

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**CALUMET COUNTY**

and

**CALUMET COUNTY COURTHOUSE EMPLOYEES  
LOCAL 1362, AFSCME, AFL-CIO**

Case 102  
No. 56848  
MA-10434

(Lisa Fox Grievance)

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Appearances:

Shneidman, Myers, Dowling, Blumenfield, Ehlke, Hawks & Domer, by **Attorney Bruce F. Ehlke**, 217 South Hamilton Street, Suite 400, P.O. Box 2155, Madison, Wisconsin 53701-2155, appearing on behalf of Calumet County Courthouse Employees Local 1362, AFSCME, AFL-CIO.

Davis & Kuelthau, S.C., by **Attorney James R. Macy** and **Attorney Tony J. Renning**, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54902-1278, appearing on behalf of Calumet County.

**SECOND SUPPLEMENTAL AWARD**

The original Award regarding grievant Lisa Fox Roberts' (hereafter Roberts) termination was issued by the undersigned on August 20, 1999. Thereafter, on January 27, 2000, Calumet County Courthouse Employees Local 1362, AFSCME, AFL-CIO (hereafter Union) filed a prohibited practice complaint alleging that Calumet County (hereafter County) had failed and refused to implement the August 20, 1999 award in violation of Sec. 111.70(3)(a)1 and 5, Stats. On June 6, 2000, the County filed a cross-complaint alleging that the Union had failed to cooperate in Roberts' return to work and it had thereby refused and failed to implement the August 20, 1999 award in violation of Sec. 111.70(3)(b)4 and 6, Stats.

Thereafter, WERC Examiner Shaw issued a decision remanding the case to the undersigned for clarification on May 4, 2001. On October 24, 2001, the undersigned issued a Supplemental Award in this case, and she retained jurisdiction for a period of thirty (30) calendar days after the date of that Award regarding the remedy only.

By letter dated November 19, 2001, the Union requested that the Arbitrator retain jurisdiction for a period longer than thirty (30) days after the date of the Supplemental Award in order to deal with two problems which had arisen: First, Roberts had been unable to enter Level II treatment within the 14-calendar day period after the date of the Supplemental Award, as required thereby, for various reasons. Second, on November 7, 2001, the State of Wisconsin, Department of Workforce Development denied Roberts access to the "KIDS" computer program because "this individual has violated the State statutes, fed. regs. and DWD security policy relating to confidentiality."

Prior to November 23, 2001, the Arbitrator sent a fax to the parties indicating that she would extend her jurisdiction beyond the 30-calendar day period after the issuance of the Supplemental Award in order to deal with the issues raised in the Union's November 19, 2001 letter. On November 26, 2001, a conference call was held between the Arbitrator and Counsel for the County and the Union. During this conference call, the Arbitrator asked the parties to brief the issues raised in the Union's November 19<sup>th</sup> letter.

**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.**

### ISSUE

Whether the Arbitrator should modify the Award and/or Supplemental Award to allow Roberts additional time to obtain appropriate treatment, if any, and what effect the State of Wisconsin Department of Workforce Development's denial of access to the State "KIDS" program to Roberts should have on the remedy in this case?

### POSITIONS OF THE PARTIES

#### County

The County took the position in its brief received November 30, 2001, that Roberts should be terminated from County employment based upon DWD's decision denying her access to the State of Wisconsin's "KIDS" program. In the alternative, as Roberts failed to

enter a Level II treatment program within 14-calendar days after the date of the Supplemental Award as required therein, the County urged that Roberts' employment should be terminated on that basis. Finally, if the Arbitrator believes that Roberts' employment cannot be terminated on either of the above bases, the County requested that it may be necessary for the Arbitrator to hold further evidentiary hearings wherein the Union should carry the burden to demonstrate "why Ms. Roberts did not comply with the requirements of the Supplemental Award."

### Union

The Union argued that changes have been made in the substance abuse standards since the issuance of the initial Award in this case. For this reason, Roberts could not enter Level II treatment for her problem with alcohol without completing a current assessment. The Union therefore sought that the Supplemental Award be modified to indicate that Roberts' reinstatement be conditioned upon the completion of such a current assessment and her participation in whatever treatment (if any) is recommended thereby. 1/

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*1/ In its November 19, 2001 letter, the Union asserted that the County is obligated to reinstate Roberts to an alternative position of employment, as the Award and Supplemental Award provided that she be placed in a "substantially similar position" if her child support position was not available. The Union also requested that Roberts be given "additional time in which to contact and obtain enrollment in a Level II program that will admit her, without requiring a current assessment."*

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### DISCUSSION

It appears to the Arbitrator that the essential issue remaining in this case revolves around the meaning of the phrase "substantially similar position" in both the Award and Supplemental Award. Although the undersigned did not explicate this phrase in either of the prior Awards, the intent in using the above-quoted phrase was that Roberts be offered another child support worker position if her child support worker position had been filled or eliminated by the County prior to her reinstatement pursuant to the decisions in this case. I point the parties to footnote 9/ of the Supplemental Award as demonstrating that there was no intention to order Roberts' reinstatement to any other County position other than a child support position by the orders issued.

However, as the State of Wisconsin Department of Workforce Development has denied Roberts access to the "KIDS" program which is essential to the performance of her duties as a County child support worker, it is therefore clear to this Arbitrator 2/ that "the County has no obligation to reinstate Roberts to a child support worker position" pursuant to the Award or the Supplemental Award.

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*2/ I need not address the Union's arguments regarding Roberts' inability to enter Level II treatment in a timely fashion as it was clear in my Supplemental Award that "if Roberts is denied access to 'KIDS,' the County will have no obligation to reinstate her to a child support worker position." The State's action ends the inquiries in this case.*

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Based on the above and foregoing, and in response to the parties' arguments as described herein, I issue the following

### **AWARD**

There is no need to modify the Award or Supplemental Award herein. The State of Wisconsin Department of Workforce Development's denial of "KIDS" access to Roberts means that she is not qualified to hold her child support worker position or any other child support worker position at Calumet County. Therefore, as Roberts is ineligible to be reinstated, this case is dismissed in its entirety.

Dated at Oshkosh, Wisconsin, this 19<sup>th</sup> day of December, 2001.

Sharon A. Gallagher /s/

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Sharon A. Gallagher, Arbitrator