

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

KENOSHA COUNTY (Wisconsin)

and

KENOSHA COUNTY SOCIAL WORK
PROFESSIONAL EMPLOYEES,
LOCAL 990, AFSCME, AFL-CIO

Grievance #95-0090-001
M. Manka, non-selection
for posted job

Case 152
No. 52660
MA-9064

Appearances:

Mr. Frank Volpintesta, Kenosha County Corporation Counsel, 912 - 56th Street,
Kenosha, WI 53140, appearing on behalf of the County.

Mr. John Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, PO
Box 624, Racine, WI 53401-0624, appearing on behalf of the Union.

ARBITRATION AWARD

At the joint request of the Union and County noted above, the Wisconsin Employment Relations Commission designated the undersigned Marshall L. Gratz as Arbitrator to hear and decide a dispute concerning the above-noted grievance which the parties have treated as if it arose under terms materially the same as those in the parties' 1992-1994 Agreement (Agreement).

The arbitration hearing was conducted at the offices of the County's Personnel Department on October 26, 1995. The proceedings were not transcribed, however, the parties agreed that the Arbitrator could maintain a cassette tape recording of the testimony and arguments for the Arbitrator's exclusive use in award preparation. The parties summed up their positions orally at the hearing, so the case was fully submitted and ready for award as of October 26, 1995.

STIPULATED ISSUES

At the hearing, the parties authorized the Arbitrator to decide the following issues:

1. Did the County violate the Agreement by failing to award Michelle Manka the Social Worker position posted on February 23, 1995?
2. If so, what is the appropriate remedy?

ARTICLE I - RECOGNITION

. . .

Section 1.2 Management Rights

Except as otherwise provided in this agreement, the County retains all the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote or suspend or otherwise discharge or discipline for proper cause; the right to decide the work to be done and location of work; to contract for work services or materials; to schedule overtime work; to establish or abolish a job classification; to establish qualifications for the various job classifications; however, when a new position is created or an existing position changed, the County shall establish the job duties and wage level for such new or revised position in a fair and equitable manner subject to the grievance and arbitration procedure of this agreement. The County shall have the right to adopt reasonable rules and regulations. Such authority will not be applied in a discriminatory manner. The County will not contract out for work or services where such contracting out will result in the layoff of employees or the reduction of regular hours worked by bargaining unit employees or the reduction of regular hours worked by bargaining unit employees.

. . .

ARTICLE VII - JOB POSTING

Section 7.1 Procedure. Notice of vacancies which are to be filled due to retirement, quitting, new positions, or for whatever reason, shall be posted on all bulletin boards within five working days; and employees shall have a minimum of five (5) workdays (which overlap two (2) consecutive weeks) to bid on such posted job. The successful bidder shall be notified of his selection and his approximate starting date within five (5) workdays.

Section 7.2 Contents of Posting. The job requirements, qualifications, shift and rate of pay shall be part of the posting and sufficient space for interested parties to sign said posting, or they may in writing notify the department head of their application. When an employee is absent from work, his steward may sign said posting for such absent employee.

Section 7.3. Seniority - Filling of Vacancies. In filling a vacancy, the employee signing with the greatest seniority in the bargaining unit shall be given first consideration, except as provided in Section 7.4 below, and except those vacancies which, in accordance with the Merit System Rules, require testing and then the test score will be the ruling factor, not seniority, except in case of tie.

In the event that a position is vacated and no qualified applicant is available or desires to bid, then the County shall be able to fill the position at the next lower classification. However, when the employee filling the position qualifies for the higher rated job, he or she will automatically be reclassified to do the higher rated position.

Section 7.4. Employment Preference. Full-time employees are given preference over part-time employees. Regular part-time employees shall be given preference over casual part-time employees or new applicants.

Section 7.5. Probationary Period. Employees filling promotional vacancies shall be on a probationary period for thirty (30) days. Such probationary period may be extended for an additional thirty (30) days by mutual agreement, in writing, between the parties.

Section 7.6. Time for Bidding. A social work professional employe employed in Brookside, Aging and Social Services Departments who successfully bids on a job shall not be eligible to bid on another job for a period of six (6) months, unless such job is in a classification paying a higher wage.

Section 7.7. Failure to Qualify on New Job. An employe who fails to have the ability to handle a job obtained through job posting during his probationary period shall return to his former job.

Section 7.8. Union Notification. Whenever a posted position has been filled by hiring from the outside, the Union shall be notified.

