

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 986-A, AFSCME, AFL-CIO

and

MANITOWOC COUNTY

Case 320
No. 54452
MA-9691

Appearances:

Mr. Gerald Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO,
appearing on behalf of the Union.

Mr. Steven J. Rollins, Corporation Counsel, Manitowoc County, appearing on behalf of
the County.

ARBITRATION AWARD

The Union and the County named above are parties to a 1996-1997 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties agreed to arbitrate a grievance regarding a Program Coordinator position, and the Wisconsin Employment Relations Commission appointed the undersigned to serve as the arbitrator. A hearing was held on January 14, 1997, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs by April 24, 1997.

ISSUE:

The parties differ on the framing of the issue. The Arbitrator has framed the issue as the following:

Did the County violate the collective bargaining agreement when it did not fill the Program Coordinator position in the U.W. Extension office with one of the applicants who signed the posting? If so, what is the appropriate remedy?

CONTRACT LANGUAGE:

ARTICLE 22 - JOB POSTING

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Whenever any vacancy occurs within an Employment Group (Courthouse or Human Services) it shall be awarded to the employee from that Group with the greatest seniority within seven (7) working days after the completion of the posting period. If no employee from that Employment Group applies for or, having bid on the vacancy, is not qualified for the vacant position, it shall be awarded to the employee applicant, from the remaining Employment Group (Courthouse or Human Services) with the greatest seniority.

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When objections are made by the Department Head regarding the qualifications of an employee to fill the position, such objections shall be presented to the employee and the Union in writing by the Department Head or the Department Head's designee.

If there is any difference of opinion as to the qualifications of an employee, the County Personnel Committee and the Union Committee shall take the matter up for adjustment through the grievance procedure.

When new positions are to be created the Employer shall notify the Union in writing prior to filling the position. The department head shall complete a job content evaluation questionnaire using the form agreed to by the Employer and the Union. The parties shall meet and negotiate the wage rate for the new position.

The Employer shall notify the Union in writing of any significant change in the job description, job duties, assignment, or qualifications of a position it may desire. If requested by the Union, the position shall be re-evaluated using the job content evaluation questionnaire form agreed to by the Employer and the Union. The parties shall meet and negotiate as may be required under the circumstances. Significant changes shall be defined as a change of one (1) pay grade or more.

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BACKGROUND:

This grievance is about the qualifications involved in a new position called Program Coordinator for the U.W. Extension office in the County. There are six agents and four program assistants in the office. Each program assistant reports to a different agent and takes assignments from that agent. The program assistants do not work as a team, and the arrangement created some problems in the office.

Judith Pedersen-Benn is a Community Resource Development Agent with the Extension office, and Scott Gunderson is the U.W. Extension dairy and livestock agent. These positions are joint appointments between the State of Wisconsin and the County. Gunderson served as Office Chair at one time and observed problems with program assistants who would not help out other program assistants. The problem became serious, with a lot of conflicts in the office concerning whether some were doing as much work as others or working as efficiently or effectively as they could have, and there was divisiveness about sharing the work load when one person was busy and another was not.

The agents sought to resolve the problems by talking with someone from an Employee Assistance Program. Susan Schutz prepared a report that identified a number of problems, such as the lack of team work, the opinion that individual agents protect his or her assistant, the lack of clerical or management supervisor or leadership, etc. The agents also asked Professor George Hagglund, a professor of Labor Education with the U.W. Extension, to analyze the office. He made a report in April of 1996 that made certain recommendations, the relevant portion to this issue being the following:

Leadership among Agents and Program Assistants - A group leader with authority to mediate between Agents and PAs would be in a better position to balance workloads and ensure efficient operations, to organize the PAs concerns at the monthly meeting, and to meet with the leader of the Agents when it is necessary to make decisions between meetings. It is clear that the Program Assistants need someone to whom they can turn for leadership in the new work environment.

Since there is currently an open position, it is suggested that it be advertised as a *group leader* position, and paid a level or two above the current Program Assistant classification. Care needs to be exercised to make it clear that education and experience in business or office management is required, that the person have some

training in team-building, and that the person have demonstrated qualifications in forming or working with a self-directed team responsible for handling the changing needs of a group of 6 professionals in an office with four support staff.

