative to the experience requirement. Prior to posting into the GACM position, Weiler held the positions of Administrative Secretary I and Legal Secretary with the County.

On October 29, 1992, the Director of the CHSD, Judy Bablitch, notified Pam Helgamo, a member of the bargaining unit employed in the CHSD, that her position was being eliminated for budgetary reasons and she was being laid off effective the end of the work day on December 31, 1992. Helgamo first attempted to exercise her seniority and bump into the GACM position, but after applying and interviewing for the position, she was advised by Bablitch on December 21, 1992 that she did not meet the job qualifications as relates to "two years experience in identifying barriers to employment, self-sufficiency, and case management or two years post-secondary education with emphasis in the human services field." At the same time, Bablitch indicated a number of positions for which Helgamo did appear to be qualified. On December 23, 1992, Helgamo exercised her seniority and bumped into

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1/ The parties stipulated that the General Assistance Case Worker and the General Assistance Case Manager (GACM) is the same position.

the position of Elderly Services Case Manager in the Financial Services Division held by the Grievant, Jan Musch. Musch was advised that same day that Helgamo was bumping into Musch's position effective January 1, 1993.

On January 7, 1993, Musch advised Bablitch that she would be bumping into the GACM position. Musch was interviewed for that position by the Financial Services Supervisor, Lauri Rockman, and the General Assistance Program Manager, James Riegenbach. In addition to the interview, Musch submitted a resume of her employment history which included approximately two years in the Elderly Services Case Manager position, approximately one and a half years as a Clerk Typist II at the CHSD's Gilfrey Human Resources Center and approximately one year as a Bookkeeper II at the Portage County Health Care Center. Prior to her County employment, Musch had worked approximately twelve years in the private sector performing clerical and bookkeeping functions. Bablitch advised Musch by letter of January 18, 1993, that she did not have the required qualifications for the General Assistance Case Manager (GACM) position in that she did not have two years of post-secondary education with an emphasis in the human services field and her experience as an Elderly Services Case Manager (ESCM) did not qualify her since it did not involve "identifying barriers to employment or self-sufficiency."

Musch grieved the County's refusal to permit her to bump into the GACM position on January 18, 1993, and bumped into a Bookkeeper I position 2/ on February 3, 1993, but maintained her grievance. Bablitch denied the grievance on January 18, 1993. The County's Personnel Committee denied the grievance and the County's Personnel Director, Gerald Lang, by memorandum dated January 26, 1993, notified Musch and the Union's business representative, Sam Froiland, of the denial. Lang's memorandum was received on January 27, 1993, a Wednesday. The Union subsequently filed a "Request to Initiate Grievance Arbitration" with the Commission. Lang received a copy of the request on February 9, 1993. By letter of February 10, 1993, Lang advised Froiland that it was the County's position that the request was not timely, as the parties' Agreement requires the Union to notify the County within ten days that they intend to process the grievance to arbitration and the County concluded that was not done in this case.

The parties were unable to resolve their dispute, and proceeded to arbitration before the undersigned.

#### POSITIONS OF THE PARTIES

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2/ The Grievant took a reduction in pay from \$10.47/hour to \$9.09/hour. The GACM and ESCM positions have the same rate of pay.

## Union

With regard to the issue of procedural arbitrability, the Union asserts that it timely notified the County of its intent to arbitrate this grievance. The Union received the County's third step response to the grievance on January 27, 1993, and the County received notice of the Union's intent to arbitrate the matter on February 9, 1993. Article 8, Grievance Procedure, Section G, of the Agreement, requires that the Union notify the County in writing "within ten (10) days" that it intends to arbitrate. Section D of Article 8 provides that "Saturdays, Sundays and holidays shall be excluded in computing time limits." Since the Union received the County's third step response on January 27th, January 28th constituted the first day, January 30 and 31 and February 6 and 7 are excluded as they were Saturdays and Sundays, and February 9th, when the County received the Union's notice, was only the ninth day. Therefore, the Union met the time limit and the grievance is arbitrable.

As to the merits of the grievance, the Union takes the position that the Grievant is qualified for the position of General Assistance Case Manager (GACM) and that the County unilaterally changed the qualifications for the position without bargaining the impact of that change with the Union.