Section 7.9. The practice of reclassification applications and review (including grievance) upon successfully completing the State certification criteria, shall be continued. However, the parties agree to enter into negotiations during the life of the Agreement, up to and

including arbitration under Section 111.70 of the Wisconsin Statutes, over the issue of classifications.

. . .

ARTICLE VIII - WAGES

Section 8.1. Wages. "Job Classification and Rate Schedules" for January 1, 1992 through December 31, 1994 shall be attached to this Agreement as Appendices "A", "B" and "C", and made a part hereof.

[The Agreement contains annual Classification and Rate Schedules, each of which lists ten increasing rates from "Min (Prob)" through "After 96 Mo." for each of five classifications from Social Worker I (lowest paid) through Social Worker V (highest paid), with overlap among several of the rates for the five classifications.]

. . .

BACKGROUND

The Union has represented the County's professional employes in Brookside, Aging and Social Services Departments for many years. As noted above, the Agreement Classification and Rate Schedule includes five classifications from Social Worker I to Social Worker V, with increasing but overlapping 10-step pay ranges.

Among the qualifications that have been required of candidates for posted Social Worker positions at all times material to this case have been those roughly summarized below:

- Social Worker I - Bachelor's degree
- Social Worker II - meet SWI requirements plus completion of core courses and a specified length of service
- Social Worker III - meet SWII requirements plus additional specified length of service plus certain credits
- Social Worker IV - Master's degree
- Social Worker V - Master's degree plus additional length of service

On February 23, 1995, the County posted a Social Worker IV position in the Child Welfare unit of the Department of Social Services. Included on the posting among the qualifications was "Master's Degree in Social Work" (MSW). At the time that position was posted, the Grievant, Michelle Manka, held a Social Worker I position in the Court Services unit, and she did not possess a master's degree. Grievant nonetheless bid for the position. Grievant was considered but not selected for the position. Instead, the County ultimately hired an outside applicant who possessed an MSW degree.

Grievant testified that she bid for the position with the expectation that if awarded it she would have performed the work described in the posting but would have continued to be paid at the Social Worker I level. Grievant explained that her expectation in that regard was based,

in part, on the fact that she had secured her Social Worker I position in Court Services unit by bidding for a Social Worker position that was posted as a Social Worker I after it had been vacated by a Social Worker V who moved to another bargaining unit position. Grievant testified that, although she was paid at the Social Worker I level, she performed the same duties on the same caseload as the Social Worker V whom she succeeded.

In the grievance giving rise to this case, the violation involved is described as follows:

Ms. Manka has been denied the most recent social work posting in the Child Welfare area, which is in violation of the Labor/Management Agreement, Sections 7.1 and 7.3 and a past practice history of an individual's education and skills being carried with them into a new position.

By way of relief, the grievance requests "Ms. Manka is to notified of her successful bid to the Child Welfare position and the date she will assume her new responsibilities."

The grievance was denied at the various pre-arbitral steps. The Step 2 disposition denied the grievance on the basis that "Ms. Manka, Social Worker I, does not meet the required MSW qualifications for the newly created position."

The grievance was then submitted for arbitration as noted above. At the arbitration hearing, the Union presented testimony of Ms. Carol Pawlaczyk (a foster parent with whom Grievant worked), Assistant District Attorney Mary Hart, the Grievant, Social Worker II Leon Potter, and Social Worker II Yvone Wheeler. The County presented testimony of Child Welfare Program Manager Patricia Bell.

Additional factual background is set forth in the various remaining sections of this award.

POSITION OF THE UNION

Grievant admittedly did not have the MSW degree that the County listed as a requirement on the posting. However, Grievant has clearly demonstrated that she is qualified for the position despite her lack of the advanced degree. Her highly successful employment history in the Department shows that she is capable of performing the work of the posted position. The County should therefore have awarded the posted Social Worker position to the Grievant but at the Social Worker I level.

As stated on the grievance, the County should be required to allow incumbent Social Worker bidders to carry their individual educational and skill/experience levels with them into a

new posted Social Worker position. That is the practice the County followed when it awarded Social Worker Piasecki [phonetic] a position posted at Social Worker I but continued to pay him at his Social Worker V rate. The County should be bound to follow the same practice in this case.

The reasons given by the County for its insistence on an MSW degree in this case are not valid, and it was unreasonable for the County to deny Grievant the posted position because she lacked an MSW degree. Social Workers at all levels are assigned a mix of cases including some of the most difficult ones. Social Workers with MSWs do not have time to work sufficiently in depth with clients to make use of any deeper understanding of their clients' problems that their advanced degree provides them. The County's claimed goal of creating Social Worker teams with an MSW on each was neither mandated nor uniformly achieved. Moreover, after rejecting Grievant as unqualified, the County hired an MSW basically right out of school who had none of the Wisconsin court experience or successful and highly-praised Kenosha County social worker experience that Grievant possessed.

For those reasons, the Arbitrator should order the County to award Grievant a Social Worker position in the Child Welfare unit at the Grievant's existing pay level.

POSITION OF THE COUNTY

The County posted for a Social Worker IV in the Child Welfare unit. The posting required, among other things, a Master's Degree in Social Work. Grievant admittedly lacked the required degree, so the County properly concluded that she did not possess the required qualifications for the posted position and did not award it to her. The County acted in all respects within its rights under the Agreement including the Sec. 1.2 right "to establish qualifications for the various job classifications," and did not violate any other provision of the Agreement by failing to award Grievant the Social Worker position posted on February 23, 1995.

In any event, the County's insistence on an MSW-degreed person for the posted position was reasonable. The County Board approved Department Administration's recommendation to hire at a higher pay level in pursuit of legitimate operational objectives. Those objectives included obtaining the benefit of an MSW holder's deeper understanding of the causes of behavioral problems affecting clients in the social workers' caseloads and enabling Social Worker teams to be formed with each team including an MSW.

The Union has never challenged the propriety of the County's longstanding requirement of an MSW degree for the Social Worker IV position. The Agreement reflects the parties' agreement that higher rates of pay at each step are appropriate for employees who meet the higher-level qualifications of a Social Worker IV. The evidence also shows that the County has determined the level at which Social Worker positions will be posted, such that, without Union challenge, the County has historically posted and filled some positions at the Social Worker IV position. In other situations the County has posted and filled positions vacated by Social Worker IV or V personnel at a classification not requiring an MSW degree.

The Grievant in this case is essentially seeking a lateral transfer to a work unit that she would prefer as compared to her current unit. Neither the Agreement nor past practice gives her the right to prevent the County from insisting, instead, on filling that position with an MSW-degreed person. The grievance should therefore be denied.

DISCUSSION

At issue is whether the Agreement required the County to award the posted Social Worker IV position to the Grievant at her Social Worker I level, rather than insisting on selecting a candidate possessing an MSW degree.

As noted above, the Union asserts that the County violated Agreement Secs. 7.1 and 7.3, violated past practice, and otherwise unreasonably exercised its rights.

The Agreement Sec. 7.1 procedures do not appear to have been violated. There is no contention or showing that the County failed to post the subject notice for the requisite period of time or that it failed to allow employees the requisite period of time in which to bid. Because there was no successful bidder for the job among bargaining unit employees, the concluding sentence of Sec. 7.1 has not been shown to have been violated either.

There is also no showing that the County violated the first sentence of Agreement Sec. 7.3 which requires (with exceptions not material here) that the employee signing with the greatest seniority in the bargaining unit be given first consideration. The position at issue was posted internally and Grievant's qualifications were considered after she bid for the position. Grievant was not notified that she was selected because the County found that Grievant was not qualified for the posted position because she lacked the MSW degree qualification required on the posting. It is undisputed that Grievant lacks that degree and that the MSW degree was among the required qualifications set forth by the County on the posting.

The second paragraph of Sec. 7.3, by its terms, applies, "[i]n the event that a position is vacated. . .". In this case, however, the position in question was not vacated by anyone. Rather it was an a position newly added to the budget in 1995 that had not previously been held by anyone. Therefore, whatever that second paragraph would mean in a case involving a vacated position, it has no application here where no position was vacated.

The Union's reliance on past practice appears to rest solely on the County's earlier treatment of Social Worker V Piasecki. In that instance, the County moved Piasecki from the Court Services unit to another unit in which the County had posted a Social Worker I position. The testimony indicates that after Piasecki expressed an interest in moving to the posted position, the County permitted him to do so while maintaining the Social Worker V status and pay that he had previously attained.

The Piasecki case does persuasively support the Union in the instant case. First, it is at least consistent with the evidence presented concerning the Piasecki case that Piasecki was moved by special agreement of the parties, rather than in accordance with what the parties mutually understood was an obligation on the County's part under the Agreement. Second, Piasecki appears clearly to have met all of the qualifications for the posted position involved, whereas Grievant clearly does not meet the MSW degree requirement of the Social Work IV position involved in her case. Thus, the County was not prevented in the Piasecki case from filling the position with a person who met (and indeed exceeded) the posted qualifications required for the position. In contrast, if it is required to award the instant position to the Grievant, the County would be prevented from filling that position with a person who meets the posted MSW qualification required for the position. The latter difference alone would be a sufficient basis on which to materially distinguish the Piasecki case and to render the Union's reliance on it here unpersuasive.

The Union's additional contentions, that the County's insistence on an MSW degree in this case was unreasonable, essentially assert that the County's rights under the Agreement are subject to implied limitations against the County exercising those rights in an arbitrary, capricious or bad faith manner. The Union's contentions that the County has exercised its rights in such a manner are not persuasive, however, for the following reasons.

Agreement Sec. 1.2 Management Rights, provides, "Except as otherwise provided in this agreement, the County retains all the normal rights and functions of management and those it has by law." The "normal rights and functions of management" would ordinarily include the right to establish qualifications to be met by candidates for posted positions. The further enumeration of rights in Sec. 1.2 lends support to the applicability of that conclusion in this case by its specific reservation to the County of the rights "to establish or abolish a job classification" and "to establish qualifications for the various job classifications." The evidence that the County has historically exercised discretion regarding which classification it would post and fill Social Worker positions further supports the notion that the parties understand that the County enjoys a range of discretion in that regard except where the Agreement expressly provides otherwise.

In this case, the County posted a position in an existing classification and at the higher rates of pay associated in the Agreement with that classification. The requirement that holders of Social Worker IV positions possess an MSW is historically well established and uniformly applied. The County has also shown that the County Board and Department management chose to post the Child Welfare unit position in question at the higher-paid Social Work IV level in order to secure the higher level of knowledge and skills that management associates with an MSW. Given the higher rates of pay negotiated by the parties for Social Worker IV as compared with Social Worker classifications that do not require an MSW, it was not arbitrary for the County to associate an MSW degree with knowledge and skills of somewhat greater potential value to the County. Patricia Bell testified at some length about the County's particular operational reasons for wanting an MSW in this and one other Social Worker IV position that were added to the budget in 1995. She said the County chose: to seek a skilled interventionist who could assess a situation from

beginning to end of a case; to hire an MSW so that the County would be better able to team MSW with non-MSW Social workers; and to hire a skilled diagnostician who could function independently with an understanding of the dynamics of family systems and who could address the etiology of complex family issues encountered by the worker or others on her team.

The Union has sought in various respects to show that the County could not or did not in fact achieve those purported objectives outlined by Bell in her testimony. In that regard, the Union offered testimony tending to show: that heavy caseloads prevent Social Workers from providing in-depth interventions of the sort Bell described; that the most demanding cases tend either to be spread among all workers to prevent burnout or to be assigned in greater proportion to the most experienced, able and interested Social Workers regardless of educational attainment; that the County has implemented team arrangements only among volunteers rather than unit wide; and that the County ultimately chose to hire an MSW who had only recently graduated and who lacked significant social work experience.

However, those and other similar Union contentions and proofs are not sufficient to establish that the County's insistence on an MSW in this case was arbitrary, capricious or a bad faith effort to defeat the Agreement rights of the Grievant or others in the bargaining unit. On the contrary, the County's evidence satisfactorily establishes that it insisted on an MSW in pursuit of legitimate operational objectives. Whether the County exercised its Agreement rights wisely in retrospect is not the test of the propriety of that exercise.

The Union's evidence does persuasively establish that Grievant performed the Child Welfare unit work she was assigned when she substituted for Social Worker IV Melissa Carlisle and for Social Worker II Dolly Fitch in a highly professional and praise-worthy manner. The record also reveals that Grievant is a highly capable individual with a potentially long, successful and rewarding future in social work ahead of her.

However, notwithstanding those attributes and the evident sincerity of Grievant's interests in working in the Child Welfare unit, the Agreement does not afford her the right claimed in the grievance to move to the position at issue in this case.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole, it is the decision and award of the Arbitrator on the STIPULATED ISSUE noted above that

1. The County did not violate the Agreement by failing to award Michelle Manka the Social Worker position posted on February 23, 1995.

2. The subject grievance is therefore denied in all respects, and no consideration of a remedy is necessary or appropriate.

Dated at Shorewood, Wisconsin this 14th day of March, 1996.

By Marshall L. Gratz /s/
Marshall L. Gratz, Arbitrator