

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

VERNON COUNTY COURTHOUSE AND
HUMAN SERVICES EMPLOYEES, LOCAL 2918,
AFSCME, AFL-CIO

and

VERNON COUNTY
(HUMAN SERVICES DEPARTMENT)

Case 100
No. 54683
MA-9758

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Vernon County Courthouse and Human Services Employees, Local 2918, AFSCME, AFL-CIO.

Klos, Flynn & Papenfuss, Chartered, Attorneys at Law, by Mr. Jerome Klos, on behalf of Vernon County.

ARBITRATION AWARD

Vernon County Courthouse and Human Services Employees, Local 2918, 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 Vernon County, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. 1/ 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 February 6, 1997 in Viroqua, Wisconsin. There was no stenographic transcript made of the hearing and the Union submitted a post-hearing brief in the matter by March 3, 1997. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there are no procedural issues and were also able to stipulate to the first substantive issue:

- 1) Did the County violate the Collective Bargaining Agreement

1/ The parties agreed to waive the contractual time limit on issuing an Award in this matter.

by denying the Grievant, Betty Stalsberg, the position of Mental Health Case Manager? If so, what is the appropriate remedy?

The Union, over the County's objection, would also submit the following issue:

If the answer to Issue 1) is no, then should the position in question be compensated at a Social Worker rate, with a make whole remedy?

CONTRACT PROVISIONS

The parties' 1996-1997 Agreement contains the following relevant provisions:

ARTICLE III ADMINISTRATION

2.01 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 employees for just cause; the right to decide the work to be done and allocation of work; to determine the services to be rendered, the materials and equipment to be used, the size of the work force, and the allocation and assignment of work and workers' to schedule when work shall be performed; 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; and to adopt and enforce reasonable rules and regulations.

. . .

ARTICLE VIII JOB POSTING

8.01 When a vacancy is declared by the COUNTY for any position covered by this Agreement, notice of said vacancy shall be posted on the main bulletin board situated on the first floor of the Courthouse for seven (7) working days. The notice shall include the rate of pay and the title of the position.

8.02 The job requirements, qualifications and rate of pay shall be part of the posting and interested applicants may apply in writing for said position to the Department Head stating therein their qualifications for the position.

8.03 To apply for a vacancy, the employee must have the basic qualifications for the job which shall be determined by the County Personnel Committee through appropriate testing and examining procedures, or have a State Certification where required, for the higher position.

8.04 In filling a vacancy, the employee applying with the greatest seniority in the department, providing they have the skills, abilities and efficiencies to perform the necessary job duties will be given first consideration. In addition, employees who are not working due to disability, vacation or leave not exceeding six (6) months, shall be notified of said vacancy in writing to the address on record of the County Clerk. If the absent employee(s) do not respond within five (5) working days of said notice, it shall be deemed they have no interest in applying.

8.05 Employees filling promotional vacancies shall be on a trial period for ninety (90) calendar days. An employee who fails to have the ability to handle a classification obtained through job posting during his/her trial period, or who chooses to return to his or her former position during the trial period, shall be returned to his former classification and pay as if there had been no interruption.

...

BACKGROUND

The County maintains and operates the County Human Services Department. The Union is the exclusive bargaining representative of the professional and non-professional employees in the Vernon County Courthouse and Human Services Department. The Grievant, Betty Stalsberg, is employed by the County as an Economic Support Specialist in the Human Services Department and has been so employed for approximately five years.

On June 25, 1996, the County posted the position of Mental Health Case Manager in the Human Services Department, with said posting stating, in relevant part:

JOB POSTING

UNION: **Vernon County Courthouse & Human Services
AFSCME Council 40, Local 2918**

DATE OF POSTING: **June 25, 1996**

DEPARTMENT: **Human Services**

POSITION: **Mental Health Case Manager**

RATE OF PAY: **10.25 PER HOUR (Start)**

EDUCATION AND TRAINING REQUIREMENTS

Graduation from an accredited college or university with a major in a human service discipline, such as Social Work, Sociology, Psychology or any other suitable related college degree; Associate degree acceptable; Bachelor's degree preferred; minimum of 2 years experience in the Human/Social Services field working with individuals who have a mental health diagnosis; or any acceptable combination of experience and training. Current Social Work certification meeting the requirements specified under Wis. Statutes. Must have valid Wisconsin driver's license and reliable transportation with adequate auto insurance to meet minimum County requirements, or access to reliable transportation for City and rural travel.

POSITION SUMMARY

This is a professional position in the Vernon County Human Services Department providing a variety of case management and other direct services in programs for persons with diagnosis of mental illness. Employees in this class work under the general supervision of the Long Term Support Supervisor. Employee exercises independent judgment within established guidelines. **JOB DESCRIPTION ATTACHED**

PER ARTICLE VIII, SECTION 8.02 OF THE LABOR CONTRACT: INTERESTED (UNION) APPLICANTS MAY APPLY IN WRITING FOR SAID POSITION TO THE DEPARTMENT HEAD STATING THEIR QUALIFICATIONS FOR THE POSITION.

**UNION MEMBERS ONLY MAY APPLY BY 2:30 P.M. ON
JULY 5, 1995**

If there are no qualified Union applicants, position will be advertised.

Attached to the posting was the position description, which contained the same "Educational Training Requirements" and "Position Summary", and also provided, in relevant part:

MENTAL HEALTH CASE MANAGER

. . .

ESSENTIAL DUTIES/RESPONSIBILITIES

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive

- * Coordinates services for clients with mental illness who are living in a variety of community settings.
- * Arranges for placement services within community based resources such as Adult Family Homes and Group Homes.
- * Provides and/or arranges for transportation for the needed court appearances with the Chapter 51 emergency detention and court commitment reviews.
- * Maintains liaison with other community agencies and coordinates services to provide continuity of care for consumers.
- * Assesses consumer's needs for community services utilizing staff and other resources.
- * Arranges for available financial services and provides protective payee services for consumers.
- * Gathers social history and other pertinent information as necessary for the assessment of clients referred for service to determine eligibility.
- * Provide support services to family members of the consumer.
- * Serves appropriate papers and explains process and rights to individual being committed.
- * Provides support services for law enforcement, court, doctors, and in-patient staff.
- * Secures court dates and makes changes when directed.

- * Maintains an individual file for each consumer which includes all required documents and documentation for each respective consumer; updates and documents files on an ongoing basis.
- * Complete all necessary court reports, follow-up correspondence, and prepares necessary reports to the department or state.
- * Assesses current mental status of consumer during contacts, documenting any changes.
- * Evaluate the need for emergency services in cooperation with law enforcement and the contracted agencies.
- * Advocates and promotes better understanding and community service for the chronically mentally ill.
- * Prepares and enters invoices for payment of services.

. . .

On July 3, 1996, the Grievant submitted an application for the Mental Health Case Manager position along with her resume and transcript of her grades from Western Wisconsin Technical College where she had obtained a Paralegal Associate's degree in 1991. By a telephone call and a letter of August 7, 1996, the County's Personnel Coordinator, Beth Hemmersbach, advised the Grievant that her application for the Mental Health Case Manager position had been denied because she did not possess "current Social Work certification" as required by the job description and posting.

The Mental Health Case Manager position did not originate in the Human Services Department, but was transferred to the Department when Unified Services was merged with the Department. At that time the person holding the position was James Lee, who possessed a four-year degree in Psychology. Social Work certification did not exist at the time Lee's position was accreted into the bargaining unit. When Lee vacated the position, it was filled by Theresa Pendleton, who was not a Social Worker and did not possess Social Work certification. The Mental Health Case Manager's duties include completing medical assistance (MA) billing forms and because Pendleton did not have certification, she could not sign the MA billing forms, though it appears she might have completed the forms for a supervisor to review and sign.

The June 25, 1996 posting for the Mental Health Case Manager position was the first time that the degree and the Social Work certification requirements were added to the position's required qualifications. The Grievant was the only applicant for the position from the bargaining unit and, as she did not possess Social Work certification and was not eligible for such certification, she was denied the position. The County subsequently filled the position from the outside, the successful applicant being Sharon Maybee, who does possess Social Work certification.

On August 21, 1996, the Grievant filed the instant grievance regarding her being denied the Mental Health Case Manager position. During the processing of the grievance, at Step 3 before the County Personnel Committee, the Union orally amended the grievance to allege that the County had violated the parties' Agreement by improperly requiring the Social Work certification for the position, or in the alternative, that it was a violation of the Agreement not to automatically reclassify the position to a Social Worker classification, if Social Work certification was required for the position. The grievance was denied and the parties proceeded to arbitration of their dispute before the undersigned.

POSITIONS OF THE PARTIES

Union

The Union first asserts that Section 8.03 of the Agreement provides, in relevant part:

"The employee must have the basic qualifications for the job which shall be determined by the County Personnel Committee through appropriate testing and examining procedures."

(Emphasis supplied).

The County has bargained a specific method of determining qualifications and did not follow those procedures, since no test or examining procedure took place and the Grievant was not even granted an interview for the position. The Union also asserts that since the Grievant was the only bargaining unit applicant for the position, and thus the senior applicant, the burden shifts to the County to prove that the Grievant did not meet the "minimum qualifications" of the job. The Union argues that the Grievant holds a two-year Associate degree as a paralegal, has in excess of the two years experience required due to her current position as Economic Support Specialist, and that, except for the "Social Work certification", she has met the requirements of the job. According to the Union, the question then becomes whether the requirement of the Social Work certification is a "minimum qualification" for the job.

The Union notes that the issue of Social Work certification relates to the duty of the person in the Mental Health Case Manager position to complete MA billing forms. The former incumbent in the position, Pendleton, was not a certified Social Worker, yet she was certified to perform the MA billing. The first person to hold the position, Lee, had a four-year degree in Psychology, not Social Work, and did not obtain Social Work certification until recently. In that regard, the Union notes that Lee held the position prior to 1992 and that the Social Work certification statute was not enacted until April of 1992. While a person with Social Work certification is automatically certified for MA billing, that certification is not required in order to be "certified" to do the billing. The Grievant testified that there were "grandfathering" and/or

"waiver" procedures allowed for MA billing and the County could have obtained certification for the Grievant through those procedures. The Personnel Coordinator also admitted that the requirement was a County requirement, rather than a State requirement. Further, the record establishes that the MA billing is a very small part of the position's duties. Thus, the qualifications required by the County are not the "minimum qualifications" needed for the position.

The Union also disputes the County's assertion that the wage level for the Mental Health Case Manager position was established at its current level because Lee held a college degree. The Union's witness testified that the position was originally not in the bargaining unit, and that when it was so placed, the County then proposed to reduce the position's wage rate, while the Union proposed to place it at the contract rate closest to its then-existing rate. The parties proceeded to interest-arbitration on that dispute, with the Union prevailing. The Union disputes Hemmersbach's testimony that the position's supervisor, Klousia, and the Human Services Director, Nederlo, told her that the Grievant was not qualified for the position and also objects to the County's reliance on hearsay testimony. The Grievant testified that Nederlo had told her that she would be qualified for the job when she inquired about it. The Union concludes that but for the unnecessary Social Work certification requirement, the Grievant is qualified for the position.

With regard to the Union's second issue, the Union asserts that if it is found that the Social Work certification requirement is acceptable, then the position should have been posted as a Social Worker position and paid as such. It asserts that Wisconsin Act 160, which provides for the Social Work certification, states: "'Social Worker' means an individual who practices social work. . ." Subsection 48.981(2) of that Act requires that a social worker be certified. Since the County requires that the person holding the position possess Social Work certification, it is by definition requiring a social worker, and by definition, one who practices social work. The Union concludes that if the position cannot be filled by a person who is not a certified social worker, then it must be filled by a Social Worker, who must be paid as such.

The Union notes that the County did not stipulate to the second issue, and asserts that it has the right to amend a grievance at any time prior to its submission to arbitration, as it did in this case. The County was well aware of the Union's positions on the grievance prior to the arbitration. Finally, with regard to the Arbitrator's jurisdiction to find that the position is really a Social Worker position, the Union asserts that it is not asking the Arbitrator to modify or amend the Agreement, as the Social Worker position and wage rate are already contained in the Agreement.

County

The County argues that the Grievant did not possess the qualifications required for the position as it was created, and accordingly, she was not hired for the position. It asserts that was the only issue until the Union appeared before the Personnel Committee and shifted its position, claiming that the County did not have the right to change the classification of the position. The

County asserts that Section 2.01 of the Agreement gives it the right to determine classifications and qualifications, and since the position was vacant at the time, it decided that was the time to make the changes. Management in the Department advised the County that the person who does the job has to have the Social Work certification to be able to perform all of the position's duties. While there were people in the position previously who did not have the education now being required, that had been accomplished by having the employees' supervisor do the work. What the County has done is made the requirements consistent with the State's requirements.

The County also asserts that it had to pay the higher salary to the employe originally in the position, Lee, because he had a four-year degree in Psychology. With that degree, Lee would now have been certified under the current certification statutes.

The County concludes that it exercised its management rights to make the requirements of the position consistent with the position's work requirements.

With regard to the Union's second issue, the County asserts that the position is not in the same classification as Social Workers, who perform social work all of the time. Holding Social Work certification does not make an employe a Social Worker, as the individual is not doing social work. The grievance must be denied because the Grievant did not meet the minimum qualifications for the position.

DISCUSSION

It is initially noted that the reason that was given by the County for denying the Grievant's application for the Mental Health Case Manager position is that she does not possess "Social Work certification".

The Union first challenges the County's procedures in deciding that the Grievant did not qualify for the position, on the basis that the Grievant was not tested, examined or even interviewed for the position, as required by Sec. 8.03 of the Agreement. The Union's recitation of that provision is incomplete. Section 8.03 goes on to provide that to apply, the employe "must have the basic qualifications for the job. . . , or have a State Certification where required, for the higher position." The Grievant admittedly does not possess "Social Work certification" as required by the County. The question to be decided is whether the County had the right to require that certification for the position.

Article II, Administration, Sec. 2.01, of the Agreement, gives the County the right "to establish qualifications for the various job classifications. . ." Those qualifications must, however, reasonably relate to the functions and responsibilities of the job. The County cites the pay level of the position and the job duty of completing MA billing forms as its bases for requiring the certification.

Regarding the position's pay level, a review of Appendix A and Appendix B of the Agreement establishes that the Mental Health Case Manager position is in wage classification "J", above the clerical and traditionally non-professional classifications and just below the Social Worker I classification of "K". The Union noted that the position is classified at that level as a result of its prevailing in interest arbitration over the County's attempt to lower the position's rate when it was first accreted into this bargaining unit. The Union's witness, Moran, conceded, however, that the Union justified placing the position's rate at that level, at least in part, based upon the then-incumbent's (Lee) possessing a four-year degree in Psychology.

The Union notes that the person following Lee in the position and holding it until the time in question, Pendleton, possessed neither a degree, nor Social Work certification. It appears, however, that Pendleton either did not fill out the MA billing forms, or that if she did, they had to be reviewed and signed by her supervisor, Klousia, 2/ the Long Term Support Supervisor, since Pendleton was not "certified". At any rate, it appears that the problem as to the MA billing when the person in the position lacks "certification" first arose when Pendleton held the position. It is not clear that "Social Work certification" is required by State or Federal regulations in order to complete and sign the MA billing forms, rather, it appears instead that "case management certification" is sufficient to meet the requirement for doing MA billing forms. A person possessing "Social Work certification" would, however, automatically meet the "case management certification" requirement and could do the billing immediately.

The Union asserts there are "grandfathering" or "waiver" procedures the County could follow to permit the Grievant to do MA billing based on her years of experience working as an Economic Support Specialist. The Union refers in that regard to the "case management certification" form which states, in relevant part:

Assessment and Case Plan Certification

1. ___ Degree in human service related field and one years experience

OR

___ Two years experience working with targeted population for which person was employed

OR

2/ The Grievant testified both ways on this point, but did not indicate the basis of her knowledge in this regard.

___ An equivalent combination of training or experience.

AND

___ For persons working with CMI persons, meets certification standards for community support programs encoded in administrative rule.

___ For persons working with DD or chemically dependent persons, meets relevant standards under HSS-61.

Does this employee meet standards for assessment and case plan certification?

___ Yes ___ No

Signature of Supervisor _____

Date _____

While the Grievant testified that she works with some of the same clients in her Economic Support Specialist position that she would work with in the Mental Health Case Manager position (mentally ill), it is not clear that her experience in her present position would meet the experience alternative of working two years "with targeted population". The minutes of the September 11th meeting with the Personnel Committee indicate that Nederlo stated that one needed two years of "case management experience" to do the billing and that when the Grievant asked if her experience would qualify her, Nederlo responded that she was not sure. 3/

Finally, it is evident that the County was serious about the Social Work certification requirement, as it ultimately hired an applicant with that qualification for the Mental Health Case Manager position.

The net result of a review of the evidence is the conclusion that, while it is not a major function of the job, completing the MA billing forms is a required duty of the Mental Health Care Manager position and possessing "Social Work certification" automatically qualifies an individual to fill out and sign such forms without the County having to seek a waiver. Section 2.01 of the

3/ The Arbitrator would note that while the Union attacked as hearsay Hemmersbach's testimony that Nederlo and Klousia told her the Grievant was not qualified because she lacked certification, it too then relied upon hearsay, citing the Grievant's testimony that Nederlo told her she was qualified for the position.

Agreement reserves to management the right to establish qualifications, and the undersigned concludes that it is reasonable to expect that the person in the job can perform all of its duties and that requiring the Social Work certification is reasonably related to the position's duties and responsibilities. Therefore, it is concluded that the County did not violate the parties' Agreement by denying Grievant the Mental Health Case Worker position.

As to the second issue the Union raises - if the Social Work certification requirement is found to be valid, must the position then be compensated at a "Social Worker" rate, the Arbitrator does not have jurisdiction in this case to establish a new wage rate for the position. Contrary to the Union's assertion, to obtain a "social worker certificate" under Sec. 457.08, Wis. Stats., permits one to use the title "social worker", it does not require the conclusion that the holder of such a certificate is working as a "social worker". Wage classification levels have a number of bases, including required qualifications and the duties of the various classifications. It cannot be said that the parties intended the Social Worker wage classification in their Agreement to apply to any employe who possesses the educational degree and/or the certification that would enable them to be a "social worker", regardless of the duties they actually perform for the County. The matter of the appropriate wage level for the position, given the added requirement of social worker certification, is a subject for the parties to address in negotiations, and is not properly before this Arbitrator.

Based on the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 30th day of July, 1996.

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