BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

DOUGLAS COUNTY PROFESSIONAL HUMAN SERVICES EMPLOYEES UNION, LOCAL 2375, AFSCME, AFL-CIO

and

DOUGLAS COUNTY

Case 230
No. 55366
MA-9996

(Grievance of Mark Rooney)

Appearances:

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

Mr. Stephen Weld, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, appearing on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the County or Employer, respectively, were signatories to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. A hearing was held on February 10, 1998 in Superior, Wisconsin. The hearing was not transcribed. At the hearing, the parties decided to bifurcate an arbitrability issue from the merits of the grievance. On June 5, 1998, the undersigned issued an arbitration award finding the grievance arbitrable. On July 22, 1998, the parties filed briefs on the merits of the grievance. The record was closed on August 10, 1998 when the undersigned was notified that the parties would not be filing reply briefs. Having considered the record evidence and the arguments of the parties, the undersigned renders the following Award on the merits of the grievance.

ISSUE

The parties were unable to stipulate to the issue to be decided in this case. The Union framed the issue as follows:

> Did the Employer violate the terms of the collective bargaining agreement by denying the grievant reclassification from a Social Worker III to a Social Worker V position?
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> If so, the appropriate remedy is for the Employer to reclassify the grievant to a Social Worker V position and to make the grievant whole for any and all lost wages and benefits due to this denial from May 23, 1997.

The County framed the issue as follows:

> Did Douglas County violate Article 21, Section 4 of the collective bargaining agreement when it denied the grievant's request to be reclassified from a Social Worker III to a Social Worker V? If so, what is the appropriate remedy?

Having reviewed the record and arguments in this case, the undersigned finds the County's proposed issue appropriate for purposes of deciding this dispute. Consequently, the County's proposed issue will be decided herein.

PERTINENT CONTRACT PROVISIONS

The parties' 1996-97 collective bargaining agreement contained the following pertinent provisions:

ARTICLE 2.

MANAGEMENT RIGHTS

> The county board possesses the sole right to operate the county and all management rights repose in it unless otherwise limited in the collective bargaining agreement or applicable Federal or State laws.
>
> A. To direct all operations of the Department;
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> B. To hire, promote, schedule and assign employees in positions within the Department;

. . .

E. To maintain efficiency of County operations;

. . .

I. To determine the methods, means and personnel by which Departmental operations are to be conducted;

. . .

ARTICLE 21.

RECLASSIFICATION

Section 1. The County agrees to institute the current State standards for reclassification.

Section 2. Social Worker I's who have completed the necessary requirements shall be eligible for reclassification to Social Worker II.

Section 3. Social Worker 2's who have completed the necessary requirements shall be eligible for reclassification.

Section 4. All requests for reclassification shall be in writing to the Director.

Section 5. Within ten (10) days of the request for reclassification the Director of Human Services shall either reject or recommend reclassification in writing with such decision being subject to Article 6. (NOTE: Article 6 is the grievance procedure)

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Appendix A

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1997 SALARY SCHEDULE

Effective 1/01/97	Step 1 Start	Step 2 6 mos. to 12 mos.	Step 3 12 mos. To 18 mos.	Step 4 18 mos. to 24 mos.	Step 5 24 mos. to 30 mos.	Step 6 After 30 mos.
S. Worker I	12.84	13.14	13.71	14.07	14.55	14.93
S. Worker II	13.44	13.88	14.39	14.87	15.36	15.74
S. Worker III	13.98	14.57	15.17	15.66	16.19	16.58
S. Worker IV	13.98	14.57	15.17	15.66	16.19	16.58
S. Worker V	14.87	15.35	16.00	16.51	16.93	17.31

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BACKGROUND

As part of its governmental functions, the County operates a Department of Human Services. The Union is the excusive bargaining representative for the professional employes in that department. This unit includes social workers. The County and the Union have been parties to a series of collective bargaining agreements, the most recent being the 1996-1997 agreement. That agreement lists five categories of social workers on the salary schedule: Social Worker I, II, III, IV and V.

While the salary schedule lists the classifications of Social Worker IV and V and contains a salary for them, there are currently no social workers in the department classified as Social Worker IV's or V's and there have not been any in 25 years. Insofar as the record shows, there have never been any Social Worker IV's or V's in the department.

The contractual reference to Social Worker IV and V has historical roots. Years ago, the State of Wisconsin played an oversight role in personnel administration in county welfare departments. Possibly as a result, the County and the Union decided to list the social worker classifications on the contractual salary schedule which were then used by the State (namely, Social Worker I, II, III, IV and V). It is unclear from the record whether the State ever mandated that counties create and maintain Social Worker IV or V classifications. It is clear though that the State does not currently mandate that counties maintain Social Worker IV or V classifications. The State has not established criteria for Social Worker IV and V classifications.

The record indicates that over the years, the County has tried in negotiations to eliminate the reference on the salary schedule to Social Worker IV and V, but the Union has not agreed to delete same. As a result, the parties' labor contracts have continued to list Social Worker IV and V on the salary schedule although the County never created or filled any such positions. The record further indicates that the parties have tried in negotiations to bargain the criteria for the classifications of Social Worker IV and V, but have not reached agreement on same. The parties have bargained the criteria though for the classifications of Social Worker II and III.

Five of the department's social workers are known as coordinators. All of the coordinators but one are excluded from the bargaining unit. The one coordinator who is included in the bargaining unit is the Foster Care Coordinator. Department Director Steve Koszarek views the coordinators who are excluded from the bargaining unit as the equivalent of Social Worker IV's.

FACTS

Grievant Mark Rooney has been a social worker with the department since 1979. He is a Social Worker III and his current job assignment is Foster Care Coordinator. He has a Master's degree in Education, is a Certified Independent Clinical Social Worker, and has received 120 hours of training related to his employment.

In May, 1997, Rooney requested in writing that he be reclassified from a Social Worker III to a Social Worker V. The County denied the reclassification request and he grieved. The grievance was processed through the contractual grievance procedure and appealed to arbitration.

As of the date of the arbitration hearing, the parties were in the process of negotiating a successor labor agreement. One of the items being addressed in negotiations was the possible elimination of the contractual reference to Social Worker IV or V or, in the alternative, criteria for advancement to same.

POSITIONS OF THE PARTIES

The Union contends the County violated the labor agreement when it denied Rooney's request to be reclassified to Social Worker V. It makes the following arguments to support this contention. First, it reads Article 21 (the reclassification provision) as allowing unit employes to seek reclassification to any of the positions listed in the labor agreement. It notes in this regard that the salary schedule found in Appendix A specifies five classifications of social workers (namely I, II, III, IV and V), and lists a salary for each classification. The Union reasons that since the salary schedule lists a pay

rate for Social Worker V, this means that the position must exist even though it previously has not been created or filled by management. Second, the Union asserts that Rooney is qualified for advancement from Social Worker III to Social Worker V. In support thereof, it notes that Rooney has 19 years experience with the department, has a Master's degree, is certified by the State as an Independent Clinical Social Worker and has attended numerous professional inservices. According to the Union, the foregoing experience, education and training establish that Rooney is qualified for advancement to Social Worker V. The Union therefore argues that since the County failed to reclassify the grievant to a Social Worker V, it has violated the contract. In order to remedy this alleged contractual breach, the Union asks that the grievant be reclassified to a Social Worker V and made whole for lost wages retroactive to the filing of the grievance.

The County contends it did not violate the reclassification provision when it denied the grievant's request to be reclassified from a Social Worker III to a Social Worker V. It makes the following arguments to support this contention. To begin with, the County submits that the contract provision which the Union claims was violated (i.e. Article 21, Section 4) does nothing more than require that reclassification requests be put in writing. The County avers that just because the grievant put his reclassification request in writing does not mean he is entitled to the requested reclass. The County asserts that if the arbitrator finds that simply putting a requested reclass in writing results in the reclass being granted, then the day after the arbitrator issues his decision all social workers in the department will be requesting a reclass. Second, the County argues that nothing in the reclassification provision establishes an entitlement to a reclassification. It also submits that it has no contractual or statutory obligation to maintain Social Worker IV or V positions, or to fill a certain number of those positions. That being so, the County's view is that it is free to not fill Social Worker IV and V positions. Third, the County notes that Article 21, Section 5 gives the Departmental Director the discretion to reject reclassification requests. It argues that in this case, the County's decision to deny the grievant's reclassification request was not arbitrary or capricious because there was a business reason for doing so, namely the County's belief that there was no need to fill the Social Worker IV and V classifications. Finally, the County relies on the contractual management rights clause to support its position here. Based on the reasons set forth above, the County requests that the grievance be denied.

DISCUSSION

At issue in this contract interpretation case is whether the County violated the reclassification provision when it denied the grievant's request to be reclassified from a Social Worker III to a Social Worker V. Based on the rationale which follows, I answer that question in the negative.

My analysis begins with a review of the contract provision which the Union claims was violated, namely Article 21, Section 4. That section provides as follows: "All requests for reclassification shall be in writing to the Director." On its face, this simple declarative sentence does nothing more than provide that requests for reclassifications are to be submitted in writing. Putting a request in writing does not automatically result in the reclass being granted, though. Instead, this request simply starts the (reclass) process. In other words, it is the first hoop that an employe has to jump through to get a reclass. After the reclass request is put in writing, it is then considered by management. Section 5 establishes a timetable for management to consider the request (i.e. ten days) whereupon the Department Director has to "reject or recommend" the reclassification request. Section 5 gives the Department Director the discretion to grant or deny the reclassification request. The Director's decision is then subject to review via the grievance arbitration process.

A standard rule of contract interpretation is that the meaning of each sentence must be determined in relation to the article (or contract) as a whole. Application of this principle here means that Article 21, Section 4 cannot be interpreted in a vacuum. The language which surrounds it must also be considered for purposes of context. Accordingly, the rest of Article 21 will also be reviewed.

Before doing so though, it is noted at the outset that some labor contracts provide that employes who have served in a particular classification can be reclassified to a higher classification after certain prerequisites are satisfied. Examples of such prerequisites are a certain time period elapsing, or employes receiving certain training, degrees, certificates, etc. The instant contract contains this type of language in Article 21, Sections 2 and 3. The following shows this. Section 2 provides that Social Worker I's "who have completed the necessary requirements" are "eligible for reclassification" to Social Worker II. Section 3 provides that Social Worker II's "who have completed the necessary requirements" are likewise eligible for reclassification. For all intents and purposes, the two sections are identical in providing that employes who complete "the necessary requirements" are eligible for reclassification. Although neither section identifies what the "necessary requirements" are that need to be satisfied for reclassification to Social Worker II and III, the record indicates the parties know what the eligibility requirements are because they agreed on them. 1/ While the sections of Article 21 just noted establish that employes can be reclassified to Social Worker II and

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1/ Those eligibility requirements need not be identified here.

III status if they meet the eligibility requirements, Article 21 is silent about reclassification to Social Worker IV or V status. Since Article 21 does not say anything about reclassification to Social Worker IV or V status, this means that Social Worker III's do not have an automatic right to a reclass to Social Worker IV or V or an entitlement to same.

Having so found, the next question is whether management's decision to deny the grievant's requested reclass was arbitrary or capricious. I find it was not for the following reasons. First, this is not a situation where the County has other Social Worker IV's or V's and simply refuses to add one more to their ranks. Instead, the County has no other Social Worker IV's or V's at all. In fact, the record indicates that the County has not created or filled any Social Worker IV or V positions in the last 25 years. Second, the reason there are no Social Worker IV's or V's is because the County has decided it does not need to fill those classifications. That is the County's call to make. The reason it is the County's call is because the management rights clause (Article 2) preserves its managerial freedom to do so. Third, the record indicates that while there is established criteria for advancement to Social Worker II and III status, there is no established criteria for advancement to Social Worker IV and V status. If the County was solely responsible for creating that criteria, then the Union would have a legitimate beef with management for failing to create same. Here, though, that is not the case because the Employer is not solely responsible for creating that eligibility criteria; rather, the parties are jointly responsible. The record indicates that the parties have tried at the bargaining table to establish criteria for Social Worker IV and V status, but have been unable to do so. Under these circumstances, the Union is hard-pressed to claim that it is management's fault that no eligibility criteria exist for Social Worker IV or V when it (the Union) is partially responsible for that situation by failing to agree with management on the criteria. Given the absence of any agreed-upon criteria for reclassification to Social Worker IV or V, it follows that there was no criteria which management could apply to the grievant when he requested reclassification to Social Worker V. I therefore find that management's denial of the requested reclassification was reasonable. In fact, if the County had done the opposite and granted the requested reclassification, the Union could then have challenged that decision on the grounds that the Employer used criteria which it unilaterally created without the Union's input. In light of the foregoing, it is held that the County did not act arbitrarily or capriciously when it decided to deny the grievant's reclassification request.

What then is to be made of the fact that the salary schedule lists wage rates for the Social Worker IV and V classifications? Simply put, not much. Its significance is limited to this: if the County creates and fills a Social Worker IV or V position, Appendix A (the salary schedule) specifies how much the person will be paid. That is all that it does. Contrary to the Union's implicit suggestion, listing a wage rate for a Social

Worker IV or V does not obligate the Employer to create a Social Worker IV or V position, or to fill a certain number of them. In the absence of a contract provision limiting management's right to fill Social Worker IV and V positions (for example, a clear requirement to maintain a certain number of Social Worker IV's and V's) it is management's right to determine whether a vacancy exists in those classifications and when it is filled. Nowhere in this labor agreement is there any contractual provision which requires the County to fill any Social Worker IV or V positions or to maintain a certain number of positions in each classification. This means that the County alone determines how many Social Worker IV and V positions it chooses to fill, if any. Consequently, the County's decision herein to not create and fill a Social Worker V position with the grievant is not a contract violation.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That Douglas County did not violate Article 21, Section 4 of the collective bargaining agreement when it denied the grievant's request to be reclassified from a Social Worker III to a Social Worker V. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 2nd day of September, 1998.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
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