The Financial Services Division of the CHSD was reorganized in 1990 and changes in the GACM position were affected in January of that year, and changes in the position's job description bargained by the County were up to date in May of 1990 when the incumbent in the position Lori Gawlik (Yenter) and her supervisor signed it as being accurate. Although that job description indicated that experience in identifying barriers to employment and self-sufficiency and case management skills are necessary in the position, it did not include a requirement of two years' experience. The subsequent job description for the position, which contains the requirement of two years of experience in that area or two years of post-secondary education with an emphasis in human services, appears to have been drafted in March of 1992. The testimony of Yenter was that she did not do actual assessment forms and identify the barriers and set up employability plans. The present incumbent in the position, Linda Weiler, testified that her duties changed after she was hired into the position in 1992. The evidence establishes that the County never bargained, or asked to bargain, with the Union over those changes in the job description and the duties of the GACM position. While the County has the right under Article 3 of the Agreement to set reasonable qualifications, that provision also limits the use of that right so that it cannot be used "to interfere with the employees' rights established under this Agreement." Here, the County interfered with the Grievant's seniority and layoff rights.

The Union also contends that although the County seeks to

create the requirement for the GACM position of identifying barriers to employment and self-sufficiency in this case, it previously denied the existence of employment and training duties in the position during the parties' handling of the reclassification grievance. In the correspondence from Financial Services Director, Lauri Rockman, and the Personnel Director, Gerald Lang, containing their respective recommendations concerning the reclassification request, both distinguished between those positions with employment and training duties and the Elderly Services Case Manager and the GACM positions. Throughout the processing of the reclassification grievance the County asserted that those two positions did not have employment and training duties, and the Union relied in good faith on the County's assertion in settling that grievance. That settlement was reached February 10, 1993 and the Union would never have agreed to a lesser wage increase for the two positions if the County had claimed the positions had employment and training responsibilities. The County either acted in bad faith in the negotiations of the grievance settlement or is now attempting to "cover its tracks" in this case. Either way, the County's "sidestepping" on the issue calls into question the credibility of its witnesses.

The Union next cites the testimony of Bablitch that the prior arbitration involving Musch weighed in her making a decision in this case, and asserts that could be interpreted as bias against the Grievant based upon her past union activity and is at least evidence of arbitrary decision-making on the part of the County.

Lastly, the Union cites the testimony of the General Assistance Program Manager, James Riggenbach, regarding the qualifications and duties of the position as demonstrating his intent in making these positions professional. The Union notes the GACM position is included in this unit of non-professional employes and asserts that Riggenbach's personal interests should not go so far as to keep qualified employes from exercising their seniority rights in the layoff/bumping procedure.

#### County

With regard to arbitrability, the County takes the position that the Union did not notify the County of its intent to arbitrate this grievance within the ten calendar day time limit set forth in Step 4 of Article 8, Grievance Procedure. The Union was notified of the County's denial of the grievance at Step 3 on January 27th and the County did not receive notice of the Union's intent to arbitrate the grievance until February 9th, i.e., fourteen days after the Union was notified. In support of its contention that "ten (10) days" time limit are calendar days, as opposed to work days, the County notes that Step 1 of the grievance procedure specifies "ten (10) working days" and that, thereafter, the other time limits in the procedure are only five

or ten "days". The County then cites Elkouri and Elkouri, How Arbitration Works, 4th Ed., for the principle that when a contract contains clear time limits for filing and prosecuting grievances, failure to meet those time limits will generally result in dismissal of the grievance, and that unless the agreement refers to "working days" the normal construction of the term "days" is calendar days. 3/ Since the Union failed to satisfy the time limit at Step 4 of the grievance procedure, the grievance should be dismissed.

As to the merits of the grievance, the County takes the position that the Grievant was not qualified for the GACM position and therefore, could not bump the less senior employe that holds that position.

The County first asserts that Article 3, Management Rights, of the Agreement, expressly gives the County the right to determine the kinds and amounts of services to be performed and the number and kinds of classifications to perform the services. It would be a violation of those management rights to require the County to negotiate the duties to be assigned each position and the qualifications needed to perform those duties. Article 7, Job Posting, Section B, of the Agreement reinforces management's rights in this regard by stating, "It is understood that the Employer has the right to set reasonable qualifications and post same."

In this case the County set reasonable qualifications as shown by the testimony of the employe in the GACM position, Weiler, as to her responsibilities and as to her education that gave her the necessary knowledge, skills and ability to perform her duties. The present duties and qualifications of GACM position became effective in January of 1990, when the Financial Services Division was reorganized. The employe in the GACM position at the time, Lori (Gawlik) Yenter, was not initially qualified, but along with employes in the Financial Services Case Manager positions, was "grandfathered" and trained to perform the new duties. Those duties, and the qualifications needed to perform them, were posted in April of 1992 when Yenter became a Financial Services Case Manager and left the GACM position. The position was filled by Weiler, who possessed the qualifications on the posting. The Union did not grieve the qualifications on the GACM posting in April of 1992 and no issue was raised in that regard until the Grievant attempted to bump into the position in January of 1993. The Union's not grieving the qualifications listed in the April, 1992 posting supports a finding that the qualifications were reasonable. Further, the Grievant testified that the County and Union had never negotiated changes in position descriptions while she was Union president and she conceded that

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3/ At pages 193-195.

management has the right to set qualifications.

