

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**JUNEAU COUNTY PROFESSIONAL EMPLOYEES UNION
LOCAL 1312-A – AFSCME, AFL-CIO**

and

JUNEAU COUNTY

Case 128
No. 59606
MA-11355

Appearances:

Mr. Laurence S. Rodenstein, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite “B”, Madison, Wisconsin 53717-1903, appearing on behalf of the Union.

Mr. Mark B. Hazelbaker, Attorney at Law, 721 Lois Drive, Sun Prairie, Wisconsin 53590, appearing on behalf of the County.

ARBITRATION AWARD

Juneau County Professional Employees Union, Local 1312-A, AFSCME, AFL-CIO, and Juneau County, are parties to a collective bargaining agreement that provides for final and binding arbitration. The Union, with the concurrence of the County, requested the Wisconsin Employment Relations Commission to appoint a staff member as an impartial arbitrator to resolve this dispute. The Commission appointed Coleen A. Burns. Hearing in the matter was held on April 26, 2001 in Mauston, Wisconsin. The hearing was not transcribed. The record was closed on June 20, 2001, upon receipt of post-hearing written argument.

ISSUE

The Union frames the issue as follows:

Did the County violate the collective bargaining agreement when it downgraded the Grievant's Human Services V classification at the time she transferred into her new position?

If so, what is the appropriate remedy?

The County frames the issue as follows:

Did the County violate the collective bargaining agreement by placing the Grievant who possesses a Master's in Social Work degree at grade 16, step 4, of the wage schedule on the grounds that the position description required only a Bachelor's degree?

If so, what is the appropriate remedy?

The Arbitrator considers the following statement of the issue to be appropriate:

1. Did the County violate the collective bargaining agreement when it downgraded the Grievant's classification from Social Worker V to Social Worker III and placed the Grievant at Grade 16, Step 4, of the wage schedule, effective September 4, 2000?
2. If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE 2 – RECOGNITION

The Employer recognizes the Union as the exclusive collective bargaining representative for all regular full-time and regular part-time professional employees of Juneau County, excluding managerial, supervisory, confidential and all other employees, as certified by the Wisconsin Employment Relations Commission, Decision No. 27877-A, dated January 25, 1994. This clause is solely intended to define the bargaining unit and shall not be used for any other purpose.

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ARTICLE 9 –

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- 9.03 Job Posting: Whenever a permanent full-time or part-time vacancy occurs or a new permanent position is created, it shall be posted on all bulletin boards for a period of five (5) working days. Each employee interested in applying for the job shall endorse his/her name upon such notice in the space provided. An employee shall be required to serve a trial period of sixty (60) calendar days in a job obtained through job posting. If, in the judgment of management, the employee fails to make satisfactory progress in the new job, or if the employee decides to return to his/her former position, he/she shall be returned to his/her former position at any time during the sixty (60) calendar day trial period. In the event of a vacancy, the employee selected for that position shall begin within 60 calendar days of the date of posting.

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ARTICLE 30 – MANAGEMENT RIGHTS

Subject to the provisions of this contract and applicable law, the Employer possesses the right to operate county government and all management rights repose in it. These rights include, but are not necessarily limited to the following:

- A) To direct all operations of the County;
- B) To establish reasonable work rules and schedule work;
- C) To hire, promote, transfer, schedule and assign employees;
- D) To suspend, demote, discharge or take other disciplinary action against employees for just cause;
- E) To relieve employees from their duties because of lack of work or other justifiable economic reasons;
- F) To maintain efficiency of county government operations;

- G) To take reasonable action necessary to comply with state or federal law;
- H) To take whatever actions are necessary to comply with state or federal law;
- I) To introduce methods or facilities which are new or exist elsewhere;
- J) To change existing methods or facilities;
- K) To determine the kinds and amounts of services to be performed as pertains to county government operations and the number and kinds of classifications to perform such services;
- L) To contract out for goods or services; however, no employee shall be laid off or suffer a reduction in hours as a result of contracting out;
- M) To determine the methods, means and personnel by which County operations are to be conducted.

