

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**MANITOWOC COUNTY (HUMAN SERVICES)**

and

**WISCONSIN COUNCIL 40, AFSCME, AFL-CIO, LOCAL 986-A**

Case 356

No. 58602

MA-11008

(Gayle Grievance)

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Appearances:

**Mr. James E. Miller**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1712 Cedar Court, Manitowoc, Wisconsin 54220, on behalf of the Local Union.

**Mr. Steven J. Rollins**, Corporation Counsel, Manitowoc County, 1010 South Eighth Street, Manitowoc, Wisconsin 54220, on behalf of the County.

**ARBITRATION AWARD**

According to the terms of the 1998-99 collective bargaining agreement between Manitowoc County and Manitowoc County Human Services Department Professionals, Local 986-A, AFSCME, AFL-CIO (Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve a dispute between them regarding the County's denial of Grievant Kenneth Gayle's request to attend a social work conference in October, 1999. The Commission designated Sharon A. Gallagher to hear and resolve the dispute. The hearing was held at Manitowoc, Wisconsin, on May 9, 2000. A stenographic transcript of the proceedings was made and received on May 26, 2000. The parties agreed that they would file their briefs July 25, 2000, and that the Arbitrator would exchange the briefs for the parties. The parties agreed to waive the right to file reply briefs.

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

## ISSUES

The parties stipulated that the following issues shall be determined in this case:

Did the Employer violate the collective bargaining agreement, including the last paragraph of Article 24, when it denied the Grievant's request to attend the Midwest Conference on Child Sexual Abuse and Incest in October, 1999? If so, what is the appropriate remedy?

## RELEVANT CONTRACT PROVISION

### ARTICLE 24 – PROMOTION, HIRING REQUIREMENTS AND PROGRESSION

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#### C. Progression:

Training Requirements: There shall be no training requirements for progression on the wage schedule. However, certain training may be required for reasons other than progression. Some examples of mandated training include but are not limited to: CARF, and Juvenile Court Intake, AODA certification for AODA counselors, and any criteria established to maintain State required certification and/or licensure. The Employer shall pay for registration, mileage, meals and time spent while employees are attending required training. When an employee attends training, all time in training and/or travel in excess of the guaranteed normal work day shall be taken off on a straight time basis within the same pay period.

## RELEVANT PROVISIONS OF THE WISCONSIN ADMINISTRATIVE CODE

SOCIAL WORKERS, MARRIAGE & FAMILY THERAPISTS & CONSELORS

### Chapter SFC 8

#### CONTINUING EDUCATION

**SFC 8.01 Continuing education required for certification renewal.** On or before July 1 of every odd-numbered year every social worker, advanced practice social worker, independent social worker, and independent clinical

social worker certificate holder, shall as part of his or her application for renewal, submit proof of having met the continuing education requirements specified in this chapter on forms provided by the department.

**SFC 8.02 Continuing education requirements for certificate holders. (1)**

Unless granted a postponement or waiver under sub. (7), every social worker, advanced practice social worker, independent social worker, and independent clinical social worker certificate holder shall complete at least 30 hours of continuing education in each 2-year certification period which begins on July 1 of each odd-numbered year as specified in s. 457.20(2), Stats.

(a) The 30 hours of continuing education shall be in courses and programs specified in this chapter.

(b) Of the 30 required hours, at least 4 hours shall be in the subject area of social work ethics. At least 2 of the 4 hours shall be in issues concerning professional boundaries. The section may require that up to 2 continuing education hours in each 2-year certification period be acquired within other specified topic areas.

(c) In this chapter one hour of continuing education is a period of continuing education consisting of not less than 50 minutes.

(2) Continuing education hours shall apply only to the certification period in which the hours are acquired. A certificate holder who applies for renewal after the renewal dated specified in s. 457.20(2), Stats., shall submit proof to the section that he or she completed at least 30 hours of continuing education during the 2 years immediately preceding the date of application for renewal and meet the requirements for late renewal specified in s. 440.08(3), Stats. Continuing education hours submitted to satisfy this requirement for late renewal shall not be used to satisfy continuing education requirements for a subsequent renewal.

(3) Every certificate holder shall retain original documents showing attendance at programs and completion of self-developed programs for at least 4 years from the time that credit is claimed for the continuing education program under s. SFC 801. At the request of the section, certificate holders shall deliver their original documents to the section.

(4) Unless granted a postponement or waiver under sub. (7), a certificate holder who fails to meet continuing education requirements by the renewal deadline shall cease and desist from using a social worker title protected under ch. 457, Stats.

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(7) A certificate holder may apply to the section for a postponement or waiver of the requirements of this chapter on grounds of prolonged illness or disability, or on other grounds constituting extreme hardship. The section shall consider each application individually on its merits, and the section may grant a

postponement, partial waiver or total waiver as deemed appropriate in the circumstances.

