

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**AFSCME LOCAL 2228**

and

**WINNEBAGO COUNTY**

Case 286  
No. 55215  
MA-9931

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Appearances:

**Mr. Richard C. Badger**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

**Mr. John A. Bodnar**, Corporation Counsel, Winnebago County, appearing on behalf of the County.

**ARBITRATION AWARD**

AFSCME Local 2228, herein the Union, requested the Wisconsin Employment Relations Commission to designate the undersigned as an arbitrator to hear and to decide a dispute between the parties. Winnebago County, herein the County, concurred with said request and the undersigned was designated as the arbitrator. Hearing was held in Oshkosh, Wisconsin, on September 16, 1997. A stenographic transcript of the hearing was not made. The parties completed the filing of post-hearing briefs on November 3, 1997.

**ISSUES**

The parties stipulated to the following issues:

Did the County violate the collective bargaining agreement by not offering the position of Home Consultant to Beth Lehl? If so, what is the appropriate remedy?

## **BACKGROUND**

The position of home consultant has existed for a number of years. The home consultants work out of the Department of Social Services offices in Oshkosh and Neenah. The position had been a paraprofessional position until the County revised the qualifications in 1992 to require either a bachelor's or master's degree in a human services field.

In December of 1996, a home consultant in the Oshkosh office, Johna Lovat, resigned. Lovat was a certified social worker. On December 23, 1996, the County posted a position of home consultant: children/family team-Oshkosh. The posting stated the following:

This vacancy is created due to the resignation of Johna Lovat. This position was formerly a Social Worker position but has been redesigned and approved by the County Board as a Home Consultant. This position is available immediately.

Among the qualifications listed in the posted position description were the following:

1. Possesses good knowledge of household management, child development, parenting skills, financial counseling, problem solving, and understanding of human behavior.
2. Possess higher education training in the areas of child development, home economics, and financial or bookkeeping practices.

Beth Lehl was the only employe to apply for the posted position. Lehl has worked for the County as an energy assistance program clerk, which position requires a high school education, for approximately eight years. The two positions, i.e., energy assistance program clerk and home consultant, have the same wage rate. Lehl has a high school diploma, has taken a non-credit parenting class at Fox Valley Technical College, and has taken classes from a private firm on managing one's personal finances. Lehl has raised five children, some of that time as a single parent. Lehl has not taken any post-high school classes for credit. The County interviewed Lehl for the posted position and concluded that she did not meet the general qualifications for the position.

The County hired an outside applicant, Jean Dudgeon, for the posted position. Dudgeon had a bachelor's degree in vocational home economics, had taught at the elementary and high school levels, and had worked as a case worker for the Wayne County, Indiana, Division of Family and Children.

### **POSITIONS OF THE PARTIES**

The Union argues that the County cannot hire an applicant from outside the bargaining unit if an employee from within the bargaining unit applies and meets the minimum qualifications for the position, even if the outside applicant has superior qualifications. Based on Lehl's background and tenure with the County, she met the minimum qualifications and she should have been awarded the position. The position description no longer requires a college degree, as did the prior position description. A college degree is not necessary to successfully perform the job, as evidenced by Connie Christianson, who has successfully performed the duties of the home consultant even though she does not have any formal education beyond her high school degree.

The County argues that the contract allows the County to determine the qualifications of the applicants. The Union failed to prove that the qualifications were either established or applied in a manner which was arbitrary, discriminatory, capricious or in bad faith. Lehl did not meet the requirement for higher education training. Thus, the County did not violate the contract by concluding that Lehl was unqualified for the position. Moreover, Dudgeon was better qualified than Lehl and the County has the right under the contract to select the better qualified applicant.

### **RELEVANT CONTRACTUAL PROVISIONS**

#### **ARTICLE 11** **JOB POSTING**

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The job requirements, qualifications and salary range shall be a part of the posting. Regular employees who have passed their probationary period and who desire to apply for such vacant position are to make application in writing through the Department.

The Employer shall determine the qualifications of the applicants. If, in the opinion of the Employer, two (2) or more applicants for a single vacancy are in all respects equally qualified to fill such vacancy, it shall be filled by the employee among such equally qualified applicants having the longest continuous service within the Social Services Department. If, in the opinion of the Employer, one (1) of such applicants is better qualified to fill such vacancy than any other applicant, it may be filled by such better qualified applicant. The Employer agrees that if a selection is to be made from such posting that it will be made within thirty (30) working days after the close of the aforementioned posting. This period of time

may be extended by mutual agreement of the parties. Should such employee not qualify within a ninety (90) day trial period for a professional position or for the position of Financial Assistance Case Manager or Lead Worker or within a sixty (60) day period for any other position, or should the employee desire to return to his former position at any time within the trial period, the employee shall be reassigned to his former position without loss of seniority. The designated trial period may be extended on a case by case basis by mutual agreement of the parties.

### **DISCUSSION**

Lehl was interviewed by representatives of the County. During the interview Lehl did advise the interviewers of the elements of her background and experience which she believed made her qualified for the position. Although Lehl had raised five children and had extensive experience in working with a variety of clients, it was clear to the interviewers that Lehl did not have any formal education beyond a high school diploma. The testimony of the County's witnesses leaves no doubt that they thought Lehl failed to meet the education requirement of the position of home consultant. The job posting specified that one of the general qualifications for the position was the possession of higher education training in certain stated areas. While such a statement does not mandate the possession of a college degree, as had been the requirement in the 1992 posting, the statement sets forth the County's belief that the position required at least some post-secondary education, if not an actual degree.

One of the witnesses at the hearing, Connie Christianson, has performed very competently as a home consultant for over nine years, even though she does not have any education beyond a high school degree. However, such an example does not render the current requirement for some post-high school education to be unreasonable. In fact, the County presented a rational basis for the stated requirement of some post-high school education by relating the desired education to the duties of the position. The County's belief that some post secondary education will increase the chances that an individual will perform the duties successfully, is reasonable. The record does not support a finding that the education requirement was of an arbitrary or capricious nature. Neither was there any evidence to show that the County failed to apply the education requirement during the hiring process for the vacancy at issue herein. The County reasonably concluded that Lehl's background and experience failed to meet the stated qualification for higher educational training. Thus, since the qualification was reasonable and Lehl failed to meet the qualification, the County did not violate the contract in failing to award the posting to Lehl. Because Lehl was not qualified for the position of home consultant, it is not necessary for the undersigned to reach the question of whether the County has the right to select a more qualified applicant from outside the unit over a qualified applicant from within the unit.

Based on the foregoing, the undersigned enters the following

**AWARD**

That the County did not violate the collective bargaining agreement by failing to offer the position of home consultant to the grievant, Beth Lehl; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 22nd day of January, 1998.

Douglas V. Knudson /s/

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Douglas V. Knudson, Arbitrator