APPENDIX B – HUMAN SERVICES CLASSIFICATION CRITERIA

The following criteria shall be used to determine initial placement on the wage schedule for new employees in the Human Services Department, as well as to determine when employees shall progress from one classification to another:

1. **Social Worker I or Human Service Worker I**: Bachelor's degree in Social Work or related field.
2. **Social Worker II or Human Service Worker II**: Bachelor's degree in Social Work or related field, plus two years' experience.
3. **Social Worker III or Human Service Worker III**: Bachelor's degree in Social Work or related field, plus three years' experience or Bachelor's degree in Social Work or related field, and 6 graduate credits in Social Work or related field.

4. **Social Worker IV or Human Service Worker IV:** Master's degree in Social Work or related field; or, a Bachelor's Degree in Social Work or a related field, ten years experience in a licensed position, eight (8) graduate school credits in Social Work or a related field, and a positive supervisory review. A positive supervisory review shall not be unreasonably denied.
5. **Social Worker V or Human Service Worker V:** Master's degree in Social Work or related field plus two year's experience.
6. **Outpatient Clinician I:** Master's degree in Social Work or related field.
7. **Outpatient Clinician II:** Master's degree in Social Work or related field, plus 3,000 hours supervised experience.
8. **CSP Clinician I:** Master's degree in Social Work or related field.

Movement Between Classifications: Employees who attain the education and experience requirements of the next higher classification shall be reclassified to that higher classification effective at the beginning of the pay period immediately, upon favorable review by the supervisor, following said attainment.

RELEVANT BACKGROUND

On March 22, 2000, the County posted a "Job Opening" for a new position which stated, *inter alia*, that the opening was in the Juneau County Department of Human Services. The title of the posted position was "Human Services Worker I Case Manager", with a Grade Level of 13. The posting stated that the opening was part-time.

Attached to the "Job Opening" was a "Position Description" which stated, *inter alia*, that the "Job Title" was "Human Services Worker I Case Manager (half-time)"; that the "Department" was "Juneau County Department of Human Services"; and that the position was a Grade 13, with a salary of \$12.58. The "Position Description" also stated that the "Qualifications/Education/Experience" included a "Bachelors Degree from an accredited university, in social work, psychology, or related work."

Michael Roraff, the County's Director of Human Services, prepared the "Position Description" for the job posting. Roraff recommended the "Bachelors Degree" requirement because he did not consider the job duties of the position to require a "Masters Degree." The

County created the new position with the understanding that it would be completely funded by

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program revenue. Roraff believes that program revenues are not sufficient to fund the salary requirements of a Master's Degree position.

Kimberly Reigard, a Social Worker V in the Child Welfare Unit, posted for this "Job Opening." At the time of the posting, Reigard was in Department 63. Roraff discussed this posting with Reigard on several occasions and explained that, if Reigard accepted the position, then she would suffer a significant reduction in wages because the position required a Bachelor's Degree and not a Master's Degree.

Reigard was offered and accepted the posted position. On September 1, 2000, Roraff approved a "Juneau County Employee Add/Change Form." This form stated, *inter alia*, that, effective September 4, 2000, Reigard would be a Human Services Worker III in Department 65 and would be changed from a full-time employee at Grade 18, Step 7, with an hourly rate of \$18.88, to a part-time employee at Grade 16, Step 4, with an hourly rate of \$16.14. In their stipulation of facts, the parties have agreed that Reigard's movement into the posted position was a transfer.

On or about September 21, 2000, Reigard, hereafter Grievant, filed a written grievance that states as follows:

I am filing this grievance because I believe the County has violated Appendices A & B, of the current Juneau County Professional Employees' Union Contract, by not placing me in Grade 17 (Social Worker IV/Human Service Worker IV) for my new position as a Social Worker in the Developmental Disabilities Unit. The decision regarding my Grade placement was made on August 30, 2000.

I am asking to be placed in Grade 17(Social Worker IV/Human Services Worker IV), at 7 years and to be made whole.

POSITIONS OF THE PARTIES

Union

Appendix B, entitled "Human Services Classification Criteria", describes the manner in which employees are placed initially on the salary schedule and the manner in which they may move within the schedule. Both the initial placement criteria and the movement between classes (the reclassification criteria) are based on either education, or some combination of education and experience.

Appendix A, entitled “Wage Schedules”, delineates the pay rates for the classifications referenced in Appendix B. In that the wage schedule rewards incumbent employees based on years of service in the appropriate classification, it resembles a typical seniority-based schedule. The schedule is differentiated from other seniority-based wage schedules in that the incumbent’s pay grade is determined by the Appendix B “classification” that the incumbent has attained by virtue of his/her education and experience, rather than by the position occupied by the incumbent, or the position’s job duties.

The Grievant applied for and received a newly created part-time position within the bargaining unit. No evidence was introduced regarding similar job transactions.

The selective adoption of the Developmental Disabilities position as requiring only a Bachelor’s Degree is inconsistent with the custom and practice in the Human Services Department. Supervisor Roraff’s testimony demonstrates that the Grade 13 was assigned to the posting because Roraff believed that program revenues could fund this Grade. According to Roraff, the County was unwilling to provide any supplementary financing for this position.

Grade 13 is the pay grade of an individual possessing only a Bachelor’s Degree and no Social Worker experience. This is far less than the Grievant’s education and experience. The decision of the County to place the Grievant at Grade 16 is recognition, albeit an imperfect one, of the contractually required placement methodology.

Appendix B is clear on its face. A position, per se, is not the determinant of classification and pay rate. Rather, Social Workers and other employees in the professional unit are classified and compensated on the basis of education and experience. The evidence that Social Workers of varying classifications perform the same work supports the Union’s contention that bargaining unit pay is a function of the employee’s “classification” and not the employee’s position.

Union witness David White testified, without contradiction, that the professional status concept embedded in Appendix B arose out of the status quo ante that predated the collective bargaining agreement. The Union proposed, and the County agreed, to memorialize concepts embodied in the merit system, providing that classification would be dictated by the professional status of the individual employee, and not by the duties of the position within the classification series. The County is barred from disregarding that bargain here.

It is a well-established principle that, when an employer takes an action inconsistent with the collective bargaining agreement, the affected employee must “obey now and grieve later.” This is what the Grievant did in this matter. Thus, the fact that the County notified the Grievant of its intent to reduce her classification and wage rate if she accepted the new position

does not bar this grievance. Moreover, even if the Grievant had agreed to accept a reduced

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rate of pay, the County would still be in violation of the collective bargaining agreement because no individual employee may alter the terms of the agreement. Rather, modifications to the agreement must be made by the parties to the agreement, i.e., the Union and the County.

The testimony of Union Representative William Moberly demonstrates that the Union amended the initial grievance at the third step by informing County officials that the remedy sought was restoration of the Grievant's rate to the original classification of Social Worker V. The County is barred from claiming surprise regarding the amended remedy.

The County's actions in this matter involve an egregious disregard of clear and unambiguous contract language. Thus, the make-whole remedy should include a reasonable rate of interest. The make-whole remedy should also require the County to reimburse the Grievant for the difference in pay between Grade 18, Step 7, and Grade 16, Step 4.

County

Under the plain language of the contract, the County is permitted to compensate positions based on the educational requirements of the positions. The County created a part-time position that expressly required only a Bachelor's Degree.

For the Union to prevail, the contract must contain language that explicitly provides that compensation follows the person, not the position. There is no such language. Instead, the contract simply provides that various positions that carry classifications of Social Worker I, II, etc. are compensated accordingly. There is no evidence that the contract restricts the County from linking a lower-paying classification to a less-demanding job.

The contract language is unambiguous and needs no interpretation. Thus, bargaining history is irrelevant.

The Union testimony regarding bargaining history involved little more than self-serving statements of a unilateral intent. Moreover, it was contradicted by the testimony of Juneau County Board Chairman James C. Barrett. At best, there are equal and offsetting views of the history of the initial negotiations.

The Union may have sought a teacher's contract, but that is not what they were given. They were given a contract under which individuals in positions requiring a Master's Degree could earn a Master's Degree and advance in compensation.

Under the former merit system, employees could not advance to higher pay grades until the retirement or death of a more senior employee created a vacancy. The County agreed to

go beyond the restrictive provisions of the State merit system by opening up unlimited

opportunities for advancement within the position classifications that exists in the workforce. The parties intended to develop a new way of classifying professional employees, but they did not intend to pay employees at their highest and best-paid rate, regardless of the position they held.

The contract does not forbid the County from reducing the pay of employees who take positions that have lower educational requirements. It does, however, require that employees who move forward in their careers be compensated as they progress in experience and responsibility.

Appendix A, the wage schedule, supports the County's position. It enumerates position titles and the associated grades and steps. It does not list the names of employees and their associated pay rates and steps.

The Union's position defies common sense and logic. As with the position in this case, many Human Services positions are funded by limited grants or program revenue. In presenting requests for positions, the County must be able to assume that positions with less demanding requirements can be funded with the lower revenues that are available.

Acceptance of the Union's interpretation of the collective bargaining agreement may well mean that the County will never create any new positions. The Union's interpretation is not reasonable on its face, nor is it logical based upon the contract language. Nor is it in the best interests of the bargaining unit or the clients that unit members serve. The grievance should be denied and dismissed on its merits.

DISCUSSION

The dispute arose when the Grievant posted for and was awarded a newly created part-time position. The position was posted as a Human Services Worker I position, with pay Grade 13. When the Grievant was awarded the position, the Grievant was reclassified from a Social Worker V to a Social Worker III and the Grievant was reduced from pay Grade 18, Step 7, to pay Grade 16, Step 4. 1/ The Union, contrary to the County, maintains that the County violated the collective bargaining agreement when it reclassified the Grievant and reduced her pay Grade.

1/ The County's "Add/Change Form" indicates that the Grievant was reclassified to a Human Services Worker III. However, at hearing, the parties stipulated that the Grievant was reclassified to a Social Worker III. The undersigned considers this stipulation to be controlling.

Section 9.03 of the collective bargaining agreement addresses job posting. As a review of this language establishes, it is silent with respect to the establishment of classifications and pay grades. Thus, it is of not assistance in resolving the issues in dispute and the arbitrator must look to other provisions of the agreement.

Article 30, Management Rights, reserves to the County certain rights. These reserved rights include the right to “determine the kinds and amounts of services to be performed as pertains to county government operations and the number and kinds of classifications to perform such services” and the right “to determine the methods, means and personnel by which County operations are to be conducted.” Standing alone, this contract language provides the County with the right to establish a part-time position in the Social Worker III classification. This contract language, however, does not stand-alone. As is expressly recognized in Article 30, the reserved management rights are “subject to the provisions of this contract.”

A provision of the contract relied upon by the Union is Appendix B, entitled “Human Services Classification Criteria.” The introductory paragraph of Appendix B states as follows:

The following criteria shall be used to determine initial placement on the wage schedule for new employees in the Human Services Department, as well as to determine when employees shall progress from one classification to another:

What follows are eight classifications defined in terms of education and/or experience. Included in the eight classifications are the following:

Social Worker III or Human Service Worker III: Bachelor’s degree in Social Work or related field, plus three years’ experience or Bachelor’s degree in Social Work or related field, and 6 graduate credits in Social Work or related field.

...

Social Worker V or Human Service Worker V: Master’s degree in Social Work or related field plus two year’s experience.

Appendix B concludes with the following paragraph:

Movement Between Classifications: Employees who attain the education and experience requirements of the next higher classification shall be reclassified to that higher classification effective at the beginning of the pay period immediately, upon favorable review by the supervisor, following said

attainment.

As set forth in the introductory paragraph, a new employee's "initial placement on the wage schedule" is determined by the "following criteria." What follows is a list of classifications. Each classification is defined on the basis of education and experience.

The introductory paragraph of Appendix B also states that the "following criteria" are determinative of when employees progress from one classification to another. The final paragraph, which expressly addresses progression from one classification to another, specifically identifies that such progression is based upon "education and experience."

The most reasonable construction of the plain language of Appendix B is that an employee's placement on the wage schedule is established by the employee's classification and the education and/or experience of the employee determines the employee's classification. 2/ Thus, by agreeing to the language of Appendix B, the County has placed a limitation upon its Article 30 right to "determine the kinds and amounts of services to be performed as pertains to county government operations and the number and kinds of classifications to perform such services" and the right "to determine the methods, means and personnel by which County operations are to be conducted."

2/ Consistent with this conclusion, each classification listed in Appendix B is assigned a pay grade in Appendix A, Wage Schedules.

In summary, under the most reasonable construction of the plain language of Appendix B, a "classification" does not attach to a position, but rather, attaches to the employee that occupies the position. While not determinative, the evidence that Social Workers of varying classifications perform the same duties is consistent with this construction of the contract language.

No evidence was introduced with respect to prior job postings, hirings, or transfers. Each party, however, called one witness to give testimony regarding the bargaining history of Appendix B.

According to Union Staff Representative David White, who represented the Union during the negotiation of the parties' initial collective bargaining agreement, the Union drafted the language that resulted in Appendix B with the intent of codifying the existing system in which Social Workers moved from one classification to another based upon education and experience. White recalls that, during the negotiation of this Appendix, White explained to the County that the purpose and the effect of Appendix B was to permit any Social Worker to

become a Social Worker V if the Social Worker obtained the proper education and experience.

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White further recalls that he explained that the wage and classification system proposed by the Union was analogous to a teacher grid in that Social Workers would move through the system based upon years of service and educational level.

County Board Chairman James Barrett, a member of the County team that negotiated the initial agreement, stated that White could have made the statements that White recalled making, but that Barrett did not recall such statements. Barrett further stated that he did not understand that the schedule agreed upon by the parties would be a teacher type of grid schedule.

White's testimony demonstrates that the Union understood that Appendix B would be applied in a manner that is consistent with the plain language of the Appendix. Barrett's testimony demonstrates that he did not understand that Appendix B was a teacher type of grid schedule, but does not provide any evidence with respect to what he, as an individual, or the County, as a party to the negotiations, understood the language of Appendix B to require. Thus, the evidence of bargaining history does not warrant the conclusion that the parties intended Appendix B to be given a construction other than that reflected in the language that was agreed to by the parties.

Conclusion

Notwithstanding the County's argument to the contrary, the plain language of the collective bargaining agreement does not provide the County with the right to classify positions based upon the educational requirements of the position, as determined by the County. Thus, the fact that the County determined that the duties of the newly created part-time position required no more education than a Bachelor's Degree does not provide the County with the right to reclassify the Grievant to a Social Worker III. Rather, under the plain language of the parties' agreement, the Grievant's education and experience determine the Grievant's classification.

It is undisputed that, immediately prior to her transfer into the part-time position, the Grievant's education and experience was such that she was appropriately classified as a Social Worker V and compensated at a Grade 18, Step 7. Accordingly, the County violated Appendix B of the parties' collective bargaining agreement when, at the time of the Grievant's transfer, the County reduced the Grievant from a Social Worker V classification to a Social Worker III classification.

At the time of the Grievant's transfer, Appendix A, Wage Schedules, entitled the Grievant to be paid at Grade 18, Step 7. Thus, the County violated Appendix A of the collective bargaining agreement when, at the time of the transfer, it reduced the Grievant from

pay Grade 18, Step 7, to pay Grade 16, Step 4.

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As the County argues, the written grievance submitted by the Grievant requested, as a remedy, that she be paid at Grade 17, Step 7. Contrary to the argument of the County, the Arbitrator is not limited to this remedy. Rather, the Arbitrator may impose the remedy that is appropriate for the contract violation that is proven at hearing.

As the Union argues, it is the Union, and not the Grievant, that is a party to the collective bargaining agreement. As the Union further argues, when Union Representative William Moberly met with the County's Personnel Committee to discuss the grievance, he placed the Committee on notice that the Union considered the appropriate remedy to be a restoration of the Grievant to Grade 18.

The Union has requested a "make-whole" remedy that includes interest on monies due the Grievant. The contract, however, does not require such interest payments. To be sure, it is evident that the County's decision to post the part-time position at Grade 13 was motivated, in part, by financial considerations. However, such evidence does not demonstrate that the County has acted in bad faith. Nor does the evidence support the Union's argument that the County knowingly violated the terms of the collective bargaining agreement. The facts of this case do not warrant the imposition of the extraordinary remedy of interest.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following:

AWARD

1. The County violated the collective bargaining agreement when it downgraded the Grievant's classification from Social Worker V to Social Worker III and placed the Grievant at Grade 16, Step 4, of the wage schedule, effective September 4, 2000.

2. In remedy of this violation of the collective bargaining agreement, the County is to make the Grievant whole by immediately:

a) restoring to the Grievant the classification of Social Worker V and placing the Grievant on the wage schedule at Grade 18 and at the Step that the Grievant would now occupy but for the County's reduction of the Grievant to Grade 16, Step 4;

b) reimbursing the Grievant for all wages and benefits lost as a result of the County's failure to continue the Grievant's wage schedule placement of Grade 18, Step 7, when the Grievant transferred into her part-time position.

Dated at Madison, Wisconsin this 5th day of December, 2001.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator