

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**WISCONSIN COUNCIL 40, AFSCME,
AFL-CIO, LOCAL UNION 2223**

and

EAU CLAIRE COUNTY

Case 206
No. 59952
MA-11470

(Community Service Coordinator Posting Grievance)

Appearances:

Mr. Steve Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of the Union.

Mr. Keith R. Zehms, Corporation Counsel, on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "County", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Eau Claire, Wisconsin, on August 6, 2001. The hearing was transcribed and the parties there agreed I should retain my jurisdiction if the grievance is sustained. The parties subsequently filed briefs that were received by October 15, 2001.

Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

Whether the County violated the contract when it failed to provide a work experience equivalency in addition to the education requirement for the Community Service Coordinator position and, if so, what is the appropriate remedy?

BACKGROUND

After Cheryl Gilbert, the then-incumbent Community Service Coordinator (“CSC”) posted to another bargaining unit, the County on April 2, 2001 (unless otherwise posted, all dates herein refer to 2001), posted a CSC position in the Clerk of Court’s office (Joint Exhibit 2), which stated, *inter alia*:

• • •

JOB DUTIES & REQUIRED QUALIFICATIONS:

General Description: Position administers the Community Service Program, providing specialized case management to participants and community work sites as outlined in Chapters 973 and 346, Wisconsin Statutes.

Required Qualifications: High school graduation or equivalent. Two (2) years post-secondary education (at least 48 credits) with at least 24 credits in any combination of the following areas: criminal justice, human services related field, public/business administration, communications skills, or related fields. (Emphasis added).

Satisfactory rating on job-related knowledge and skill gained through experience and/or training which includes assessment of the following factors:

- coordinating information and services with multiple departments and organizations;
- providing direct services with significant face-to-face contact;
- program coordination and administration;
- work site recruitment and development, and
- report preparation and presentation

Training or experience in data entry and standard office practices and procedures including word processing. NOTE: Appointment will be conditional upon successful completion of a background check.

...

The County awarded the position to Lisa Jorgensen, a member of the bargaining unit who has a two-year Associate Degree in Liberal Arts and who was classified in pay range 102 in the Housing Authority. In doing so, the County passed over five bargaining unit employees who had more seniority than Jorgensen - Kathryn Bunning, Julie Niemann, Denise Hall, Linda Tafel and Patricia Scherer - because none of them met the two-year college education requirement listed in the job posting. The County therefore never reviewed their individual job-related knowledge, skill, and abilities. A class grievance on their behalf was filed on April 23.

Personnel Officer Christine Bergstrom testified that Clerk of Courts Dianna Miller “Adamantly. . .” insisted on a four-year Bachelor of Arts degree for the posted CSC position; that she, Bergstrom, believed that a two-year college requirement was more appropriate; and that a “compromise” of 48 credits was ultimately reached. She said that the educational requirement was much more objective than trying to ascertain whether applicants had equivalent qualifications. Asked why an education requirement was needed, she replied:

The Community Service Program is basically a stand-alone program. The incumbent in that position develops, implements, and maintains that program on an ongoing basis with very little outside supervision or control. Part of the position’s requirements are to go out and do public speaking to various community groups to encourage people to participate as job sites for the program, to go and speak with the job sites themselves, analyze them for the appropriateness of work to be provided for community service opportunities, and provides an ongoing liaison with the job site, the people who are operating the job sites in case there are problems with the placements. Part of what we looked at in terms of, okay, what do we presume that a formal education gives, is an ability to demonstrate an ability to take information, as in research, to take information from different sources, be able to assimilate it, be able to develop it into written communication, or be able to present it publicly in a manner that is persuasive, and that is representative of a professional level of – you know, a certain level of professional expertise.

Personnel Director Marvin Niese testified that the educational requirement for the CSC position was reasonable and that the personnel department did not check on an applicant’s ability if he/she did not meet the posted educational requirements for the CSC position. He said on cross-examination that Clerk of Court Miller originally wanted the CSC position to be placed in the professional bargaining unit and that a formal education “not necessarily” means that a person can do a better job than someone else who has equivalent experience.

County Clerk Miller testified that she wanted some objective measurement as to whether a person is qualified to be the CSC, which is why she insisted on a formal education requirement. She added that much of the work now done by the CSC was formerly performed by probation agents who were required to have a Bachelor of Arts degree; that Jorgensen has performed very well as the CSC; and that there are no equivalent work-related positions in her office because all of those positions relate to clerical duties, as opposed to the case management responsibilities of the CSC.

POSITIONS OF THE PARTIES

The Union claims that the County violated Section 5.02 of the contract because it “never considered ‘knowledge’ gained through job experience, or job-related training seminars, nor ‘skill and efficiency on the job’ of more senior employees who posted for the CSC position” and because there is no merit to the County’s claim that “an alternative experience” requirement would be too subjective to administer. The Union also maintains that the “CSC position is important to the clerical bargaining unit, and, to the more senior applicants” who have the skill, ability and experience to perform the CSC’s duties and that, furthermore, the “contractual posting provision is a ‘sufficient ability’ standard.” As a remedy, the Union asks that the CSC position be reposted and that the County be required to consider any “directly related job-related training and/or experience. . .” as an equivalency requirement.

The County, in turn, contends that the authority to determine required qualifications represents a “fundamental management right”; that its post-secondary requirement “is a bona fide occupational occupation”; and that the Union’s requested remedy cannot be granted because it “transfers the authority to determine qualifications from the County to the arbitrator.”

DISCUSSION

This case in part turns upon the application of Section 1.06 of the contract, entitled “Recognition and Management Rights”, which states in pertinent part that “The Employer shall have the right to “Manage the employees; to hire, promote, transfer, assign or retain employees and, in that regard, to establish reasonable work” rules.

This right to “hire, promote, transfer, assign or retain employees. . .” must be exercised in accordance with Section 4.01 of the contract, entitled “Seniority Defined”, which states in pertinent part:

“The Employer recognizes the principle of seniority and such principles shall predominate where applicable, provided that the employees involved in any decision to which the principle of seniority is applicable, meet any necessary qualifications.”

Seniority is addressed in Section 5.01 of the contract which states in pertinent part:

5.01 A certified bargaining unit is defined to be each separate AFSCME Union with Eau Claire County – e.g.: . . . Courthouse Clerical Employees. . . The Employer will award the position to the most senior employee who signs the posting and meets the required qualifications at the time of posting as stated on the job posting. . . . However, applications from employees within the certified AFSCME bargaining unit where the vacancy or new position exists will receive primary consideration even though applicants from other bargaining units may have more seniority.

5.02 The qualifications of employees are a matter of fact, and include physical ability, knowledge, skill and efficiency on the job. . .

The Employer shall determine whether an applicant is qualified for the position. However, such determination may be grieved by the Union. Employees not considered qualified shall be notified of the reasons in writing.

It thus must be determined under this language whether the County’s educational requirement for 48 hours of college credit, which includes 24 hours of credit in certain subjects, constitutes a reasonable qualification and whether, if employees do not have that qualification, the County is required to establish a work experience and equivalency qualification.

Since the 24 hours of college credits must be in the areas of “criminal justice, human services related field, public/business administration, communications skills, or related fields”, I find that this constitutes a *bona fide* education requirement. Moreover, the Union itself in the past acknowledged the need for a similar educational requirement when it did not object to the imposition of an educational requirement when the County in December, 2000, reclassified the CSO position to pay range 106 and awarded that position to former CSC Gilbert who had a Bachelor of Arts degree from a four-year college.

However, Bunning has about 15 college credits in criminal justice, psychology and sociology and she has worked in the Clerk of Courts office for about 20 years. Scherer, who has no college credits, also has had extensive court-related experience after she became a Warrant Specialist in 1989. Since Jorgensen's college work dated back to 1973-1981 (Joint Exhibit 14), the Union rightly asks why such former college work supercedes Bunning and Scherer's much more recent experience and training. Moreover, Personnel Director Niese acknowledged that it "is possible. . ." that some of the unsuccessful applicants would be able to serve as the CSO based only on their work experience.

The contract, though, does not contain any language mandating that a work experience equivalency be established. The Union therefore in effect is arguing that Section 5.01 of the contract must be read as providing that:

. . .

"The Employer will award the position to the most senior employee who signs the posting and meets the required qualifications at the time of posting and/or the equivalent, work-related experience and training on the job posting."

. . .

But, since Section 2.02 of the contract states that an arbitrator "shall have no authority to add to or to subtract from or modify this agreement in any way", I cannot add such an underlined phrase to the contract.

In addition, and as set forth on p. 3 above, Bergstrom credibly testified that the CSC position is unique because he/she must exercise a wide range of skills that are dissimilar from the clerical skills regularly performed by other bargaining unit members. The record further shows, throughout Clerk of Court Miller's testimony, that many of the CSC's duties were formerly performed by probation agents who were required to have a Bachelor of Arts degree. The need for such a degree therefore shows a historical basis for the County's insistence here that a CSC must have some college experience.

The Union cites Elkouri and Elkouri, *How Arbitration Works*, (BNA, 5th Ed., 1997), pp. 866-867, in support of its contention that such college experience is unreasonable and thus is violative of Section 5.01. It certainly is true that some arbitrators in some cases have struck down various educational qualifications as being unreasonable. All those cases, however, are fact-specific and thus turned on the specific facts of each such case. Here, the Union has presented several important reasons as to why the County's college requirement is unfair. Standing alone, they might well establish that the County has acted unreasonably. But, they do

not stand alone since: (1), the CSC must exercise a range of skills that are dissimilar to the clerical skills performed by other bargaining unit members; (2), many of the CSC's job duties were formerly performed by probation agents who were required to have a college degree; and (3), the Union agreed to a college requirement when the CSC position was first established.

Given all that, I conclude that the County's educational requirement is reasonable and that, as a result, the County is not required to provide for a work experience equivalency. See WAUKESHA COUNTY, Case 52, No. 52247, MA-8887 (McLaughlin, 1995); PEPIN COUNTY, Case 37, No. 44310, MA-6252 (Engmann, 1991); WINNEBAGO COUNTY, Case 286, No. 55215, MA-9931 (Knudson, 1998).

In light of the above, it is my

AWARD

1. That the County did not violate the contract when it failed to provide a work-experience equivalency in addition to the education requirement for the CSC position.
2. The grievance is hereby denied.

Dated at Madison, Wisconsin, this 11th day of February, 2002.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