The County notes the requirements in the present GACM job description and contends that a review of the Grievant's resume, experience and the job description for the Elderly Services Case Manager position shows that she does not meet those requirements.

The Grievant does not have two years of post-secondary education with an emphasis in the human services field, nor does she have experience in helping people get back in the workforce, overcoming barriers to self-sufficiency or employment and training assessment. When the Grievant posted for a job similar to the GACM in Financial Services, she was denied the job for the same reasons and an arbitrator ultimately found that she did not have the necessary qualifications.

With regard to Lang's recommendation that the Elderly Services Case Manager position and the GACM positions be grouped together for the reclassification grievance settlement, the County cites his testimony that his recommendation was based on their worth and not on their duties being identical, and that the rationale he gave in his memorandum was an error. Weiler's testimony demonstrated the significance of the employment and training duties, establishing that she does more in those areas than do the Financial Services Case Managers. A comparison of the job descriptions for the two positions also supports that conclusion.

Lastly, the County denies the Grievant was denied the GACM position because of her union activities. The new qualifications were developed in 1990 and posted in April of 1992, and did not become an issue until the Grievant attempted to bump into the GACM position in January of 1993.

## DISCUSSION

### Procedural Arbitrability

Article 8, Grievance Procedure, of the Agreement specifies in Section G that the Union must notify the County's personnel committee in writing within ten days of its intent to arbitrate. In the absence of Section D, Time Limitations, in Article 8, the County's argument that "ten (10) days" in Section G means ten "calendar days" might be persuasive, however, Section D expressly states that "Saturdays, Sundays and holidays shall be excluded in computing time limits." There is no limitation on the application of that provision to the steps in the grievance procedure. While giving effect to Section D would make the reference in Step 1 to "working days" superfluous in many instances, to conclude that the reference to "days" in the other steps means "calendar" days would be to give no effect whatsoever to Section D. It is a principle of contract construction that a provision should be given meaning and effect if reasonably possible, and an interpretation that

would give a clause meaning is favored over one that would render it mere surplusage. Therefore, it is concluded that Section D applies in computing the ten days in Section G. Applying Section D to the days that elapsed from January 27th (when the Union received the County's Step 3 denial) to February 9th (when the County received the Union's request to arbitrate), the result is the County received written notification of the Union's intent to arbitrate within the ten days. Thus, the grievance is arbitrable.

#### Merits

Having been bumped from her position by Helgamo, the Grievant attempted to exercise her bumping rights under Article 6 - Seniority Rights, and Layoffs, Section D, of the Agreement by bumping into the GACM position held by Weiler. Article 6, Section D, provides, in relevant part, that an employee in this situation "shall be allowed to bump the least senior employee in the same or lower classification within their department, provided the employee is capable and qualified to perform the duties of the position." The Grievant was not permitted to bump into the position on the basis that she did not meet the qualifications for the GACM position in that she did not have "two years experience in identifying barriers to employment and self-sufficiency and case management or two years post-secondary education with an emphasis in the human services field."

In deciding whether the County violated the parties' Agreement by not permitting the Grievant to bump into the GACM position, it is necessary to determine whether the County had the contractual right to establish those requirements for the position. The Union first contends the County improperly imposed the requirement because it did not bargain the impact of the change in required qualifications with the Union and because the County's right to set reasonable qualifications is limited by the wording in Article 3 that provides that management rights may not be exercised so as "to interfere with the employees' rights established under this Agreement..."

With regard to the need to first bargain the impact of the change in qualifications required for the GACM position, Article 7 - Job Posting, Section B, of the Agreement expressly states in paragraph two that "It is understood that the Employer has the right to set reasonable qualifications and post same." That wording is clear that the parties recognized that the County was retaining the right to set "reasonable qualifications" without first bargaining with the Union. While it made good sense for the parties to discuss the changes in the duties of positions due to the reorganization of the Financial Services Division during negotiations, it appears that those discussions had more to do with the appropriate wage rates for the positions than with negotiating over the duties or qualifications for the positions. It is concluded that the County was not obligated to first bargain

with the Union regarding the change in the qualifications for the GACM position or its impact.

