

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**ROCK COUNTY**

and

**THE ASSOCIATION OF MENTAL HEALTH SPECIALISTS**

Case 349

No. 62153

MA-12179

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Appearances:

**John S. Williamson, Jr.**, Attorney at Law, 103 West College Avenue, Suite 1203, Appleton, Wisconsin 54911, appeared on behalf of the Association of Mental Health Specialists.

**Eugene R. Dumas**, Deputy Corporation Counsel, Rock County, Courthouse, 51 South Main Street, Janesville, Wisconsin 53545, appeared on behalf of Rock County.

**ARBITRATION AWARD**

On February 18, 2003 Rock County and the Association of Mental Health Specialists requested the Wisconsin Employment Relations commission to appoint William C. Houlihan, a member of its staff, to hear and decide a dispute pending between the parties. A hearing was conducted on June 19, 2003 in Janesville, Wisconsin. A transcript of the proceedings was taken and distributed by September 10, 2003. Post-hearing briefs and reply briefs were submitted and exchanged by October 28, 2003.

This Award addresses the correct rate of pay for Social Workers who hold Temporary or Training Certifications.

### **BACKGROUND AND FACTS**

The County and Union are signatories to a collective bargaining agreement applicable to a group of professional employees, including Social Workers, employed within the County's Human Services Department. The pay for bargaining unit members is set forth in Appendix A and the Wage Progression Procedure of the collective bargaining agreement. Those provisions, set forth below, include the following:

'Progression from Range I to Range II for Case managers and Probation Officers will be automatic upon the employee's State certification as a Social Worker'

The dispute in this proceeding is whether Social Worker trainees and/or those with Temporary Certificates are eligible for wage placement at Range II.

The contractual provision(s) governing this dispute have been a part of the collective bargaining agreements between these parties since at least 1996.

In order to qualify for permanent certification as a Social Worker, an individual must satisfy a number of qualifying criteria, including successful completion of a National and a State Exam. There are provisions in the Statutes and Administrative Code which permit issuance of Temporary Certificates, which is a nine month certificate for someone who has completed all but the national exam requirements; or Training Certificates, a twenty four month certificate available to individuals with educational deficiencies who have not passed requisite exams. Employees who hold either of these Certificates are entitled to use the title "Social Worker" for employment purposes. The applicable statutes are set forth below.

The wage placement history applicable to Social Workers was made a part of the record. From January, 1994 to January 2001 there were nine employees hired without permanent certification. All were required to achieve permanent certification to be paid at the Range II level. From January 2001 to November, 2002 wage placement among Temporary/Training Social Workers was internally inconsistent. There were ten such employees hired. Five were placed at Range II, and five were placed at Range I. No relevant provision of the collective bargaining agreement was modified.

In approximately November of 1999, Amy Kingsland, a relatively new Human Resource Analyst with the Rock County Human Resources Department, was assigned to hire for the Human Services Department. It was Ms. Kingsland's understanding that employees hired in Temporary/Trainee status were entitled to placement at Range II. She placed two such hires in Range II in January, 2001. A third such person was placed in Range II in May 2002.

In October, 2002 a fourth person was placed in Range II, but that designation was rescinded after one pay period. A fifth person was similarly identified for Range II placement in November of 2002, but the placement was modified before receipt of any paycheck.

During this same period of time, Lori Pope, a veteran Human Resource Analyst was also hiring for Human Services. Ms. Pope hired five employees with Temporary/Trainee certifications, all of whom were placed at Range I. These employees were required to achieve permanent certification to move to Range II. These employees were placed at Range I in January and August, 2001, February, August, and September, 2002 respectively.

In November of 2002 the inconsistencies came to light. The different levels of pay prompted bargaining unit employees to contact the Union to investigate. That investigation resulted in the employer becoming aware of the inconsistent practice. The employer concluded that Ms. Kingsland had made a mistake, that proper placement was at Range I, and, on November 15, 2002 sent the employees who were placed at Range II a letter indicating that an error had been made and that their pay would be adjusted. The Union came to the opposite conclusion, and, on November 19, 2002 filed the grievance that has led to this proceeding.

### ISSUE

The parties were unable to stipulate to the issue.

The Union regards the issue as:

Did the County violate the collective bargaining agreement by placing employees who have a temporary certificate or a social worker training certificate in Range I rather than in Range II?

If so, what should the remedy be?

