

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**WINNEBAGO COUNTY**

and

**WINNEBAGO COUNTY DEPARTMENT OF SOCIAL SERVICES  
EMPLOYES UNION, LOCAL 2228, AFSCME, AFL-CIO**

Case 318  
No. 58201  
MA-10815

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Appearances:

**Mr. Richard C. Badger**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 2825, Appleton, Wisconsin 54915, appeared on behalf of Social Services Employees Union Local 2228, AFSCME, AFL-CIO.

**Mr. John A. Bodnar**, Corporation Counsel, Winnebago County, 415 Jackson Street, P.O. Box 2808, Oshkosh, Wisconsin 54903-2808, appeared on behalf of Winnebago County.

**ARBITRATION AWARD**

The Winnebago County Department of Social Services Employees Union Local 2228, AFSCME, AFL-CIO (“the Union”) and Winnebago County (“the County”) are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Union made a request, in which the County concurred, for the Wisconsin Employment Relations Commission to appoint an arbitrator to hear and decide a grievance concerning the interpretation and application of the terms of the agreement relating to bumping after layoff. The Commission designated Stuart Levitan, a member of its staff, as the impartial arbitrator. Hearing in the matter was held on October 28, 1999 in Oshkosh, Wisconsin. It was not transcribed. The parties filed briefs on December 8, and replies on December 22, 1999.

**ISSUE:**

The parties stipulated to the following statement of the issue:

Did the employer violate the collective bargaining agreement by denying the grievant's request to bump into the position of Social Worker/Older Adults Unit, on the grounds that it determined she was not qualified? If so, what is the appropriate remedy?

**RELEVANT CONTRACTUAL LANGUAGE:**

**ARTICLE 1 – MANAGEMENT RIGHTS**

Through its management, the Employer retains the sole and exclusive right to manage its business, including but not limited to the right to direct its work force, to hire, assign, suspend, transfer, promote, discharge or discipline for just cause, to maintain discipline and efficiency of its employees, to determine the extent to which the Employer's operations shall be conducted, the size and composition of the work force, the number of offices and locations of such offices, equipment requirements and location of such equipment and the right to change methods, equipment, systems or processes, or to use new equipment, products, methods or facilities and to reduce the work force if, in the Employer's sole judgment, the new equipment, methods, systems or facilities require fewer personnel. In no event shall the exercise of the above rights and responsibilities of the Employer violate the terms and conditions of this Agreement.

**ARTICLE 7 – LAYOFF**

Whenever the Employer determines it is necessary to decrease the work force and to lay off employees, such layoff excluding the seasonal layoff of the Energy Assistance Program Clerks, shall be in inverse order of the employee's "seniority" within a classification (Social Worker and Social Work Specialist shall comprise a single classification) within a unit. That is to say, the employee with the least seniority within a classification within a unit shall be laid off first and the employee with the longest continuous seniority shall be laid off last subject to the following:

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2. Bumping. Professional employees may only bump professional employees and paraprofessional employees may only bump paraprofessional employees. An employee with permanent status whose services are terminated through layoff/job discontinuance in a given classification has the right to induce layoff considerations (bumping) in another classification at the same or lower level for which in the Employer's judgment, his training and experience have qualified him regardless of whether a vacancy exists.

8. Qualification Disputes. If there is a dispute as to the qualifications in 2 or 5 above, the matter shall be taken up through the grievance procedure as outlined in this Agreement.

### **BACKGROUND**

The grievant, Jean Van Groll Palma, is a veteran social worker for the Winnebago County Department of Social Services, assigned since March 1999 to the Access Unit, where she investigates cases of child abuse and neglect. Prior to her current assignment, Van Groll Palma worked for 12 years with the Family Services Team, where she always received good to excellent evaluations. A 1987 evaluation routinely scored her as a 4 or 5 on a five-point scale, and adds the supervisor's comment that "this is yet another fine evaluation of a very good social worker." Her 1996 performance evaluation lists her as being superior/exceeds expectations in 14 of 20 categories; the following evaluation, in 1998, count 13 of 19 areas at that level. Van Groll Palma does not have any significant education or professional experience addressing the specific issues affecting older adults, although she has helped care for elderly relatives.

Since 1984, Ronald Duerkop has been the Supervisor of the Winnebago County Department of Social Services (WCDSS) Older Adult Unit. There have been no vacancies in this unit since 1993. Prior to assuming his supervisory position, Duerkop had been a social worker in the bargaining unit and a Union trustee.

In the late summer and early fall of 1998, the County decided to discontinue the four-person Family Services Team in the Department of Social Services, effective January 1999, and transfer the duties to four newly created, non-represented positions within the Department of Community Programs. The County offered to hire all four in the new arrangement. Van Groll Palma's three colleagues accepted this transaction; Van Groll Palma, for reasons immaterial to this proceeding, declined the County's offer.

On November 16, 1998, Human Resources Specialist Cori R. Post wrote to the grievant as follows:

Dear Ms. Palma:

As a result of the transfer of four (4) Social Work Specialist positions from the Family Services Team in the Department of Social Services to Family Services Therapist positions in the Department of Community Programs, the positions will be discontinued within DSS effective Monday, January 4, 1999.

Since you were offered the similar position in the Department of Community Programs and declined, you will be able to exercise your rights through the provisions of the collective bargaining agreement between Winnebago County and the Winnebago County Social Services Employees' Union, Local 2228, AFSCME.

The abolition of your current position will be treated as a layoff. As such, you will be eligible, at your option, and based upon your meeting the necessary qualifications for the position, to apply to bump into another professional position. Per Article 7 (Layoff) of the collective bargaining agreement, "layoff shall be in inverse order of the employee's seniority within a classification (Social Worker and Social Work Specialist shall comprise a single classification) within a unit." Thus, you are able to bump the least senior Social Worker/Social Work Specialist in any of the various DSS unit/teams, provided that you have more seniority than the least senior employee in the unit. This does not mean that you get to choose the least senior by either Neenah or Oshkosh when a single unit is split between both locations. The least senior incumbents in each team/unit is the following:

<u>Unit</u>	<u>Least Senior Incumbent</u>
Children/Family-Neenah	Terri Schroeder (4/15/98)
Children/Family-Oshkosh	Matthew Xiong (8/17/98)
Access	Joaquin Lira (9/9/98)
Substitute Care	Kelli Fabisch (1/29/98)
Younger Adult	Helen Powell (1 1/25/96)
Older Adult	Judy Verhulst (4/26/90)
Family Services	Rebecca Long (8/6/90)

Copies of the job descriptions of these positions are available upon request. In order to exercise your bumping rights, please inform me by phone and in writing on or before noon on Monday, November 23, 1998, as to the position and unit into which you wish to bump.