(8) The section may grant an exemption from the requirements of this chapter to a certificate holder who certifies to the section that he or she has permanently retired and no longer uses a social worker title protected under ch. 457, Stats. in any professional practice.

. . .

**SFC 8.03 Continuing education programs.** A continuing education program may be used to satisfy the requirements of this chapter if the subject matter of the continuing education program is one or more of the following:

- (1) Social work practice, knowledge and skills.
- (2) A field or subject area allied with and relevant to the practice of social work.
- (3) Theories and concepts of human behavior and the social environment.
- (4) Social work research, social policy and program evaluation, or social work practice evaluation.
- (5) Social policy and program administration or management.
- (6) Social work ethics.
- (7) Professional boundaries.
- (8) A subject of current importance as designed by the section.

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### FACTS

The Grievant, Kenneth Gayle, has been employed by the County as a Clinical Social Worker for approximately the past ten years. The majority of clients that he works with are referred to him from the Department of Corrections or the court system. These clients have been accused of committing crimes involving sexual abuse and incest. Gayle also provides crisis intervention services for the County for clients who have either been brought to a hospital emergency room or have been referred by the Police Department. Gayle has a Bachelor of Science degree and a Masters of Science degree. Gayle's duties include providing clinical assessment and treatment recommendations for people convicted of committing sexual offenses, facilitating pre-sentence investigations and assessing the client's potential for re-offense and amenability to treatment. In providing these services, Gayle has testified as an expert in court. Gayle also provides group therapy to his clients through Department of Corrections Probation and Parole. Gayle also provides on-call services at a local hospital. In Gayle's position, he is required to maintain a license or certification as a clinical independent social worker under the State Administrative Code.

Prior to July, 1999, social workers in the State of Wisconsin had to be able to prove that they had been adequately trained in order to maintain their license/certification. After July 1, 1999, the State of Wisconsin by its Administrative Code required all social workers to obtain 30 hours of continuing education including education regarding professional boundaries and ethics every two years in order to maintain their license/certification. 1/

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*1/ Although the Union witnesses argued that continuing education credits must be obtained in the social worker's particular field or their specific area of practice, it does not appear that the Wisconsin Administrative Code requires this in so many words.*

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On August 9, 1999, Gayle submitted a "request for continuing education reimbursement" for the 15<sup>th</sup> Annual Midwest Conference on Child Sexual Abuse and Incest 2/ in Middleton, Wisconsin, a four-day continuing education conference for which he would have received 20 CEU's. Gayle requested reimbursement for meals, mileage, lodging and four days of pay. Gayle also requested reimbursement for the registration fee of \$345. The form submitted by Gayle was a form which had been used in the Department for many years to request reimbursement for attending continuing education courses. In the past, no employee has ever received reimbursement for a continuing education course if the employee failed to submit a request form and get approval therefor.

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*2/ In 1990-94, Gayle attended this same conference at County expense. In 1998, Gayle received a partial grant to attend this conference from the District Attorney's office and the County picked up the rest of the cost of his attendance thereat.*

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Sometime after submitting this form, Gayle's supervisor told him that no one had been authorized to attend the conference and that his request had been denied. Gayle did not attend the conference after the County denied him reimbursement therefor. On October 25, 1999, Union Steward Michael Kelley filed the instant grievance.

It is undisputed that the County did not require Gayle to attend the conference he requested reimbursement for in October, 1999. It is also undisputed that other training would have met the State's requirement that Gayle receive 30 CEU's prior to July 1, 2001. The State of Wisconsin neither recommends nor pre-approves courses nor does it require any particular courses except the four hours in boundaries and ethics required in the Administrative Code.

It is also undisputed that the training which Gayle requested would have benefited other employees of the County's Human Services Department, and that the County denied Gayle's

request because of the expense of the conference, not the conference's content. In October, 1999, the Department had approximately \$2,500 of the \$5,000 training budget left in its account for social worker training. In both the answer to the grievance and in testimony, the County affirmed that it will provide 30 CEU's to each of its licensed/certified social workers as required by the Wisconsin Administrative Code at no cost to the employees prior to July 1, 2001.

### **POSITIONS OF THE PARTIES**

#### **County**

The County asserted that it did not violate the contract in this case because the training denied was neither required by the County nor the State of Wisconsin. In this regard, the County noted that the Union's argument that the training which the Grievant requested was somehow required is refuted by the testimony of the various witnesses as well as the Administrative Code itself and correspondence from the State Department of Regulation and Licensing. It was significant in the County's view that the Department of Regulation and Licensing never pre-approves or recommends any courses for continuing education. Therefore, the County had no obligation to pay for the course which the Grievant selected and which the County refused to approve. Here, the County denied the training because it was too expensive. The County noted that it has also given the Union and the Grievant assurances that all employees needing certification/licensing will receive the necessary training at the County's expense in a timely fashion. For all these reasons, the County urged that the grievance be denied and dismissed in its entirety.