The County regards the issue as:

Do the terms of the collective bargaining agreement require that an employee receive a formal certification as a social worker to be placed in Pay Range II?

I regard the issues as having no substantive difference. This Award will address both.

**RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT**

**ARTICLE XVII – SALARY**

17.01 Appendix A attached hereto and made a part of this Agreement by this reference, shall be in effect for the life of this Agreement.

. . .

**APPENDIX A AMHS – HUMAN SERVICE**  
**January 1, 2002 WAGE SCHEDULE**

**RANGE I**

Case Manager  
Probation Officer – Not Certified

. . .

**RANGE II**

Probation Officer – Certified as Social Worker      Case Manager II  
Recreational Therapist  
Registered Records Administrator  
Social Worker – Certified

. . .

**WAGE PROGRESSION PROCEDURES**

1. Progression from Range I to Range II for Case Managers and Probation Officers will be automatic upon the employee's State certification as a Social Worker. The effective date of the increase will be the pay period immediately following notification with documentation of certification to management. . .

**RELEVANT STATUTORY PROVISIONS**

**457.01      Definitions.**

. . .

(10) “Social worker” means an individual who practices social work.

. . .

**457.04 Prohibited practices.** Except as provided in s. 457.02, no person may do any of the following:

(1) Use the title “social worker” unless the person is certified as a social worker under this chapter.

. . .

**457.08 Social worker certificate and advanced practice certificates.** (1) SOCIAL WORKER CERTIFICATE. The social worker section shall grant a social worker certificate to an individual who qualifies under s. 457.09(5)(d) or to any individual who does all of the following:

- (a) Satisfies the requirements in s. 457.06
- (b) Submits evidence satisfactory to the social worker section that he or she has received a bachelor’s or master’s degree in social work from a program accredited by, or a preaccreditation program of, the council on social work education or a doctorate degree in social work.
- (c) Passes an examination approved by the social worker section to determine minimum competence to practice as a social worker as specified by the rules promulgated under s. 457.03(2).

. . .

**457.09 Social worker training certificate.** (1) The social worker section shall grant a social worker training certificate to any individual who does all of the following:

- (a) Submits an application for the certificate to the department on a form provided by the department.
- (b) Pays the fee specified in s. 440.05(6).

(c) Submits evidence satisfactory to the social worker section that he or she has a bachelor's degree from an accredited college or university in psychology, sociology, criminal justice or another human service program approved by the section.

(d) Submits a statement to the social worker section that he or she is seeking to attain social worker degree equivalency under sub. (4) while he or she holds a social worker training certificate.

(2) (a) A social worker training certificate authorizes the holder to use the title specified in s. 457.04(1) during the period in which the certificate is valid.

(b) A social worker training certificate holder is a social worker certified under this chapter for purposes of any law governing social workers certified under this chapter.

. . .

**457.14 Temporary certificates.** Upon application and payment of the fee specified in 440.05(6), the appropriate section of the examining board may grant a temporary social worker, marriage and family therapist or professional counselor certificate to any individual who satisfies the requirements under s. 457.08(1)(a) and (b), 457.10(1) to (3) or 457.12(1) to (3) and has submitted an application to take the next available examination for certification under s. 457.08(1)(c), 457.10(4) or 457.12(4). A temporary certificate granted under this section is valid for a period designated by the appropriate section of the examining board, not to exceed 9 months, and may be renewed once by that section of the examining board.

### **POSITIONS OF THE PARTIES**

It is the view of the Union that the contractual reference to "Social Worker Certified" must necessarily have the same meaning that phrase has when used in the Statutes. Chapter 457, Wis. Stats. defines social worker, including who may use the professional designation. Both Temporary and Trainee Social Workers are treated as Social Workers under the Statute. It is the position of the Union that by using the term "Certified" the parties intended the contract to have the same meaning as does the Statute. Neither the County nor the Union has certification authority.

Under the Wage Progression Procedures a Case manager automatically progresses from Range I to Range II upon the “employees State certification as a social worker”. Absent such certification, the employee remains a Case Manager. In the Union’s view, the parties contracted for the statutory scope of certification. The Union denies any basis for an alternative interpretation. No bargaining history was offered. No alternative explanation for the contractual use of the term “certified” was offered. The statutory use of the term Social Worker has not changed since the parties entered into the 1996-97 collective bargaining agreement. Then, as now, a trainee was considered a Social Worker. The Union contends that the County’s construction of the term renders “certified” as both meaningless and superfluous.

In its reply brief, the Union denies the existence of a practice. Salary placement has varied. There was no evidence that the Union knew of Range I placements. Once the Union discovered the existence of such placements, a grievance was filed. In the view of the Union, the language of the contract is clear and unambiguous, rendering any conflicting practice a nullity.

The County points out that the language in dispute has remained unchanged for years. The language existed in the bargaining unit that preceded AMHS, and was then construed by the parties to require full social worker certification to be eligible for Range II placement. The County contends that it reasonably believed the interpretation of those words were mutually intended to be incorporated into the successor agreement when the parties chose to use the same terms. The County contends that the Union is attempting to exploit an error.

The County followed the practice of requiring an employee to achieve full certification to proceed to Range II until Ms. Kingsland made a mistake. Ms. Kingsland acknowledged her error in her testimony, and the matter, once discovered, was corrected. The County points out that Union President Linda Graf was unaware of the existence of Trainee or Temporary Social Worker status until the grievance arose.

The County relies upon the testimony of two long term management witnesses who testified that they always understood that employees were not certified until they passed the required examination. It is the view of the employer that its long standing interpretation of the agreement is a reasonable construction of the agreement and has evolved into a practice through the passage of time. If the interpretation was offensive to the words of the contract it would have been identified as an issue long ago.

### **DISCUSSION**

Appendix A and the Wage Progression Procedures of the collective bargaining agreement govern when an employee is entitled to be paid at Range II. Those provisions call

for an “automatic” progression “upon the employee’s State certification as a Social Worker.” The question raised in this proceeding is what ‘certification as a Social Worker’ means. The Union contends that the clear and unambiguous meaning is derived from the statute.

Section 457.08(1) Stats. defines a Social Worker certificate, applicable to fully certified Social Workers.

Sec. 457.09 Stats. provides for a Social Worker training certificate which is a limited term certification, entitling the holder to be treated as “a social worker certified under this chapter for purposes of any law governing social workers certified under this chapter.” This certification is not a full or permanent certification as a Social Worker. As provided by Sec. 457.09(2)(b) it addresses the laws governing the regulation of the practice of Social Work, permitting the holder to work, while seeking Social Worker status.

While less specific, Sec. 457.14 Stats., applicable to Temporary certificates, appears to bring about the same result for a shorter period of time. It is another bridge device to allow the holder to work in anticipation of taking the required certification exams. It is not a full certification.

I believe the contractual reference to “State certification as a Social Worker’ is sufficiently ambiguous to look at the practice. The collective bargaining agreement is not a “law governing social workers certified under this chapter.” Thus, the statute does not purport to regulate the treatment of the term “certified” under the compensation provisions of the agreement. The Union’s interpretation of the phrase which would construe certification as including all certifications is a reasonable construction of the term. However, so is the County interpretation which is limited to full certification. Neither the Temporary nor the Trainee certification operates to confer upon the individual full Social Worker status. Unless the Temporary/Trainee certificate holder satisfies the statutory requirements the certificate will run out, and the individual will fall short of Social Worker status. The fact that the training certificate is considered “social worker certified under this chapter for purposes of any law...” does not change that fact.

I believe there was a long standing practice, construing the words of the agreement, to move only those employees who had achieved full Social Worker certification to Range II. The record establishes that for at least six years all Temporary/Trainee certified hires were placed at Range I. There were nine people so affected, including four in 2000, the year preceding the grievance. The Union disavows knowledge as to what new hires were paid. I find it difficult to believe that no one within the Union organization knew that so many people were being hired at Range I. The seniority roster contains pay rates.



I believe that Kingsland made a mistake. That is the conclusion most supported by the record. There is no evidence of any conscious decision to modify the previous application of the pay plan. This error, particularly in light of Pope's contrary administration does not serve to repeal what had been a consistent application of the agreement. Once the error was discovered, it was immediately corrected.

The employers administration of the agreement is a rational interpretation of the Wage Progression Procedures. It is also consistent with years of administration and practice. There is no evidence the parties ever intended to incorporate the statutory treatment of training certificate into the compensation provisions of the collective bargaining agreement.

**AWARD**

In light of the foregoing, the grievance is denied.

Dated at Madison, Wisconsin, this 21st day of April, 2004.

William C. Houlihan /s/

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William C. Houlihan, Arbitrator