Your layoff from your current position, as the result of the discontinuance, is considered to be permanent at this time as there is no plan to transfer these four (4) positions back from the Department of Community Programs to the Department of Social Services.

In the event that you feel that the discontinuance of your position or the resulting effects upon you were handled at variance with the terms of the collective bargaining agreement, you have the right to file a grievance under Article 10 of the contract.

Since it is expected that you may successfully bump into another position without an interruption of your continued service, your fringe benefits would not be affected by this layoff. In the event, however, that you would not exercise your bumping rights or would not be found qualified to bump into another position, you would be eligible to continue your participation in the group health insurance and group life insurance programs at your own expense, in accordance with the laws and/or provisions of the insurance programs, starting with the premium for the month following the month in which your layoff began. In the event that you actually commence a layoff, you will be provided additional information regarding premium payment procedures.

During any layoff period of up to one year, you will continue to accrue vacation credits. Sick leave credit accumulations will cease to accumulate during any layoff period in excess of 14 days. In the event that you were to be laid off for more than one (1) year or if you failed to respond to a recall from layoff, as explained in Article 6 of the collective bargaining agreement, you would lose your seniority rights.

In the event that you are laid off, you may or may not be eligible for Unemployment Insurance benefits. For further information, please contact the nearest Workforce Development Office.

If you have any questions or concerns regarding this notice, please contact me.

On November 18, 1998, Van Groll Palma replied to Post as follows:

I am writing in response to a letter I received on November 17, 1998. As I have already indicated, I am interested in bumping to the Older Adult Unit. I believe that you have quoted contract language regarding lay off rather than bumping, which does not restrict me to the least senior social worker in a unit. Many of

the people listed as least senior in each unit do not perform job duties representative of their unit. Past practice allows me to bump into a location and a case load of my choosing for which I am qualified.

I will agree to move into the position currently occupied by Judy Verhulst until we are able to resolve our different interpretations of the contract and past practice. I will negotiate with you through any avenue that is available to me. My preference is actually for the position occupied by Karla Stark and I would like to negotiate my bump into that position. In the meantime, I will state my desire to go to the Older Adult Unit.

Please send me a job description for a position in the Older Adult Unit, further procedure and a time frame for the changes in my work. Thank you for your time.

On November 24, 1998, Van Groll Palma wrote to Post, in part, as follows:

...

I am interested in finding a win-win solution. When my job was transferred and ultimately discontinued, I did a lot of soul searching to identify a position where I felt I could grow and develop as a social worker and provide a high quality of service to clients. Because of recent events in my life, I felt that would be best accomplished in the Older Adult Unit.

I contacted Ron Duerkop on October 22<sup>nd</sup> and discussed my potential transfer to his unit. At that time, Ron said that Judy Tower had bumped into the unit from child welfare and that had worked out well. He further said that he has quite a few workers in his unit who initially came from child welfare. He said that he knows me to be a strong worker, that he has no concerns about my ability to do the job and I would do fine in his unit.

Now I understand that my qualifications are being questioned. When you review my qualifications, I would like you to review all my qualifications – not just look for a class that I may or may not have taken. Please review my supervisor evaluations so that you can see my strengths in a large number of the areas listed on the job description for the Older Adult Unit. I certainly understand the principles of protective services, assessment, case planning, proper documentation, team work, community referral and organization, timely paperwork, etc, etc. I have never been out of compliance with my paperwork. I

have been complimented by two assistant corporation counsels on my

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contribution to court cases. I believe that I meet the majority of the qualifications and I believe that past practice has not required the successful candidate to excel at each of the 20 listed qualifications. I am willing to attend all workshops and seminars that a supervisor would require of me, to enhance my skills in working with an elderly population. As a matter of fact, I am in the process of enrolling in a class at UW-O, entitled "Aging:Needs, Services and Issues"

If your concern is setting a precedent relevant to the Chinn reorganization, I believe your concern will prove to be unfounded. I ask that you slow down the process of qualifying me for an Older Adult position until you have the opportunity to alleviate these concerns. This is a win for you because it allows you to avoid a costly litigation and it allows you to maintain a set of standards for the job that is high enough to require excellence while giving you a wider selection of internal candidates.

On December 11, 1998, Post wrote as follows:

Dear Ms. Van Groll:

I received your letter, dated November 18, 1998, indicating that you are interested in bumping Judy Verhulst, the least senior incumbent in the Older Adult Unit. After considering your qualifications for the position, it has been decided that you do not meet the requirements that have been established for Adult Service Social Work staff. Please see the following cited Federal and State requirements.

1. Care Management Standards for COP-W and CIP II promulgated by the Department of Health and Family Services 1/97 per the MA Waivers Program Manual, Chapter VI page 111b states that:
2. "A care manager **shall** have the skills and knowledge typically acquired:
  - A. Through a course of study leading to a BA/BS degree in a health or human services related field *and* one year of experience in working with individuals of the specific target group for which they are employed to work (this does not include a registered nurse degree of less than four years); or

- B. Through a minimum of four years experience as a long term support care manager; or
- C. Through an equivalent combination of training and experience that equals four years. (emphases added).

The care manager shall be knowledgeable **of** the service delivery system, needs of the client group with which s/he is employed, need for integrated services, and resources available or needing to be developed.

Documentation: The county agency must be able to provide documentation indicating qualifications of care managers."

2. Wisconsin Medical Assistance (Targeted) Case Management: per the WI Medical Assistance Provider Handbook, Part U., Case Management, page U1-002 states:

"Qualifications for individuals performing assessments and case planning are: knowledge concerning the local service delivery system, the needs and dysfunctions of the recipient group(s), the need for integrated services, and resources available. In addition, individuals performing assessments and case planning must possess a degree in a related human services field and one year of experience, or two years of experience working with the persons in the targeted population for which they are employed, or an equivalent combination of training and experience.

An individual providing ongoing monitoring and service coordination must be knowledgeable concerning the local service delivery system, the needs and dysfunctions of the recipient group, the need for integrated services and the resources available or needing to be developed. Such knowledge is typically gained through one year of supervised experience working with the persons in the program target populations."

3. Community Options Program: promulgated by the Department of Health and Family Services 1/95 per the Community Options Guidelines, Chapter V., page V-2 states:

"Care management staff in the Community Options Program must have demonstrated qualifications and abilities to determine needs and community alternatives for individuals of different age/disability groups,



and knowledge of community resources that are alternatives to nursing

home placement. Care management staff in Community Options must also have knowledge of the disabilities or conditions of the persons being served.

1. A BA/BS degree preferably in a health or human services related field (this does not include a registered nurse degree of less than four years), or
2. Any combination of four (4) years of post-secondary education and experience, either in long term support (preferred) or other human services, may be substituted for the degree requirements with prior Department (DHFS) approval."

Based on all of the above, the minimum requirements for social work staff in the Adult Services Units (Younger Adult Unit, Older Adult Unit, and Adult Services Access Unit), is a Bachelors Degree in a health or human services field and one year of experience in working with the large population(s) they will be serving.

In the Older Adult Unit, the only target population is older adults. In the Younger Adult Unit the target populations are developmentally disabled, mentally ill, and AODA. In the Adult Services Access Unit all four target populations are served.

A BSW, additional training, and additional experience in working with the required target populations (i.e. Older Adults, DD, MI, AODA) beyond one year, is preferred.

As such, you will be laid off from the Department of Social Services, effective Monday, January 4, 1999, unless you choose to exercise your option to bump into another position from those listed on my first letter, dated November 16, 1998. Those positions, again, are:

<u>Unit</u>	<u>Least Senior Incumbent</u>
Children/Family-Neenah	Terri Schroeder (4/15/98)
Children/Family-Oshkosh	Matthew Xiong (8/17/98)
Access	Joaquin Lira (9/9/98)
Substitute Care	Kelli Fabisch (1/29/98)
Family Services	Rebecca Long (8/6/90)

Please inform me by Wednesday, December 16, 1998, by 4:30 p.m., as to your decision.

Please do this by phone and in writing. My extension is 236-4743.

In November 1998, the adopted position description for the position which Van Groll Palma sought was as follows:

POSITION: Social Worker/Social Work Specialist

DEPARTMENT: Social Services - OLDER ADULT SERVICES UNIT

DATE: June, 1994 (Updated)

POSITION PURPOSE:

Provide a wide range of social services to adults 65 years and older with emphasis in protective services and long term support (LTS).

POSITION IN ORGANIZATION:

Reports to Older Adult Services Unit Supervisor.

MAJOR DUTIES: \* = Essential Job Functions

- \*1. Assess the service needs of each person assigned via interviews with client, significant others, etc. (Will require field contact in clients' homes and other settings.)
- \*2. Establish an appropriate case plan with each client completing necessary paperwork to implement the case plan.
- \*3. Refer clients to community resources for appropriate services and follow-up to insure that service is received.
- \*4. Complete administrative paperwork requirements such as case management logs, case narrative dictation, HSRS forms, LTS Authorizations, Foster Care forms, Court petitions and other paperwork as necessary.

- \*5. Attend and participate in supervisory conferences, unit, Long Term Support (LTS), Adult Protective Services, agency staff and other meetings as assigned.
- \*6. Be available to provide emergency adult protective services when called upon to do so during working and non-working hours.
- \*7. Counsel older adults and their significant others in coping with aging and related problems.
- \*8. Provide referral, placement and follow-up services when clients need Adult Foster Care.
- \*9. Respond to Elder Abuse referrals by completing an assessment and providing intervention services as allowed by client and required by law.
- \*10. Assess LTS needs, develop appropriate LTS plans and provide case management services to implement and continue the case plan.
- \*11. Provide for Adult Protective Services such as guardianship and protective placement in collaboration with legal counsel and the Courts.
- \*12. Other duties related to Older Adult Service needs may be assigned as necessary.

GENERAL QUALIFICATIONS:

1. Thorough knowledge and understanding of the aging process and aging-related problems and issues.
2. Thorough knowledge of human behavior and case work principles.
3. Considerable knowledge of Wisconsin Adult Protective Service Laws including Chapters 46, 55, and 880.
4. Considerable knowledge of community organization principles and methods.
5. Ability to thoroughly assess, develop case plans and follow up/coordinate multiple details related to same.

6. Demonstrated history of ability to skillfully plan and organize work to achieve the most effective and efficient service delivery.(Paperwork and fieldwork)
7. Ability to make social diagnoses and provide appropriate social case work intervention.
8. Ability to communicate effectively and professionally both verbally and in writing.
9. Ability to recognize the agency administrative structure and to accept supervisory and/or consultative help constructively.
10. Ability to work cooperatively and effectively with clients, agency staff, local officials, collateral professionals and other public and voluntary personnel.
11. Ability to perform work in a variety of settings, i.e., agency, Courts, hospitals, nursing homes, client homes, foster homes, etc.
12. Ability to write legibly and accurately complete administrative and direct service related paperwork within time constraints.
13. Ability to work independently yet to utilize Supervisor for supervision and consultation when necessary and appropriate.
14. Ability to adjust to and cope with a constant caseload demand, efficiently prioritizing caseload service needs to ensure priority services are delivered.
15. Ability to intervene effectively and appropriately in involuntary Adult Protective Services situations, including emergencies.
16. Ability to write, read, make daily field contacts to client/ family homes and collateral resources are essential skills required for this position.
17. Must have the capacity to access second floors in private homes, for purposes of ("providing services to" or "taking applications from") handicapped or homebound clients.

18. Must have the capacity to freely move in the community (such as through possession of a valid Wisconsin driver's license, or other means) including access to a vehicle.
19. Must produce evidence of meeting or exceeding the minimum automobile liability insurance requirements contained in the Winnebago County Travel Ordinance (Currently \$100,000 for each person for bodily injury, \$300,000 for each occurrence for bodily injury, and \$50,000 for each occurrence for property damage).
20. Must be Wisconsin certified or certifiable "Social Worker. "Advanced Practice Social Worker" or "Independent Social Worker" is preferred.

Following Van Groll Palma's attempt to bump into the position, the County promulgated an amended position description, as follows:

POSITION: Social Worker/Social Work Specialist

DEPARTMENT: Social Services - OLDER ADULT SERVICES UNIT

DATE: JANUARY 1999 (UPDATED)

POSITION PURPOSE:

To provide a wide range of social work services to adults 65 years and older with emphasis in protective services and long term support (LTS).

POSITION IN ORGANIZATION:

Reports to Older Adult Services Unit Supervisor.

MAJOR DUTIES: \* = Essential Job Functions

- \*1. Assesses the service needs of each person assigned via interviews with client, significant others, etc.

(Will require field contact in clients' homes and other settings.)

- \*2. Establishes an appropriate case plan with each client completing

necessary paperwork to implement the case plan.

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- \*3. Refers clients to community resources for appropriate services and follow-up to insure that service is received.
- \*4. Completes administrative paperwork requirements such as case management logs, case narrative dictation, HSRS forms, LTS Authorizations, Foster Care forms, Court petitions and other paperwork as necessary.
- \*5. Attends and participates in supervisory conferences, unit Long Term Support (LTS), Adult Protective Services, agency staff and other meetings as assigned.
- \*6. Be available to provide emergency adult protective services when called upon to do so during working and non-working hours.
- \*7. Counsels older adults and their significant others in coping with aging and related problems.
- \*8. Provides referral services for clients needing non-emergent Adult Foster Family Care (AFFC). Provides all AFFC services related to the need for Rapid Placements due to emergency situations.
- \*9. Responds to Elder Abuse referrals by completing an assessment and providing intervention services s allowed by client and required by law.
- \*10. Assesses LTS needs, develop appropriate LTS plans and provide case management services to implement and continue the case plan.

PRINCIPAL ACCOUNTABILITIES:

1. Ensures needed supportive services related to financial, health, family, social, educational, and personal problems are provided to the client.
2. Ensures that confidentiality regarding clients and other business is maintained at all times.
3. Ensures compliance with federal, state, and county mandates.
4. Ensures that paperwork is completed efficiently and in a timely manner so that client services are not delayed.

5. Ensures that clients are provided services in a competent and courteous manner and referred for needed services.

GENERAL QUALIFICATIONS:

1. Thorough knowledge and understanding of the aging process and aging-related problems and issues.
2. Thorough knowledge of human behavior and case management principles.
3. Considerable knowledge of Wisconsin Adult Protective Service Laws including Chapters 46, 55, and 880.
4. Considerable knowledge of community organization principles and methods.
5. Ability to thoroughly assess, develop case plans and follow up/coordinate multiple details related to same.
6. Demonstrated history of ability to skillfully plan and organize work to achieve the most effective and efficient service delivery (Paperwork and fieldwork)
7. Ability to make social diagnoses and provide appropriate social case work intervention.
8. Ability to communicate effectively and professionally both verbally and in writing.
9. Ability to recognize the agency administrative structure and to accept supervisory and/or consultative help constructively.
10. Ability to work cooperatively and effectively with clients, agency staff, local officials, collateral professionals and other public and voluntary personnel.
11. Ability to perform work in a variety of settings, i.e., agency, courts, hospitals, nursing homes, client homes, foster homes, etc.

12. Ability to write legibly and accurately complete administrative and direct service related paperwork within time constraints.
13. Ability to work independently yet to utilize Supervisor for supervision and consultation when necessary and appropriate.
14. Ability to adjust to and cope with a constant caseload demand, efficiently prioritizing caseload service needs to ensure priority services are delivered.
15. Ability to intervene effectively and appropriately in involuntary Adult Protective Services situations, including emergencies.
16. Ability to write, read, make daily field contacts to client/family homes and collateral resources are essential skills required for this position.
17. Ability to use a personal computer with a basic competence in Outlook and Word for Windows.
18. Must have the capacity to freely move in the community (such as through possession of a valid Wisconsin driver's license, or other means) including access to a vehicle.
19. Must produce evidence of meeting or exceeding the minimum automobile liability insurance requirements contained in the Winnebago County Travel Ordinance (Currently \$100,000 for each person for bodily injury, \$300,000 for each occurrence for bodily injury, and \$50,000 for each occurrence for property damage).
20. **Must have a Bachelors degree in a health or human services field and one year of experience in working with older adults.** A BSW, additional training, and additional experience in working with older adults beyond one year is preferred. (Emphasis added).
21. Must be Licensed as a Social Worker, Advanced Practice Social Worker, Independent Social Worker, Independent Clinical Social Worker or able to obtain a license as a Social Worker within six months of hire. "Advanced Practice Social Worker" or "Independent Social Worker" is preferred.



PHYSICAL QUALIFICATIONS:

1. Must have the capacity to access second floors in private homes, for purposes of assessment and service provisions.
2. Must have the capacity to tolerate using keyboard and computer monitor for varying periods of time.

Under a contract between the State of Wisconsin Department of Health and Family Services (DHFS) and the U.S. Department of Health and Social Services, the State and its counties are allowed to use Medical Assistance Funds for services not covered by a Medical Assistance Card, effectively waiving federal limits for other services. County social workers have the responsibility for determining client eligibility.

The federal and state governments have issued various directives regulating the qualifications and credentials of county social work professionals involved in care and case management.

Effective February 1990, the Wisconsin Medical Assistance Provider Handbook, Page U1-001/002, provides in part as follows:

- A. TYPE OF HANDBOOK**
- Part U, the Case Management Handbook, is the service specific portion of the Wisconsin Medical Assistance Provider Handbook. It includes all information applicable to case management agency providers or agencies or persons under subcontract to the case management agency. The intent of Part U is to provide information regarding provider eligibility criteria, recipient eligibility criteria, covered services, target populations, reimbursement rates, and billing instructions. Part U is intended to be used in conjunction with Part A of the Wisconsin Medical Assistance Provider Handbook which includes general policy guidelines, regulations and billing information applicable to all types of providers certified in the Wisconsin Medical Assistance Program (WMAP).

**B. PROVIDER  
INFORMATION**

**Provider eligibility and Certification**

The WMAP will certify and reimburse qualified agencies which elect to participate as case management agencies through certification and signature of a provider agreement. Qualifies agencies must be located in a county in which the local county government has elected to participate in this service and must have state statutory authority to operate community programs necessary for the population(s) served, to assure effective monitoring and coordination of these critical services. Extensive familiarity and daily working relationships with the policies, procedures, and personnel of these community programs is critical to effective case management of the selected populations.