While the Union correctly notes that Article 3 - Management Rights, in the Agreement, provides that the County has agreed "it will not use these management rights to interfere with the employees' rights established under this Agreement...", that does not necessarily mean that a right expressly reserved to management and exercised by it may be subsequently found to violate that provision simply because it had an adverse impact on an employee. More to the point, the Grievant did not have an unlimited right to bump, rather, she had the contractual right under Article 6, Section D, to bump into a position provided she was capable and qualified to perform the duties of the position. The County has the express right under Article 7 - Job Posting, Section B, of the Agreement, to set "reasonable qualifications" for a position. The qualifications in question were set by the County at least as early as April of 1992, approximately eight months before the Grievant attempted to bump into the GACM position. Hence, it is concluded that the County did not exercise its right to set reasonable qualifications for the purpose of interfering with the Grievant's rights under Article 6 - Seniority and Layoffs.

The foregoing does not mean that the County's right to set qualifications is unlimited, rather, Article 7, Section B, gives the County the right to set "reasonable qualifications". To determine the reasonableness of the qualifications in this case, it is necessary to determine whether those required qualifications are sufficiently related to those duties and responsibilities of the GACM position. The Union contends that the County, contrary to the position it took in the discussions on the reclassification grievance, is now attempting to ascribe employment and training duties to the GACM position. The Union essentially relies on Yenter's testimony that the employment and training duties of GACM positions were not a significant part of her job for the two years she was in the position and Lang's recommendations in the reclassification grievance that the GACM and Elderly Services Case Manager positions receive less of an increase than the Financial Services Case Managers, etc., because the former do not have employment and training duties. (Jt. Exhibit No. 24). The County, in turn, relies on Lang's testimony that he erred in his rationale for making his recommendation in the reclassification grievance. It also relies on Weiler's testimony as the incumbent in the GACM position and the job descriptions for the GACM position from 1990 and 1992 as establishing the existence of the employment and training duties in the GACM position.

The Union's skepticism as to the County's position is understandable, given Lang's recommendations in the reclassification grievance. 4/ At the least, the County's

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4/ It is noted, however, that the reclassification grievance was



position in the reclassification grievance requires that the requirement for the GACM position of two years of experience in identifying barriers to employment and self-sufficiency and in case management, or two years of post-secondary education with an emphasis in the human services field, be closely scrutinized.

It appears that, regardless of the County's position in the reclassification grievance, the GACM position has included employment and training duties to some degree at least since 1990. Yenter's and Weiler's testimony indicates that the responsibilities related to identifying barriers to employment and self-sufficiency and doing case management have been part of the GACM position in varying degrees at least since early 1990. Yenter downplayed those responsibilities in her testimony, while Weiler testified that they were at present a significant part of her job, and it appears that doing separate assessments apart from the eligibility determination on clients was not done while Yenter was in the position. The job description for the GACM position in both 1990 and 1992 lists those responsibilities under the description of the position's "major responsibilities". Those duties are also listed under part B, Case Management and Assessment, of the job description with the indication that they constitute 40% of the tasks of the GACM position. Both the 1990 and the 1992 job descriptions state in the Position Summary that "Experience in identifying barriers to employment and self-sufficiency and case management skills are necessary." It is also noted that the Financial Services Case Manager (PRIDE Case Manager) position, which the parties agreed in settling the reclassification grievance, was a higher-rated position that involved employment and training duties, also requires the two years of experience in identifying barriers to self-sufficiency and employment and in case management, but does not provide for the educational alternative to the experience, as does the GACM position.

Based upon the foregoing, it is concluded that the requirement of two years experience and the educational alternative to that requirement, are "reasonable qualifications" for the GACM position. It remains, however, to determine whether the Grievant's experience in the Elderly Services Case Manager position meets the experience requirement for the GACM position. A review of the job descriptions for the two positions, and a comparison of the Grievant's description of her duties with Weiler's description of her duties, indicates that the Grievant did not have any responsibilities in the area of identifying barriers to employment and self-sufficiency, although she did have case management duties. For that reason, it is concluded that the Grievant's experience in the Elderly Services Case Manager position did not meet the qualifications for the GACM position.

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settled after this grievance arose, so it appears that the Union was aware of the County's position in this case at the time.

Therefore, it is further concluded that the County did not violate the parties' Agreement when it did not permit the Grievant to bump into the GACM position.

Based upon the above, the record, and the arguments of the parties, the undersigned makes the following

AWARD

1. The grievance is procedurally arbitrable.
2. The grievance is denied.

Dated at Madison, Wisconsin this 21st day of September, 1993.

By David E. Shaw /s/  
David E. Shaw, Arbitrator