These are not necessarily qualities that can be found in a traditional county office setting, so recruiting someone from outside who better fits the stated requirements of the position should not be ruled out. Whoever the person is, he/she will have his/her hands full trying to develop a positive working environment in which all PAs work together to fulfill the unit's needs. Since the staff is so short, however, the group leader would be expected to pick up a share of the Agents' work.

The agents decided to implement the professor's recommendations and they created a Program Coordinator Position to take on the team leadership role. They worked up a job description to call for proven ability in conflict resolution and team building, as well as a degree that would add a theoretical background to the abilities they wanted to see put into practice. The new position was posted on June 27, 1996. The job description for this position follows:

Title of Position Program Coordinator Date June 13, 1996

Approximate number of employees in classification or with same title 1

Division/Dept. U.W. Extension Location: County Offices Building

Reports to: Office Chair/Agent Team leaders

PURPOSE OF POSITION:

Responsible for the coordination of all supportive services staff functions performed for the U.W. Extension, as well as the administrative functions of the office, including budgetary responsibilities and providing both program support as well as first line supervision of program assistants.

FUNDAMENTAL JOB DUTIES AND RESPONSIBILITIES:

A. Essential Functions:

1. Provides program assistance and other supportive services that include but are not limited to: developing, designing, editing and proofreading of workshop materials, brochures, newsletters, lesson plans, surveys and reports. Compose and type correspondence and press releases. Maintains adequate inventory of program bulletins and distributes to general public upon request. Maintains mailing lists for newsletters and brochure distribution. Processes and assists with registration for workshops and conferences; organizes materials for training and workshops. Tabulates surveys as needed. Sends quarterly and annual reports via Wiscom or Wiscworld. Answers telephone for agent (50%).
2. Acts as team leader for program assistants and facilitates teamwork among program assistants. Supervises work flow, assisting in redistribution of work assignments as requested or necessary. Acts as liaison between Agent Team Leader and Program Assistants to ensure effective communication, and to answer questions or concerns from either party. Enforces work rules and policies; provides input to Agent preparing performance evaluations for program assistants (20%).
3. Coordinates ETN/Satellite programs including handling registrations, attendance and evaluation sheets, providing technical assistance if needed during the program, supervises ETN Aide. Informs Public Works Department of meeting room reservations. Maintains university computer network for staff; serves as computer and technology contact person in conjunction with an Extension Agent (11%).
4. In cooperation with and under the administrative direction of the Office Chair, coordinates and performs all budgetary and financial responsibilities for UW Extension, including budget preparation, preparation of vouchers, and processing of receivables, including invoicing other departments for shared cost areas. Responsible for financial reporting and record keeping for all grants. Informs Agent Team of status of budget, prepares a draft of the monthly budget report for the Office Chair. Provides main support for Natural Resources and Education Committee, including typing meeting notices, agendas and minutes, filing and WACEC (10%).
5. In conjunction with Program Assistants, recruits, trains and coordinates the work of RSVP volunteers (5%).

6. Collects, verifies the accuracy of, and submits time cards for support staff to Office Chair; completes employee status forms as needed; reviews time off requests, schedule changes, and assures adequate staffing (2%).

7. Inventories and purchases office supplies, solicits bids for purchase of office equipment and materials (2%).

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QUALIFICATIONS NEEDED:

An Associate Degree in Office Administration or related field is required, as is proven ability in team building and conflict resolution. One to three years of experience in an administrative position with increasing levels of responsibility in financial reporting, work flow analysis and scheduling is also required. The ability to work independently, and assess and assign priorities to projects is required, as are effective oral and written communication skills. The ability to maintain composure, confidentiality, and exercise good judgment is also required.

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The second paragraph -- under Essential Functions -- is the part of the job that sets it apart from a program assistant position, according to Pedersen-Benn. The team leader duties were the reason that the Program Coordinator was classified at a higher salary level than the program assistants.