Case management providers will be certified, for dates of service beginning no sooner than October 1, 1987. Effective with dates on or after January 1, 1990, county and city/county public health agencies in Wisconsin may become certified and be reimbursed by the WMAP for case management services. This change was instituted by the Wisconsin Legislature in the 1989-91 Biennial Budget Act, Act 31, in order to make case management services more available to eligible WMAP recipients.

Certified providers of case management will be any of the following county or tribal governmental agencies, or local health departments, as defined by the relevant state statutes:

- A. Departments of community programs (51.42 and 51.42/.437 boards);
- B. Departments of social services;
- C. Departments of human services;
- D. County aging units;

- E. Departments of developmental disabilities services (51.437 boards);
- F. County or combined city/county public health agency, and multiple county health departments (as defined under Wis. Stat. 140.09[a]).

Participation by counties is voluntary and case management agencies are allowed to select target populations covered.

After the initial certification process, where initial target population selection(s) are made, agencies may add or delete target populations anytime that they wish by completing the “Target Population Change Request Form” (see Appendix 4) and sending it to E.D.S. Federal Corporation (EDS), subject to the following provisions: Agencies electing to add target population(s) must specify whether they want the population added retroactive to the first day of the calendar quarter or if the addition should go into effect upon receipt of the form by EDS. For counties subtracting population(s), such subtraction(s) are effective upon receipt of the change form by EDS (see Appendix 4), or it can be made effective at a date after receipt by EDS and as specified on the form.

Since s.49.45(25), stats., requires the approval of the case management agency’s County Board of Supervisors or Indian tribal government, a county board, or -tribal, government, may at any time send notice of termination of or amendment to participation as a provider of case management services to EDS -or to the Bureau of Health Care Financing. Such notice shall supercede any prior or subsequent action by the case management agency within the county or tribal jurisdiction.

### **Qualifications**

WMAP qualifications for individuals performing case management are divided into two levels: a higher level for individuals performing assessments and case plans and a lower level requirement for individuals performing ongoing monitoring and service coordination.

Qualifications for individuals performing assessments and case planning are: knowledge concerning the local service delivery system, the needs and dysfunctions of the recipient group(s), the need for integrated services, and resources available. In addition, individuals performing assessments and case planning must possess a degree in a related human services field and one year of experience, or two years of experience working with the persons in the targeted population or equivalent combination of training and experience. The determination of equivalence is the responsibility of the certified case management agency, whether for its own staff or subcontract staff.

An individual providing ongoing monitoring and service co-ordination must be knowledgeable concerning the local service delivery system, the needs and dysfunctions of the recipient group, the need for integrated services and the resources available or needing to be developed. Such knowledge is typically gained through one year of supervised experience working with the persons in the program target population. For example, for a person who is alcoholic or drug dependent, a case manager who is a certified AODA counselor should be deemed qualified, whereas that AODA counselor should not be deemed qualified to case manage an elderly recipient. The case management agency must have available on request

qualifications of individual case managers, as well as documentation of qualifications of its case managers. Any determination of qualifications based on equivalency must be made and documented on the basis of written guidelines and procedures. The determination of equivalence is the responsibility of the certified case management agency, whether for its own staff or subcontract staff.

**Provider Authority to Subcontract**

Certified case management agencies may subcontract with noncertified providers or agencies for any and all components of case management services, but will retain all legal and fiscal responsibility for subcontractees. Subcontract agencies may bill the WMAP program, using the case management agency's provider number, but the WMAP will make payment only to the certified case management agency. The WMAP-certified case management agency is responsible for assuring all program requirements are met by its subcontracted agency or agencies. Certified case management agencies should review all general WMAP provider requirements outlined in the WMAP Provider Handbook. Part A; as well as ch. HSS 101-108, Wis. Admin. Code; and s.49.45(25). Stats. WMAP-certified case management agencies are also responsible for assuring that all information (e.g., handbooks, bulletins) are copied, and sent to each subcontract agency provider.

In 1995, DHFS started setting regulations with mandatory training and qualifications for case managers for counties seeking waivers under the Medical Assistance Program. The Care Management Standards for Community Options Program-Waiver and Community Integration Program II, Chapter VI, page 111b, established in January 1997, provides in part as follows:

3. Care Management Standards for COP-W and CIP II promulgated by the Department of Health and Family Services 1/97 per the MA Waivers Program Manual, Chapter VI page 111b states that:
4. "A care manager shall have skills and knowledge typically acquired:
  - A. Through a course of study leading to a BA/BS degree in a health or human services related field *and* one year of experience in working with individuals of the specific target group for which they are employed to work (this does not include a registered nurse degree of less than four years); or
  - B. Through a minimum of four years experience as a long term support care manager; or
  - C. Through an equivalent combination of training and experience that equals four years.

The care manager shall be knowledgeable of the service delivery system, needs of the client group with which s/he is employed, need for integrated services, and resources available or needing to be developed.

Documentation: The county agency must be able to provide documentation indicating qualifications of care managers."

On December 17, 1998, Van Groll Palma grieved the matter, stating as follows:

Employee received on or about 12/12/98 via U.S. Mail notice that she did not meet requirements for position she had notified co(unity) she was electing to bump into the Adult Services Unit. Union and employee do not agree that employee is not qualified to do the job. Action is seen as discriminatory as employee has grievances filed pertaining to bumping rights.

As remedy, Van Groll Palma sought to be made whole, including but not necessarily limited to allowing her to bump into a position in the older adults unit.

On January 12, 1999, the County's Director of Personnel, William J. Wagner, replied to the grievance as follows:

This letter constitutes my response at Step 3 of the Jean Palma grievance that was dated 12/23/98. In the grievance, Ms. Palma is grieving the fact that she was found to be unqualified for the first position that she attempted to bump into. In reviewing Ms. Palma's qualifications and the letter of Cori Post to Ms. Palma, dated December 11, 1998, I find that Ms. Palma, in fact, does not meet the minimum experience requirements for the position in the Adult Service Unit of the Department. Accordingly, I believe that the denial of the position to Ms. Palma was appropriate.

The grievance is therefore denied.

At the request of the Union, and with the concurrence of the County, the matter was thereafter advanced to arbitration.

#### **POSITIONS OF THE PARTIES**

In support of its position that the grievance should be sustained, the Union asserts and avers as follows:

Palma was qualified for the Older Adults position because she met all of the terms of the official Position Description in place as of her layoff, given her by the employer in November 1998. It is uncontested the grievant meets all the terms of Exhibit 4, which has no experience requirement for working with older adults. Even though the employer generally has the right to set and determine qualifications, the employe goes too far when it conveniently rewrites a new position description including that requirement *after* an employe has sought the position through the bumping process. It is only fair that the County be held to the position's existing qualifications as listed in the 1994 position description.

Further, past practice fails to support the "necessity" of the year's experience. Over the years it has been quite common for experienced social workers to voluntarily post into vacant positions in other units even though they did not have extensive experience with the new target group, particularly with Adult Services. The two arbitration awards the County cites involve posting rather than bumping, and thus are not on point and should be given little weight.

Further, the County's own September 1998 operating policies do not require one-year experience, but instead speak only of "in-service training and social worker minimum qualifications." As the policy allows for two and one-half years for an employe to become qualified in Adult Services, it is arbitrary and capricious for the County to expect that the grievant would arrive in the unit

with more experience than that expected of a new hire.

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It is not true that the State of Wisconsin requires counties to have social workers who have a minimum of one year's experience with their respective target groups. Nowhere in any of the exhibits does it state that a social worker must have this experience; rather, the MA Waivers Manual and the Wisconsin Medical Assistance Provider Handbook both only require that a care manager have skills and knowledge **typically** acquired through certain education and experiences; in the Community Options Guideline, the issue of one year's experience is not even mentioned as a "typically acquired" qualification. "Typically" involves the usual, not the only; if the state had truly intended to place a one year minimum for experience, it never would have used the word "typically." Thus, the county was wrong to emphasize "shall" in its December 11, 1998 letter to the grievant.

The county was also wrong to conclude that a temporary inability to bill the state for the grievant's work made her unqualified to do the job. Since 1990, the county has hired numerous employees who could not bill as case managers immediately (even including the employee hired to take the position originally intended for the grievant in the Community Programs department).

The county also failed to create an equivalency policy for determining experience, as has been required for nearly ten years by the state's Medical Assistance Provider Handbook. Assuming that experience with older adults is required for the position (a proposition with which the Union disagrees based on the County's standing policies and the job description in effect when the grievant attempted to bump), it is only fair that the employer accept or reject the grievant's personal and professional experience based on formal written guidelines.

Looking between the lines, the real reason the county did not allow the bump is that the Older Adult Services unit supervisor simply did not want any member of his work team displaced by the grievant. The supervisor overstepped his bounds and unjustly infringed upon the grievant rights in order to protect his own employees.

That the entire process has been arbitrary and capricious is shown by the fact that the grievant has been required to jump through hoops not even new employees have to face. It is inappropriate for the County to act as though this were a posting into a vacancy when it is a bumping. The grievant does not need to be the best qualified for an older adult unit position, but only meet the minimum qualifications as they existed in November 1998.



Accordingly, because the County did not treat the grievant fairly, was unreasonable in insisting on the grievant having one year's experience with older adults is unreasonable, and was clearly arbitrary and capricious throughout, the grievance should be sustained and the grievant allowed to bump into the position in the Older Adults Unit.

In support of its position that the grievance should be denied, the County asserts and avers as follows:

Under the provisions of the collective bargaining agreement relating to layoff, bumping is allowed in situations where, in the employer's judgment, the employee's training and experience qualify the employee for the position. In arbitrations regarding qualification disputes, the burden of proof clearly falls upon the Union to prove arbitrariness, discrimination or bad faith. This is the standard which has been set in cases involving this Union and the County, and the grievant has failed to meet this burden.

The major duties and responsibilities of the position include assessing the service needs of clients, establishing an appropriate case plan, and developing appropriate long term service plans. A significant majority of the client population requires case management services for either the Community Options Program Waiver (COP-W) and/or Community Incentives Program II (CIP II) funding. Pursuant to a contract between the State of Wisconsin and the federal department of Health and Social Services, the county may use Medical Assistance Funds for services (such as case management) that Medical Assistance Cards do not cover.

Because there had been no vacancies in the Older Adults Unit since 1993, the county had not updated the relevant job description to incorporate the 1995 and subsequent state regulations relating to case management or care managers within this unit. The 1997 state regulations specifically state that a case manager shall possess not only a BA or BS degree in a health or human-service related field, but must also possess at least one year of experience in working with individuals in a specific target group; that is, to be a case manager in the Older Adults unit, an applicant must have at least one year of employment or work experience with individuals 65 years of age or older. Life experience with family members does not satisfy the state regulation. Consequently, although the grievant was, at the very least, a satisfactory social worker, she did not qualify for the position in the Older Adults Unit, given the fact that a substantial part of that position's responsibilities related to case management for COP-W

and CIP II clients. While prior to these regulations the County had allowed

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social workers to bump into the Older Adults Unit without the year's experience, the State's current regulatory practices would prohibit this from being done now.

The job qualification standards are certainly not arbitrary, discriminatory, capricious or established in bad faith, but in fact have been established pursuant to the state's regulatory edict. The county has no other choice but to comply with the regulation, and it is for this reason that the grievance should be denied.

In the event the grievance is sustained, the remedy should be limited to the grievant bumping into the position with no back pay. There is no evidence in the record indicating any monetary detriment to the grievant as a result of the county's refusal to allow her to bump into the Older Adult Unit position.

In further support of the grievance, the Union replies as follows:

The County has misinterpreted the State's requirements; the State does not require a year's experience, but only refers to the minimum qualification level *typically* acquired through a relevant bachelor's degree and experience with the target group. It does *not* say that an employer must have one year's experience to be considered minimally qualified. In any case, the regulations refer to the agency's ability to bill the state, not the case manager's ability to do the job. The County's reliance on the year's experience is misplaced and further demonstrates that the County's method of determining qualifications was arbitrary, discriminatory, capricious and/or established in bad faith.

Further, the County never considered the factor of equivalency. The state edicts which the County says it follows also require it to have a formal written policy for determining minimum qualifications, yet the County has ignored this requirement and disregarded the grievant's exceptional professional and life experiences. Picking and choosing what requirements to follow is the epitome of arbitrary, discriminatory and capricious behavior.

This disregard for the state regulations is also evident from the fact that the County did not incorporate the 1990 and 1995 state regulations until the grievant attempted to bump into the Older Adults Unit.

The County did not treat the grievant fairly in this matter and its insistence that she have one year's experience with older adults is unreasonable since the basis

for this qualification is a misapplied “state regulation” and a job description

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promulgated after the grievant sought the older adults positionl. The County was clearly arbitrary, discriminatory and capricious in its actions and must be made aware that such actions are unacceptable.

In further support of its position, the County responds as follows:

While the prior arbitration awards do involved posting rather than bumping, they do clearly establish the employer’s right to determine qualifications as long as it does so in a fashion which is not arbitrary or capricious. And while the county it did not change the relevant position description until 1999, the Union did not challenge the facts of the state’s new requirement. The Unit supervisor testified he believed this regulation prohibited him from assigning as a case manager someone who failed to meet this qualification, an assignment that would normally constitute a majority of the position’s caseload.

The Union’s argument that the state’s only requirement is that such experience by “typically acquired” through such a combination of training and experience is undercut by the fact that the grievant had no professional experience at all, and negligible educational and training experience, working with older adults. The grievant’s experience and education simply do not satisfy the state’s requirements.

It is not arbitrary or capricious for the County to apply this requirement. The issue is whether the County is prohibited from providing these services through the grievant, not just whether it could bill the state for her work. The evidence from an experienced supervisor indicates that the County is prohibited from allowing an unqualified person to perform in this position.

Nor is the Union’s argument about the County’s admitted failure to establish an equivalency policy meaningful. Given the grievant’s lack of experience working with older adults, it is highly doubtful that any equivalency qualifications would allow her to meet the state standards. Indeed, the equivalency standard really only applies to the MA Waiver Manual Regulations provision finding a person qualified who had “an equivalent combination of training and experience that equals four years.” Clearly, without that experience, the grievant would meet no equivalency requirements which could be promulgated by the County.

Finally, the Union’s allegation that Duerkop barred the move to protect his existing team is supported by no testimony or evidence. Indeed, the grievant testified that, prior to this situation, she had the utmost respect for Duerkop and

that he was regarded as a fairly sympathetic supervisor.

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Accordingly, the grievance should be denied.

### DISCUSSION

There can be no question about Van Groll Palma's general qualifications as a social worker. The performance evaluations in evidence establish that she routinely exceeds expectations in such areas as job knowledge and quality, and performs at a superior level in areas as diverse as counseling and case record documentation. There are also testimonials in the file that Van Groll Palma's dedication and commitment far exceed what is required or even expected. Simply, the record evidence establishes that Van Groll Palma is a credit to her profession, someone the County is fortunate to have in this difficult and important field.

But Van Groll Palma's exemplary record as a social worker specialist in the Family Services Team does not necessarily mean that the County violated the collective bargaining agreement when it denied her the opportunity to bump into the social worker position in the Older Adults Unit.

The first question I have to address is the standard by which to judge the evidence and arguments. It is a question two other WERC arbitrators have addressed, with internally consistent results. In WINNEBAGO COUNTY, CASE 286, MA-9931 (KNUDSON, 1998) AND WINNEBAGO COUNTY, DEC. 188, MA-6305 (HOULIHAN), the arbitrators both found that the collective bargaining agreement entrusted certain personnel decisions to the employer's discretion, such that the decisions could only be held invalid if they were arbitrary and capricious. As Arbitrator Houlihan explained:

Article 11, which sets out the job posting procedure provides: "The Employer shall determine the qualifications of the applicants." That paragraph, which talks about the selection of applicants for a vacancy goes on in two other places to address the qualifications of applicants. Both make reference to "in the opinion of the Employer" in assessing qualifications criteria of applicants. Clearly, this paragraph vests the Employer with substantial discretion with respect to the determination of qualifications of competing applicants, or any individual applicant. Given the degree of employer discretion, the real question arises, "Has the Employer exercised this discretion in an arbitrary or capricious fashion?" Both briefs argue the application of this standard.

As the Union correctly notes in its reply, the two cases that the employer cites involve Article 11 postings, rather than the Article 7 bumping process involved in the case before me. However, the language of Article 11 noted above is very close to the language of Article 7, which allows an employee to bump to a position "for which in the Employer's judgment, his

training and experience have qualified him ....” I find that having the employer “determine the qualifications of the applicants,” and having the qualifications be subject to “the Employer’s judgment” are so substantially similar that the same standard for reviewing the employer’s action applies. Indeed, the Union apparently accepts this standard, explicitly arguing in its brief that the employer was in fact arbitrary, capricious and discriminatory.

Accordingly, the question before me is **not** whether Van Groll Palma was qualified for the social worker position in the Older Adults Unit, but instead whether the County acted in an arbitrary and capricious manner in determining that she was not.

The essential question can be made even more specific, in that the supervisor of the Older Adults Unit, Ronald Duerkop, testified that “the one year requirement was the only reason we had” for denying Van Groll’s bid to bump into his unit. Thus, the issue before me can be reduced to, “did the County act in an arbitrary and capricious manner in denying Van Groll Palma’s bump into the Older Adults Unit because she lacked a year’s professional experience with older adults?”

The Union points to several factors in arguing the employer acted improperly. Several of its arguments have merit.

The Union correctly notes that the County failed for several years to update the relevant position description, so that the position description in place at the time this matter began, the 1994 document, did not include this requirement. The County acknowledges it was delinquent in updating the position description to incorporate the new requirements, but explains its failure to act promptly by noting that there had been no vacancies since the time the state established the year’s experience standard, and thus no reason to incorporate the condition.

I appreciate the County’s candor in conceding that the position description in place at the time the grievant applied for the position failed to include the single criterion on which it based its rejection of the grievant. But I find the County’s typical practice of updating job descriptions only when there is a vacancy in the position to be inadequate. Employees considering their bumping and posting opportunities should be able to rely on the adopted position descriptions which the employer has promulgated.

As of the time Van Groll Palma denied the transfer opportunity to the Community Programs requested to bump into the older adults position, she had no reason to believe the employer would apply a requirement for one year’s professional experience with older adults as a pre-requisite. Indeed, the County explicitly referred Van Groll Palma to the outdated job description in its letter of November 18, 1998, which letter specifically included the Older Adults Unit as one to which Van Groll Palma was eligible to bump “based upon ... meeting the

necessary qualifications for the position....”

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Van Groll Palma notified the County she wished to bump into the position in the older adults unit on or about November 18. Within a week, she was aware that the County was expressing concern over her qualifications and experience. By letter of December 11, the County rejected that bump on the stated basis that she did “not meet the requirements that have been established for Adult Service Social Work staff.”

In its letter, the County cited three state standards and/or guidelines it said Van Groll Palma failed. The Care Management Standards for COP-W and CIP-II, which the Wisconsin DHFS promulgated in January 1997 per the Medical Assistance Waivers Program Manual, Chapter VI, page 111b, provides that care managers “**shall** have skills and knowledge typically acquired through a course of study leading to a BA/BS degree in a health or human services related field **and** one year of experience” in working with individuals from the specific target group (emphasis added). In this instance, the specific target group is older adults, a target group with which the grievant has no professional experience.

Further, the Wisconsin Medical Assistance Provider Handbook, page U1-002 (Case Management), requires that “individuals performing assessments and case planning **must** possess a degree in a related human services field **and** one year of experience....” (emphasis added). The handbook gives a pertinent example, describing a certified AODA counselor as qualified to be a case manager for a person who is alcoholic or drug dependent, “whereas that AODA counselor **should not be deemed qualified to case manage an elderly recipient.**” (emphasis added).

Finally, the Community Options Program Guidelines, also promulgated by the DHFS, requires care management staff to have “demonstrated qualifications and abilities to determine the needs and community alternatives” for individuals of various age/disability groups, plus “knowledge of the disabilities or conditions of the persons being served.”

On the basis of these state standards, the Duerkop concluded that the minimum requirement for social work staff in the Adult Services Unit was a Bachelor’s Degree in a health or human services field “and one year of experience in working with the large population(s) they will be serving,” which in the Older Adult Unit is older adults. As the County determined that Van Groll Palma lacked that year’s experience working with older adults, it found her unqualified for the position.

The Union castigates the County for completely dismissing what it calls the grievant’s “exceptional professional and life experiences.” But it is clear that the experience the standards and requirements reference are professional, not personal; there is nothing in the record to establish that the DHFS considers the life experiences of tending to elderly relatives

as equivalent to professional experience with the target population of older adults.

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The Union also calls on the County to abide by its 1998 Operating Policies, which again fail to mention a requirement of one year of experience with older adults. Again, the Union has highlighted an administrative failure on the County's part; the County clearly needs to pay more attention to updating its position description and operating manuals to accurately reflect state and federal procedures and guidelines. But the Union clearly reaches the wrong conclusion in asserting that the Operating Policies allow a new hire 30 months in which to become qualified.

The Union correctly identifies yet another deficiency in the County's operations, namely its failure to create an equivalency policy for determining experience. "Picking and choosing" which State mandate to follow, the Union asserts, "is the epitome of arbitrary, discriminatory and capricious behavior." The Union's problem, though, is twofold. First, the WMAP Handbook addresses the relationship between the County and the State; it is to the State that the County must provide, on request, its policies and procedures for determining the qualifications, and the documentation of qualifications. Second, and more importantly, there is no requirement for the County to *allow* equivalency – the requirement is that if it does allow equivalency, it do so on the basis of written guidelines and procedures. The County's failure to comply with the terms of this paragraph may well give the DHFS some concern, but it does not form grounds to sustain the grievance.

The Union asserts that the grievant should be found to be qualified for the position, even if the County could not bill the state for her services. At hearing, Duerkop testified that billing for all of Van Groll Palma's case management services could be disallowed, possibly leading to the County losing certification for MA waivers. This, he testified "would be catastrophic for the whole program." The County expanded on that in its brief, asserting that, beyond billing, the County was indeed and in fact *prohibited* from allowing Van Groll Palma to perform these services. Given fiscal realities, the inability to bill for a professional employe's time would be a serious matter; the loss of state certification would be, as Duerkop testified, catastrophic.

The Union also notes that past personnel moves have brought into the older adult unit several social workers who served successfully despite their lack of a year's experience at the time they started. But there have been no such moves since 1993; those situations all occurred prior to the promulgation of the policies and procedures on which Duerkop relied in this instance. Thus, their persuasive power is lost.

Finally, the Union asserts that the County's denial of Van Groll Palma's bump was wrongful because it was essentially a subterfuge to allow the unit supervisor, Duerkop, to keep all his current employes. There is absolutely no evidence for this charge in the record – indeed, there is evidence of a productive working relationship between the grievant and

Duerkop.



Ultimately, the Union insists Van Groll Palma is fully qualified to perform the duties in the Older Adults Unit, and that it just isn't fair for her to be denied the position in the older adults unit under these circumstances. Given her outstanding evaluations to date, she may indeed have the experience, education and temperament to be an equally outstanding care manager for older adults. But as noted above, that is not the question before me. Nor is it my job to dispense equity and fairness; my only authority extends to interpreting and applying the terms of the collective bargaining agreement.

The relevant supervisor, with considerable experience managing under state codes and mandates, testified credibly that he believed that the State of Wisconsin now requires one year's experience working with older adults for persons seeking to assume the position to which Van Groll Palma sought to bump. There is no evidence in the record to indicate any bad faith on his part in this proceeding.

Despite Duerkop's understanding of the importance of maintaining current policies and procedures, the County was in substantial non-compliance in several aspects. Because the County notified the grievant of its decision in a reasonably timely manner, however, its failures to incorporate relevant standards initially in a timely manner do not go to the underlying merits of the grievance.

Reviewing the relevant state standards and guidelines, a reasonable person could conclude that the state requires care managers in the Older Adults Unit to have at least one year experience working with older adults. A reasonable person could further conclude that hiring a person without that qualification could seriously jeopardize the County's financial and programmatic relationship with the State. Thus, whether or not the state has in fact set such standards, it was **not** arbitrary, capricious or discriminatory for Duerkop to determine that it had, and respond to Van Groll Palma accordingly.

Therefore, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, it is my

**AWARD**

That the grievance is denied.

Dated at Madison, Wisconsin this 21st day of March, 2000.

Stuart Levitan /s/

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Stuart Levitan, Arbitrator

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