

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
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LINCOLN COUNTY SOCIAL SERVICES : Case 130
WORKERS' ASSOCIATION : No. 49170
 : MA-7851
and :
 :
LINCOLN COUNTY :
 :
- - - - -

Appearances:

Mr. Patrick J. Coraggio, Labor Consultant, appearing on
behalf of the Association.
Mr. Daniel H. Mundt, Jr., Personnel Director, appearing on
behalf of the County.

ARBITRATION AWARD

Pursuant to a request by Lincoln County Social Services Workers' Association, affiliated with Labor Association of Wisconsin, Inc., herein the Association, and the subsequent concurrence by Lincoln County, herein the County, the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on May 19, 1993 pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on August 11, 1993 in Merrill, Wisconsin. The hearing was not transcribed. The parties completed their briefing schedule on September 13, 1993.

After considering the entire record, I issue the following decision and Award.

ISSUES:

The parties were unable to stipulate as to the issues.

The Union frames the issues as follows:

1. Based on the language in the collective bargaining agreement and the past practice of the parties, did the Employer violate the grievant's contractual rights by denying her an opportunity to work as a Social Worker?
2. If so, what is the appropriate remedy?

The County, on the other hand, frames the issue in the following manner:

Was the Social Services Department Head, Mr. Moe's determination that Ms. Pearson's qualifications were insufficient to be hired as a Social Worker reasonable?

Having reviewed the entire record, the Arbitrator frames the issues as follows:

1. Did the County violate the collective bargaining agreement or past practice when it denied the grievant's application for the vacant Social Worker 1 position?
2. If so, what is the appropriate remedy?

FACTUAL BACKGROUND:

Rhonda Pearson, herein the grievant, works for Lincoln County Department of Social Services as an Economic Support Specialist. She worked initially on a half-time basis for about one and one-half (1 1/2) years, but has worked full-time for the County since February, 1992.

Her job duties and responsibilities include making financial eligibility determinations regarding public assistance for seniors as part of the Economic Support Unit. Her job description indicates that she must "Assess human need for individuals through the use of Determine sources, types, and levels of public assistance available by law. Take proper action . . . for the purpose of issuing public assistance benefits to eligible persons." She does not, however, have the same type of case assessment, planning, servicing or management responsibilities which are required of a Social Worker.

On January 29, 1993 Curtis M. Moe, Director of Social Services, posted a notice that a vacancy existed for a Social Worker opening within the Department. If anyone was interested they were to notify the Director no later than 4:30 P.M. on Friday, February 5, 1993. Attached to the notice were the qualifications for the position:

QUALIFICATIONS: Social Worker I: Bachelor's Degree in Social Work, Sociology or directly related field. Social Worker II: The same requirements as Social Worker I along with two years of increasingly responsible social work experience, plus completion of prescribed in-service training.

This posting was similar to ones used in the past to fill the Social Worker position.

On that same day, the grievant filed a letter with the Director indicating that she was interested in the vacancy. After submitting her application, the grievant had several meetings with the Director regarding her qualifications and academic background.

Despite her repeated requests, at no time during these meetings did the Director inform the grievant what he considered to be the minimum qualifications for the aforesaid Social Worker I position or explain what was meant by the phrase "directly related field" contained in the qualifications listed for the disputed position as noted above.

To support her bid for the vacant position, the grievant also submitted a copy of her college transcript identifying all of the classes taken to obtain her Bachelor of Science Degree in Health Promotion/Physical Education/Wellness Option with a Minor in Psychology. She attempted to go over her transcript with the Director in an unsuccessful effort to show the comparability of her course work with that of a Social Work Degree. The Director did not feel that he was "in a position to conclude" that the grievant's degree was in a directly related field based on a comparison of course work, and declined to make such a determination.

During this same period of time, the Director made a preliminary decision expressing "doubt" that the grievant had a "directly related degree" which he later finalized after talking with Charles Rude, the previous County Personnel Director and a State Department of Health and Social Services official in Madison. Thereafter, he looked at the grievant's employment history with the Department to see if her work experience would qualify her to be a Social Worker I and concluded that it would not.

On February 17, 1993 the Director informed the grievant that after "a review of your academic credentials and work experience, I have concluded that you do not meet the minimum entry level requirements for a Social Worker in this Department. I must, therefore, inform you that you are not being considered for the position at this time."

Thereafter, a grievance was filed on February 18, 1993 and processed through the steps of the grievance procedure to arbitration. The parties stipulated at hearing that there are no procedural issues, and that the instant dispute is properly before the Arbitrator for a decision on the merits.

The language of Article VIII involving job posting and

promotion has remained the same since 1981. Under said language the parties' practice has been to hire from within the Department, if possible, before going outside to the general public to fill a vacancy. If someone in the bargaining unit applies for a vacancy and meets the minimum qualifications said employee is given an opportunity to fill the vacant position. In making a selection, the Director first determines if the applicant has the requisite degree. If not, the Director reviews the applicant's work experience to determine if that would qualify the person for the position.