The management team that interviewed applicants for the new position consisted of the Personnel/Labor Negotiator, Sharon Cornils, and Gunderson and Pedersen-Benn. A standard list of questions for applicants was developed and each applicant was asked the same questions by Cornils. The questions were the following:

This newly created position has three broad primary areas of responsibility:

- 1) Providing program support
- 2) Acting as team leader for program assistants
- 3) Providing financial and statistical information

We will discuss these three primary areas individually. Following this discussion, you will be invited to ask any questions you may have of us.

PROVIDING PROGRAM SUPPORT

Approximately 50% of the time, the program coordinator will be performing the same duties as a program assistant. In summary, these duties include providing program assistance and supportive services including but not limited to: developing, designing, editing and proofreading workshop materials, brochures, newsletters, lesson plans, etc. Other responsibilities include assisting with registration for workshops, tabulating surveys, answering the telephone for the agent.

Please describe what training and experience you have in any of the above areas. Are you familiar with:

WordPerfect? What version? DOS

Quatro Pro - Windows 95

Paradox - Internet

E-Mail

ACTING AS TEAM LEADER

This is a critical component of this position, and the reason for the development of this new position. It is important for you to know that while initially being receptive to the idea of a quasi-supervisory position being developed, some of the current program assistants are not receptive to the idea of this restructured position. How would you propose changing these feelings around so that this position is viewed as an asset to the program assistants rather than a threat?

Prior to developing this position an independent study was conducted by George Hagglund, a Professor of Labor Education for the University of Wisconsin Extension. In this study Professor Hagglund states "Since there is currently an open position, it is suggested that it be advertised as a group leader position, and paid a level or two above the Program Assistant classification. Care needs to be exercised to make it clear that education and experience in business or office management is required, that the person have

some training in team building, and that the person have demonstrated qualifications in forming or working with a self-directed team responsible for handling the changing needs of a group of six professionals in an office with four support staff." Do you feel you meet this recommended criteria?

About 20% of the time will be spent acting as team leader for program assistants. This will entail facilitating teamwork, supervising work flow, assisting in the redistribution of work assignments as necessary. Please describe any experience/training with these responsibilities.

This position will act as a liaison between the Agent Team Leader and the Program Assistants to ensure effective communication. Please assess your communication style: how are you most effective in communicating (oral, written, etc.)? How do you know when you are being clearly understood? If you were responsible for communicating some information that you know will not be well received by the party you are going to speak to, how would you go about delivering that message?

Finally, in this role of team leader, this position will be responsible for enforcing work rules and policies, and providing input to Agents preparing performance evaluations for the program assistants. Please describe any experience you have had in these areas.

FINANCIAL AND STATISTICAL REPORTING

Switching emphasis to the financial responsibilities for this position, this position, in conjunction with the Office Chair, coordinates and performs all budgetary and financial responsibilities for the UW Extension. This includes, but is not limited to: budget preparation, preparation of vouchers, processing of receivables, and responsibilities for financial reporting and record keeping of all grants. The Program Coordinator will also keep the Agent Team of status of budget, and prepares a draft of the monthly budget report for the Office chair. Please describe your financial reporting skills, and how you attained them (education and/or experience).

Have you any questions you would like to ask of us?

Christy Zich is a Secretary Clerk II, or an assistant to the Clerk of Courts, and she has

held that position since October of 1995. Before working for the County, she worked in a dentist's office, making appointments, filing and working on insurance forms. She applied for the Program Coordinator position and was given a letter stating that she was not qualified. The Personnel/Labor Negotiator, Sharon Cornils, sent Zich a letter on July 12, 1996, which states:

The UW-Extension Agents notified me this afternoon that they have made a decision to continue the recruitment process for the position of Program Coordinator.

The professional and enthusiastic manner in which you participated in the interview process has not gone unnoticed. However, the Agents' analysis of the requirements of the Program Coordinator position, along with the recommendations made by Professor Hagglund, have led the Agents to conclude that supervisory experience with proven competence in team building to be essential in order to be qualified for the position of Program Coordinator.