#### **Union**

The Union noted that it filed the grievance because the State had changed its requirements regarding continuing education training for Social Workers, mandating 30 credit hours every two years. Here, the Grievant stated that he worked between 70 and 80% of his time with sexual offenders in the child abuse area and that the remaining portion of his duties concerns crisis intervention. Therefore, the conference he requested to attend was directly related to his major duties on behalf of the County. The Union observed that the County has paid for this conference in the past, having found it appropriate training for the Grievant.

Article 24 of the collective bargaining agreement states that the employer shall pay for training, *inter alia*, relating to "any criteria to maintain State required certification and/or licensure." As the revised Administrative Code places the responsibility on the individual social worker to choose the courses necessary to meet the 30 credit requirement, "mandated training" must be interpreted to mean that employee selected courses become required or mandated if they are necessary to maintain certification and/or licensure. Thus, the Union urged that the County should have paid for the Grievant's requested course. In these

circumstances, the Union asked that the grievance be sustained and that the Arbitrator find a violation of the collective bargaining agreement. 3/

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*3/ The Union failed to request any further remedy.*

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### DISCUSSION

Article 24 speaks of “required” training but fails to state who may require such training. Although Article 24 also gives examples of “mandated training” which includes “any criteria established to maintain State required certification and/or licensure,” it fails to state who may establish such criteria. In any event, the parties submitted only one item which could constitute “criteria” as used in Article 24, the State Administrative Code sections. However, those sections fail to require or mandate specific courses. 4/

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*4/ The phrase “any criteria . . .” only has meaning in reference to the other specific examples of “mandated training” listed in this portion of Article 24. It is undisputed that Gayle’s duties did not include CARF, Juvenile Intake or AODA Counseling.*

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In the silence of the collective bargaining agreement, the Union has argued that because the newly created State Administrative Code requires 30 hours of continuing education for social workers and leaves to each social worker the choice of which courses to take, County social workers should be able to select any course they deem appropriate and the County should have to pay for the employe’s “. . . registration, mileage, meals and time spent . . .” for attendance. On the other hand, the County has argued that the use of terms such as “required” and “mandated” in Article 24 necessarily means that the County must first find the requested courses to be required before employes can expect to receive the payments described in Article 24.

The contract is, in my view, ambiguous on the point regarding who has the authority to require or mandate training. Given the silence of the contract, the question then arises whether any evidence of bargaining history or past practice exists to fill in the blanks created by the labor agreement regarding who may require or mandate a course for social workers under Article 24. The parties submitted no evidence of bargaining history on this point. The evidence of past practice submitted herein involved the consistent use of a form to request reimbursement. There, the evidence showed that in the past, the County has denied employe course reimbursement requests because courses were too expensive and that the Union failed to grieve these denials. This evidence also showed that the only way employes have received reimbursement for courses in the past was by submitting a request form which was approved by the County. In my view, this evidence tends to support the County’s arguments herein.

The Union's contention that the changes in the State Administrative Code require a finding that employees must be able to select any course that meets the Code and receive reimbursement therefor, essentially ignores the fact that the State does not require or mandate any specific courses except that social workers must receive four credits in social work ethics, two of which must be in professional boundaries. Nor does the State recommend or pre-approve any courses, according to correspondence from the State Department of Regulation and Licensing.

In the instant case, Gayle's requested course was relevant to his County work. But, if the Union were to prevail in this case, theoretically, a County social worker could take any course which would give him/her CEU's and which was within the broad generic outlines of relevancy stated in SFC 8.03 (without regard to the County's budgetary restraints) and expect to receive full Article 24 reimbursement therefor. Such a result would be economically insupportable as well as insupportable in light of the undisputed past practice proven herein. A finding in favor of the County, however, would not mean that employees will be denied the ability to attend courses they choose. Rather, such a finding would mean that employees will only be reimbursed for Article 24 expenses for courses of their choice when they receive approval for said reimbursement. This result would be consistent with past practice.

In addition, it is significant that both during the grievance process and at the instant hearing, the County gave assurances that it would timely provide 30 CEU's to employees at County expense during the 1999-2001 period covered by the Administrative Code. Finally, the parties submitted evidence to show that they were unaware that the State was about to change its CEU requirements for social workers prior the execution of the effective labor agreement. If the parties had intended for the County to pay for any courses employees selected they could have used the word "courses" rather than "criteria" in the third sentence of Article 24. The parties chose not to do this. In all of these circumstances, I find that there was no violation of Article 24 or past practice in this case and I issue the following

### **AWARD**

The Employer did not violate the collective bargaining agreement, including the last paragraph of Article 24, when it denied the Grievant's request to attend the Midwest Conference on Child Sexual Abuse and Incest in October, 1999. The grievance, therefore, is denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin, this 8<sup>th</sup> day of August, 2000.

Sharon A. Gallagher /s/

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Sharon A. Gallagher

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