The County hired Cheryl Nowotny, who has a Bachelor of Science Degree in Business Administration, based primarily on her experience as a Social Services Aide in the Department.

Neither the State of Wisconsin nor the Department has any written guidelines as to what constitutes a degree in a directly related field. The decision is solely the Director's. He testified that he considers Psychology, Guidance and Counseling, Social Studies or Criminal Justice as directly related fields, but provided no additional elaboration. He also indicated that a degree in Animal Science is not a directly related degree, but again provided no additional elaboration.

New State of Wisconsin requirements (1991 Wisconsin Act 160, published April 27, 1992), not applicable herein, call for a Social Work degree only as a requirement for filling a Social Worker position.

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE III - MANAGEMENT RIGHTS

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:

. . . .

C. To hire, train, promote,
transfer, assign and retain
employees;

. . . .

J. To manage and direct the
working force, to make

assignments of jobs, to determine the size and composition of the work force, to determine the work to be performed by employees, and to determine the competence and qualifications of employees;

. . .

ARTICLE VIII - JOB POSTING, PROMOTIONS AND RECLASSIFICATIONS

1. Posting Vacancy: In the event a permanent job vacancy occurs or a new position is created, which the County desires to fill, notice of such vacancy shall be posted for five (5) working days, not counting the first day. During this time employees may bid for such job. In addition, employees on a leave of absence shall be mailed, by certified mail to the last known address, a copy of any job posting. Should any such employee desire to post for a job, they shall do so by certified mail to be post-marked within five (5) days of the day of the mailing of the original posting.

2. Qualifications: To apply for a vacancy, the employee must have the qualifications for the job, and have state certification for the vacancy, if such is required.

3. Filling Vacancy: When management reasonably determines aptitude, skill, qualifications and ability are equal, seniority shall govern the filling of vacancies. The employee filling a vacancy shall serve a six (6) month probationary period.

4. Return to Former Position: A successful bidder shall not bid for a new classification until after one hundred twenty (120) working days on his new job. The County may transfer a successful bidder to his prior job at the prior job's current rate of pay during the first sixty (60) working days on the new job if the successful bidder does not perform the job satisfactorily. A successful

bidder may return to his prior job, at the prior job's current rate of pay, at any time during the first twenty (20) working days on the new job if he no longer desires to continue working at the job.

WISCONSIN MEDICAL ASSISTANCE HANDBOOK:

Qualifications

WMAP qualifications for individuals performing case management are divided into two levels: a higher level for individuals performing assessments and case plans and a lower level requirement for individuals performing ongoing monitoring and service coordination.

Qualifications for individuals performing assessments and case planning are: knowledge concerning the local service delivery system, the needs and dysfunctions of the recipient group(s), the need for integrated services, and resources available. In addition, individuals performing assessments and case planning must possess a degree in a related human services field and one year of experience, or two years of experience working with the persons in the targeted population for which they are employed, or an equivalent combination of training and experience. The determination of equivalence is the responsibility of the certified case management agency, whether for its own staff or subcontract staff.

PARTIES' POSITIONS:

The Association initially argues that the language of Article VIII, Job Posting, is ambiguous and subject to differing interpretations and that as a result the Arbitrator must look to the past practice of the parties to determine its intent. The Association adds that a past practice which is mutually accepted by the parties is an integral part of the contract and is binding on the parties. Applying these principles of contract interpretation to the instant dispute, the Association maintains that there is a longstanding practice herein to post an opening first within the Department to determine whether or not someone from within the Department is interested and that if someone from the Department applies and has the minimum qualifications that person is given an opportunity to fill the vacancy. (Emphasis supplied) The Association maintains that this practice is recognized, at least indirectly, by Article VIII, Sections 3 and 4 which provide for an employee who successfully bids on a position to serve a six (6) month probationary period and to have the ability to return to his or her former position under certain circumstances. Based on the foregoing and the record, the Association concludes that the County violated past practice and the agreement by acting in an arbitrary and capricious manner in determining the grievant did not have the minimum qualifications to apply for the position of Social Worker I and in failing to give her an opportunity to work in said position based on her meeting the minimum qualifications. (Emphasis supplied)

In the alternative, the Association argues that even if the disputed language is found to be clear, the County does not have the right to change a condition of employment in the middle of the contract without first bargaining with the Association over same.

For a remedy, the Association requests that the Arbitrator sustain the grievance, and order the County to give the grievant an opportunity to fill the Social Worker I position pursuant to the provisions of Article VIII noted above.

The County, on the other hand, maintains that it has the authority based on Article III and the Wisconsin Medical Assistance Handbook to determine who is qualified for the position in question; and that arbitration practices and principles require that the Department's decision be upheld and the grievance denied, unless said decision was unreasonable, arbitrary, capricious or discriminatory. The County contends that the Department Head's decision that the grievant did not have the required degree or experience for the job was reasonable and appropriate. Based on same, the County requests that the grievance be denied and the

matter dismissed.

DISCUSSION:

It is undisputed that it has been a binding past practice of the parties to first post an opening within the Department to determine whether or not anyone from within the Department is interested. If someone from within the Department applies for the vacancy, the Department does not look outside the agency for applicants until making a determination regarding the internal candidates. If the internal candidate has the minimum qualifications for the position that person is given an opportunity to fill the vacancy. (Emphasis Supplied)

The Association argues that the County violated the collective bargaining agreement and past practice when it determined that the grievant did not have the necessary qualifications for the disputed position. The County argues, however, that the Department Head's decision to not hire the grievant as a Social Worker because she did not have the necessary qualifications should be upheld unless his decision was unreasonable, arbitrary, capricious or discriminatory.

If the issue before the Arbitrator was the selection of one applicant over another within the meaning of Article VIII, Section 3, then the Arbitrator would agree with the County's articulation of a reasonableness standard as an appropriate standard of review.

However, based on the parties' practice and the specific facts of this case, the Arbitrator finds that the only issue before the undersigned is whether or not the grievant has the minimum qualifications to fill the disputed position. The Arbitrator therefore turns his attention to this issue.

The first question before the Arbitrator is whether or not the grievant has the required degree to qualify for a Social Worker I position.

The Association does not argue, nor does the record support a finding that the requirement of a degree in a "directly related field" for the position of Social Worker I is unreasonable or improper.

The Association argues that the grievant's Bachelor of Science Degree in Health Promotion/Physical Education/Wellness Option is a degree in a "directly related field" which is the only qualification listed for the entry level Social Worker position in the posting. However, the Association could point to no other person hired by the County with the same or a similar degree, absent relevant work experience. Nor was such a degree listed by the County among the degrees it considered to be in a "directly

related field." It is true that the grievant has a minor in Psychology which is one of the degrees that the County has found to be directly related. It is also true that some of the grievant's courses for her BA are comparable to those required by a degree in Psychology, Social Work or Sociology. 1/ However, neither educational achievement is the same as having the required degree itself.

It is true that the Association provided evidence that the grievant's degree is broadly speaking in the human services field. 2/ Consequently, a case can be made that her degree fits within the definition of someone possessing "a degree in a related human services field" which is one of the qualifications listed by the Wisconsin Medical Assistance Handbook for the Social Worker position. However, the actual posting provides on its face a much narrower definition of the required qualification by requiring a Bachelor's Degree in a "directly related field." (Emphasis Added)

The County, pursuant to Article III, Sections C and J and to Article VIII, Section 2, has the right to make that determination.

The Association presented no persuasive evidence that would allow the Arbitrator to "second guess" the County's decision. Nor, as noted above, did the Association challenge the reasonableness of the requirement in the first place.

Based on all of the foregoing, the Arbitrator finds that the answer to the first question noted above is NO, the grievant does not have the required degree in a "directly related field" to qualify for the Social Worker I position. A question remains as to whether the grievant has the necessary work experience for the position. For the reasons listed below, the Arbitrator concludes that she does not have the proper experience for the job.

The grievant has worked for the County for about three years as an Economic Support Specialist. In this capacity she works with many of the same parties and issues that she would work with as a Social Worker. However, she does not have the necessary experience in case assessment, planning or management that would qualify her for the disputed position. 3/ This fact distinguishes her situation from the example relied upon by the Association in support of its position; Cheryl Nowotny, who was hired by the County as a Social Worker without a degree in a "directly related

1/ Union Exhibit Nos. 1-6.

2/ Unrebutted testimony of the grievant.

3/ Unrebutted testimony of the Director of the Department of Social Services, Curtis M. Moe and Donna Simek, the Director of Adult Services.

field," but who had experience performing the aforesaid case worker functions as a Social Services Aide. The grievant's work experience is limited to primarily making financial eligibility determinations, and, again, the Association offered no persuasive evidence or argument as to why the County's determination that her work experience did not qualify her for the position should be overturned.

In reaching the above conclusions, the Arbitrator wants to make it perfectly clear that he is not condoning the County's failure to communicate a set of clear criteria for meeting the minimum qualifications necessary to become a Social Worker. This should be done as a regular part of any hiring process. It was particularly important here since the grievant specifically asked for a clearer understanding of what the County meant by a degree "in a directly related field" as well as what it considered to be relevant work experience in order to qualify for the disputed position. However, since there is no persuasive evidence in the record that by providing this information the grievant would have qualified for the position, the Arbitrator will not address this issue further in deciding the merits of the case.

Based on all of the above, the Arbitrator finds that the answer to the issue as framed by the undersigned is NO, the County did not violate the collective bargaining agreement or past practice by not awarding the position of Social Worker I to the grievant, Rhonda Pearson, and it is my

AWARD

That Rhonda Pearson's grievance dated February 18, 1993 is hereby denied and the matter is dismissed.

Dated at Madison, Wisconsin this 3rd day of November, 1993.

By Dennis P. McGilligan /s/