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Zich was aware of the qualifications of the position from the posting and the interview. All the applicants were asked the same questions that were developed and noted above. When Zich was asked how she would propose changing the feelings of the program assistants who were not receptive to the new position, she stated that she would bring a positive attitude, let everyone know that she would be there to work with them, and that she would be relying on them for some training. When Zich was asked how she met the criteria for group leader and experience in business or office management and training in team building, she referred to a prior position she held at William Schaus & Son, where she was the secretary to the vice president of the company and another office person reported to her. She was responsible for making sure that the work got done by the two of them. Zich stated that at that company, she supervised the work flow. She assigned work at the Schaus company to one full-time person and another part-time employee.

At the time Zich was interviewed for the position, she did not feel that the team leader functions were critical or determining factors. She acknowledged that the questionnaire clearly stated that acting as a team leader was a critical component of the job and the reason for its development. However, she considered the team leader function to be only a small part or equal part of the job. She stated that she has always been part of a team in every job, but that her only leadership role was at Schaus & Son. Zich has an associate of arts degree from the UW-Center in Manitowoc, and has taken courses in accounting, statistics and computers. She took a one-day seminar in managerial techniques for secretaries and administrative assistants, which dealt with organizing and prioritizing work.

Roberta Marcelle, a six-year employee of the County, also applied for the new position.

She started as a Clerk Typist at the Manitowoc County Counseling Center, then was the Secretary to the Clerk of Courts, then a Small Claims Clerk for the last two years. She did not receive the position and received the following letter from Cornils on July 12, 1996:

The UW-Extension Agents notified me this afternoon that they have made a decision to continue the recruitment process for the position of Program Coordinator.

Your work history with Manitowoc County is very impressive; the Clerk of Court Office has a tremendous resource in your knowledge of the operation of that complex office. However, the Agents' analysis of the requirements of the Program coordinator position, along with the recommendations made by Professor Hagglund, have led the Agents to conclude that supervisory experience with proven competence in team building to be essential in order to be qualified for the position of Program Coordinator.

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During Marcelle's interview for the position, she was asked the same set of questions as the other candidates for the job. She admitted to having weak criteria for the team leader position. She stated that she did not have a lot of formal education regarding supervision and team leadership. She stated that she had worked on a team in the Clerk of Court's office. She had trained three people in that office before moving to the small claims job. She also worked on a team in a sales department for Lakeside Foods. Marcelle has taken some classes in accounting, computers, written communication, and college writing. Marcelle understood that being the team leader was an important aspect of the position for which she was applying.

Laurie Heier has been employed by the County for 22 years. She is currently a Secretary Clerk II in the Health Department. She has held other positions, such as a secretary/receptionist and site manager at the Aging Resource Center, and a nursing assistant and housekeeper at Park Lawn. She applied for the new position but was denied it. Her denial letter included the following paragraph:

Your work history with Manitowoc County is very impressive, and has not gone unnoticed, and your willingness to come in for the interview while you were on vacation was greatly appreciated. The Agents' analysis of the requirements of the position, along with the recommendations made by Professor Hagglund, have led the Agents to conclude that supervisory experience with proven competence in team building to be essential in order to be qualified for the position of Program Coordinator.

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Heier considered her jobs as nursing assistant or secretary to be a form of team building. At Park Lawn, she would have to show newer employees how to do the job. She assumes a leadership role in her current secretarial work, because she has been there longer than the other person in the office. Heier was on vacation when the interview took place, and she could not recall her answers to most of the questions asked during that interview. Heier was a team leader when in housekeeping at the nursing home, and she scheduled employees and assisted if they were short in an area where they were working. She did not discuss this aspect of her past employment in the job interview. Heier has taken some courses for computers and other unrelated courses and is starting to work on an associate degree.

A fourth internal candidate, Virginia Podrabsky, did not testify at the hearing. Pedersen-Benn felt that Podrabsky did not show the kind of team leadership skills or qualifications being sought, that she was not very comfortable with oral communication styles, that she did not have any training or experience in team leadership or team building, and she did not have an associate degree or related experience.

Pedersen-Benn and the agents wanted someone who had more experience in team building than just being part of a team or a member of a team. They were looking for someone who could create a team and promote teamwork among people who did not know anything about teamwork. Pedersen-Benn did not feel that Heier had the educational background or related work experience necessary for the job. She also felt that Marcelle was not qualified for it as she lacked the educational background and team building skills. Pedersen-Benn felt that Zich was not qualified for the position. While Zich had some supervisory responsibilities at the Schaus company, Pedersen-Benn said that it was not the same as organizing a self-directed work team.

Gunderson shared the same opinion that Pedersen-Benn had of the applicants' qualifications, and the two of them recommended that none of the four internal applicants be hired for the position. They made their recommendations to the other agents -- Sarah Taylor, Scott Hendricksen, Kathy Smith, and Faye Malek -- and in a consensus decision, they agreed not to fill the position with any of the applicants. Pedersen-Benn and Gunderson reviewed personnel files as part of the hiring process. No one checked information in the personnel files to verify prior employment or education. The agents were looking for courses with orientation in office administration, human relations, communications, conflict resolution, team building, or leadership.

Jerrilyn Burkhart is the Union steward and sits on the reclassification and negotiations committees. The reclassification committee works with the Personnel Department and employees whose jobs have changed. The committee works out a system which determines whether someone should be stepped up in pay, and a couple of managers and a couple of Union members participate in the process. They work out a point system, where a job is rated for so many points depending on level of education, experience, supervision, personal interactions, job complexity, deadlines, etc. The total number of points given to the Program Coordinator's position was 318, which

would have resulted in a pay grade five. The program assistants are in pay grade four, which was 77 cents an hour lower than pay grade five in 1996. Burkhart assumed that this position would be similar to team leaders in the Clerk of Courts office, who are a pay grade higher than others in the office. She did not recall that anyone from management put a large emphasis on team building and conflict resolution. The committee considered the position to be a liaison between the agents and the program assistants but less as a person to resolve conflicts.

Burkhart noted that the management portion of the committee wanted the job graded lower than the Union members would have rated it. The criteria for personal interactions was rated lower by management, who explained to the Union side of the committee that the position would not be an office manager, but that its main functions would be the same as other program assistants except that it would be responsible for work loads. The supervisor would still be the Agents' office chair, or Scott Gunderson, and not the new Program Coordinator. The difference between the program assistant position and the Program Coordinator position was given a score of 33 percent, with 20 percent of the new position being the team leader and 11 percent coordinating a satellite program. The other 2 percent difference would be that the Program Coordinator would collect and verify the accuracy of time cards for the program assistants, review their time off requests, make schedule changes and see that there is adequate staffing. The Program Coordinator is also rated higher in points than program assistants for the level of supervision exercised, although the Program Coordinator is not a supervisor but a team leader.

THE PARTIES' POSITIONS:

The County:

The County states that the Program Coordinator position was created to meet specific needs and it required special skills. Schutz found the need for stronger leadership with the program assistants, and Hagglund recommended the creation of a position to provide team leadership to the program assistants. The distinguishing features of the new position were acting as team leader, supervising work flow, assisting in redistribution of work assignments, acting as liaison between the Agent Team Leader and the program assistants to ensure effective communication, enforcing work rules and policies, and providing input to the Agent preparing performance evaluations for program assistants. The Employer negotiated with the Union and the parties set a pay grade one step above the grade for program assistants. The Employer placed substantial emphasis on acting as a team leader in the interview process, as shown by the structured questions used in the interviews.

The Employer submits that none of the four people who bid on the Program Coordinator position met the minimum qualifications for the job. Heier would have been the most senior person to bid on the position, but she did not present any information suggesting that she met the criteria, including education, experience in business or office management, training and team building, or demonstrate qualifications in forming or working with a self-directed group. At best,

she has been a member of a team but not a team leader, and she gave no information about dealing with people in conflict situations. She had no experience in recommending evaluations of individuals, she did not have an associate degree to comparable work experience. For all those reasons, Pedersen-Benn and Gunderson properly concluded that Heier was not qualified for the position. Heier's own evaluation of her qualifications for the position was consistent with the observations made by the agents.

Both Pedersen-Benn and Gunderson found that Marcelle was not qualified for the position. She lacked the educational background, the skills and proven ability to show that she understood and could implement a team building program. She indicated that her qualifications were weak. Gunderson noted that Marcelle provided no clear understanding of how she would deal with program assistants who felt that the Program Coordinator was a threat. The conclusions reached by Pedersen-Benn and Gunderson were supported by Marcelle's own testimony.

Podrabsky also did not exhibit the kinds of team leadership skills and qualifications that the U.W. Extension was seeking. She did not seem comfortable with oral communication styles, she did not have training or experience as a team leader or in team building or conflict resolution, and she lacked an associate degree or experience that would substitute for a degree. Zich was the least senior person to bid on the position, and Pedersen-Benn found that Zich was not qualified. While Zich claimed to have experience involving team building or team leadership roles, this experience was in a supervisory context and consisted of delegating work to two co-workers and following up to see that it was completed. Pedersen-Benn found that this was not the same as organizing a self-directed work team or taking a leadership position in relation to people responsible for overseeing their own work. Also, Zich had limited experience in enforcing work rules, she lacked experience in conflict resolution, and she lacked the requisite education or training. Although she had an associate degree, it was not in office administration.

Zich testified that her employment as a secretary for Schaus & Son was her qualifying experience for a number of critical skills, including team leadership, supervising work flow, enforcing work rules, and providing input regarding the evaluation of employees. However, she admitted that she did not recall whether she told anyone at the interview about the level of responsibility that she now claims to have had while employed at Schaus and Son. Zich fell short of meeting the minimum qualifications and the Employer properly denied her bid.

The Employer asks that the grievance be denied.

The Union:

The Union states that the applicants were not informed of the specific qualifications of the posted position, and that they saw the job posting which included a copy of the job description. The collective bargaining agreement states that this posting, which included the job description, is to depict the qualifications. The applicants were rejected because of lack of supervisory experience and proven competence in team building. The personnel files were available to the

office chairs who were considering the candidates, but there is no evidence that they checked credentials listed in the files. Pedersen-Benn did not check either employers or educational institutions, and she did not determine whether the specific courses which they were looking for were taken by the candidates. She did not check to see whether classes taken by the applicants were relevant, and she did not have any specific course in mind.

The Employer did not announce the specifics of which courses were required or that the candidates must be able to enunciate an academic description of how they would handle resistance from other employees. Pedersen-Benn expected employees to have the kinds of courses that she had while in graduate school, even though the position does not call for a graduate degree.

Pedersen-Benn agreed that a supervisor might not have a lot of conflict because it was resolved, and that if an applicant could communicate how he or she resolved the conflict, it would be important to assess in whether they actually did have experience in conflict resolution. Zich explained how she dealt with difficulty at Schaus & Son, with firm but positive enforcement. She was a team leader without fanfare, and did her job naturally, applying her education in an operational way and not caught up in academic hyperbole. The Union asserts that Pedersen-Benn's interpretation of Hagglund's recommendations is too academic and she has excluded a qualified applicant.

The Union submits that the Employer gave contradictory information to the Union in the process of evaluating the position. The joint committee of Union and Employer representatives met to evaluate the position and assigned numerical values that determine the pay rate. The Union representatives rated the criterion for personnel interaction higher than the Employer, who stated that the position would not be an office manager position, that the main function would be to work with other program assistants and be responsible for work distribution, satellite programs and time cards. The main difference would be paying attention to work loads. No large emphasis was put on team leadership. Team leaders in the Clerk of Courts' office are paid one pay grade higher than the other clerks. The description for the personnel interaction that the Employer used called for frequent contacts with people outside the organization but only normal communication skills within a structured relationship. That is very different from what the Employer has been purporting.

The Union representatives on the reclassification committee also marked the position higher than the Employer on the issue of conflict resolution. The Employer stated that the program assistants could go to the Agent Chairperson if they had a problem, and the position was described as just a liaison between the Agents and the program assistants. The employee would not directly take care of conflict. Team building was not mentioned in the documentation or discussion for reclassification.

The Union thinks the Employer is painting two pictures at different times when it counts. The first is when the wage is determined, and the second is when it is decided whether the Employer gets to seek a candidate from the outside. The Employer has differentiated between a

supervisor and a team leader, although there should be no difference for the purpose of pay. It takes less skill to give orders than to build a consensus, but the Employer has played down the skill required when determining the wage rate. The Employer has presented a moving target, and this is not fair to employees. Also, there is a trial period in the contract, and these qualified employees should have been given a chance to demonstrate their skill during a trial period.

In conclusion, the Union notes that the position is not supervisory or it would not be in the bargaining unit. There were qualified applicants among the four candidates. Experience can substitute for education. Zich has both education and experience. Since the Employer was not specific on the posting or in the interview about which courses it required, it has no basis for applying a specific standard now. The Union asks how much more does an applicant have to prove aside from demonstrated ability to coordinate, direct, and work as a team member. Pedersen-Benn is expecting an academic peer rather than an effective clerical leader. The senior applicant should receive the job and be paid the pay differential and be made whole.

The County's Reply:

While the Union apparently believes that the Employer should have done more to learn about each applicant's qualifications, the County asserts that each applicant must take responsibility for demonstrating that he or she is qualified for the position. The Employer asked opened-ended questions and every applicant was given a chance to describe her training and experience. It is unreasonable for the Union to demand more.

The County also takes issue with the Union's contention that the Employer did not adequately communicate the skills and qualifications required for the position. The Union claimed that the Employer was not specific on the posting or in the interview about which courses it required. The Employer did not require any specific courses or course work, and the Employer adequately advised the applicants of the qualifications required for the position. Zich testified that she knew about the qualifications from both the job posting and the interview. She said she was aware of the requirements for team leadership and team building as a result of the posting and the interview. The problem for Zich was that she did not believe that the team leadership requirements were more important than any other aspect of the job.

The Union apparently thinks that Zich is the qualified applicant. The Union stressed the fact that she had an associate degree, unlike the other candidates. But she did not have the required associate degree in office administration. The Union contended that she had the requisite education because she attended a seminar on managerial techniques for secretaries. This training was only one day, the County notes, and Zich admitted she did not have any courses in supervision, management or leadership. The Union also argued that Zich dealt with resistance and difficulty in her prior job at Schaus and Son, but her own testimony showed that she had limited experience in dealing with conflict situations. Pedersen-Benn pointed out that it was critical for the applicants to describe what they did to resolve conflict and how they did it to keep things working smoothly, or it would be impossible to evaluate a person's skills at conflict resolution. Zich only indicated that she would approach someone who was resistant to change and talk with them about it in a non-threatening way. That was not a satisfactory answer on how one deals with conflict.

Finally, the fact that Zich presented more information in the arbitration hearing than at the job interview or presented it to enhance her qualifications has no bearing on this case. The information presented at the hearing was consistent with the information it gleaned through the job interview.

The County objects that the Union's statement that team building was not mentioned in the documentation for reclassification or in the discussion, even though the Union admits that no *large* emphasis was put on team leadership. The County finds it remarkable for the Union to make such an assertion, since an exhibit submitted by the Union itself proved that this assertion was false. Union Exhibit #13, the Position Analysis Questionnaire, states that an associate degree in office administration or related field is required, as is a proven ability in team building and conflict resolution. The questionnaire also stated that skills in office administration were required because the incumbent would be acting as a team leader and specifically identified skill as a team leader for program assistants as both an experience requirement and as a supervisory factor. The job description also required proven ability in team building. Accordingly, team building not was only mentioned during the reclassification process -- it was the central focus of the discussions.

The County has some concerns regarding the extensions of time given to the Union to submit a brief in this matter, because the Union has sought a remedy that includes back pay and retroactive benefits. The County believes it is unfair to demand a remedy that includes compensation for delays caused by the Union's own conduct in seeking repeated extensions.

DISCUSSION:

This is not the usual case where an employer has picked a junior employee over a senior employee for a position, or even where an employer has picked an outside applicant over an inside applicant. In this case, the Employer has not picked anyone yet -- it simply found no one qualified from the pool of applicants so far.

The Employer has asked for some rather unique qualifications, and as Professor Hagglund suspected, those qualifications were not found among the internal applicants posting for the job. The Employer may not even find those qualifications among external applicants, but it has not advertised the job to the outside world yet. The Employer needs to be careful to apply the same standards and demand the same qualifications for outside applicants as it demanded of the bargaining unit members. If the Employer finds that it cannot find anyone to meet its demands, it can, of course, restructure the position or qualifications, but it must re-consider the bargaining unit members who wish to apply and it may even need to re-post the position if it changes the qualifications for the job.

However, nothing the Employer has done so far violates the collective bargaining agreement. The Union believes that the bargaining unit members who applied were qualified for the position, but the record fails to substantiate that. The posting clearly called for the following

qualifications:

An Associate Degree in Office Administration or related field is required, as is proven ability in team building and conflict resolution. One to three years of experience in an administrative position with increasing levels of responsibility in financial reporting, work flow analysis and scheduling is also required. The ability to work independently, and assess and assign priorities to projects is required, as are effective oral and written communication skills. The ability to maintain composure, confidentiality, and exercise good judgment is also required.

Zich did not meet the qualifications. She has an Associate Degree, but not in Office Administration or a related field, and her other course work does not meet the educational requirements. She did not show that she had proven ability in team building and conflict resolution. Although she assigned work to others at her prior job with Schaus and Son, this cannot be considered the same as team building and conflict resolution. While the Union has contended that applicants were not informed of the specific qualification of the posted position, Zich stated that she was aware of the qualifications from the posting and the job interview. The posting included the job description, which listed the qualifications noted above.

Marcelle also understood that being a team leader was an important part of the job, and she admitted that she had weak criteria for the position. She had worked on a team and had taken some courses, but none of her credentials matched the qualifications sought in the position description. Neither Marcelle nor Heier had a degree or course work that would qualify them for the position. Like Marcelle, Heier had worked on a team. She was a team leader when she worked in housekeeping at the nursing home and she scheduled employees and assisted in areas where they were short. However, she never discussed her team leadership abilities during the interview for the position. The Employer is entitled to make a reasonable decision based on the information it had at hand, not what was given later at the arbitration hearing.

The Union also objects to the fact that the Employer did not check the credentials listed in personnel files, that the Employer did not contact prior employers or determine whether the educational credits employees had were relevant. It is not necessary for the Employer to check the credentials -- the Employer may accept the information given by the employee as true. It was up to the employees to point out how their prior employment or education may fit into the position, and the applicants were not able to do so. It would be rather strange for the Employer, having found them not qualified by their resumes and job interviews, to search further to see if there was anything that would qualify them.

What the Union really objects to is the fact that when the Employer was establishing a pay rate for the job, it downgraded the job and placed it below the rates found by the Union representatives on the joint reclassification committee. There was nothing inconsistent in what the management portion of that committee was saying, however. Management was telling the Union representatives that the position was not going to be an office manager, and 20 percent of the new

position was being the team leader. This is in line with the job description and the job interview. While 20 percent is not the majority of the time, it was the factor that made the difference between being a Program Coordinator and a program assistant. It was the very reason for the creation of the job in the first place.

The Employer has a position that is somewhere between a supervisory position and a non-supervisory position. It is similar to lead worker positions in other settings, people who have some responsibility for the work of those under them but are not true supervisors. In this case, the Employer has asked for some rather special skills in proven team building to go along with the position. It may or may not find them, even when it goes shopping on the outside. But it has a reasonable basis for creating this position and putting certain qualifications on it, and it is entitled to at least look for those qualifications at this time.

There is not contract violation and the grievance is denied.

AWARD

The grievance is denied.

Dated at Elkhorn, Wisconsin this 29th day of April, 1997.

By Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator