

BEFORE THE ARBITRATOR

---

In the Matter of the Arbitration of a Dispute Between

**HUMAN SERVICE EMPLOYEES OF FOREST, ONEIDA  
AND VILAS COUNTIES, LOCAL 79-A, AFSCME, AFL-CIO**

and

**HUMAN SERVICES BOARD OF FOREST,  
ONEIDA AND VILAS COUNTIES**

Case 15  
No. 62362  
MA-12253

*(Linda Carriere Grievance)*

---

Appearances:

**Jack Bernfeld and Dennis O'Brien**, Staff Representatives, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Human Service Employees of Forest, Oneida and Vilas Counties, Local 79-A, AFSCME, AFL-CIO.

Ruder, Ware & Michler, L.L.S.C., Attorneys at Law, by **Dean R. Dietrich** and **Bryan Kleinmaier**, on behalf of Human Services Board of Forest, Oneida and Vilas Counties.

**ARBITRATION AWARD**

Human Service Employees of Forest, Oneida and Vilas Counties, Local 79-A, AFSCME, AFL-CIO, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and the Human Services Board of Forest, Oneida and Vilas Counties, hereinafter the Board, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The Board subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A

hearing was held before the undersigned on January 7, 2004, in Rhinelander, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by March 9, 2004. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

### ISSUES

The parties could not agree on a statement of the issues and agreed the Arbitrator would frame the issues to be decided.

The Union would state the issues as follows:

Did the Employer unreasonably deny the grievant the right to bump a less senior employee, and thereby violate the collective bargaining agreement?

If so, what is the remedy?

The Employer would state the issues as being:

Whether the Employer violated the labor agreement when it decided that the Grievant was not qualified to replace the less senior employee designated by the Grievant? If so, what is the appropriate remedy?

The Arbitrator frames the issues as follows:

Did the Employer violate the parties' labor agreement when it did not allow the Grievant to bump into the Mental Health Case Manager position? If so, what is the appropriate remedy?

### CONTRACT PROVISIONS

The following provisions of the parties' agreement have been cited in relevant part:

#### ARTICLE 2 – MANAGEMENT RIGHTS

The Board possesses the sole right to operate the Human Services Organization and all management rights repose in it, subject only to the provisions of this Agreement and applicable law. These rights include, but are not limited to the following:

A. To direct all operations of the Organization.

...

- C. To hire, train, promote, transfer, assign and retrain employees.

...

- E. To relieve employees from their duties because of lack of work or any other legitimate cause in accordance with the terms of this Agreement.

- F. To maintain efficiency of organization operations entrusted to it.

...

- J. To manage and direct the working force, to make assignments of jobs, to determine the size and composition of the work force, to determine the work to be performed by employees, to determine the competence and qualifications of employees, and to evaluate the performance of employees.

...

- L. To determine the methods, means and personnel by which operations are to be conducted.

Any dispute with respect to the improper application of said management rights contrary to language contained in this Agreement may be processed through the Grievance and Arbitration procedure contained herein; however, the pendency of any grievance or arbitration shall not interfere with the right of the Board to continue to exercise these management rights.

...

#### ARTICLE 5 – SENIORITY/PROBATIONARY PERIOD

...

- D. Layoff: In the event of a reduction in the work force, probationary employees in the affected job classification shall be laid off first and then employees with the least seniority within the classification shall be selected for layoff, providing the remaining employees in each classification are capable and qualified, in the judgment of the Director, to perform the remaining work. Employees selected for layoff shall have

the right to replace less senior employees in the same or lower rated classification in a position provided the employee is capable and qualified to perform the work of the position.

### **BACKGROUND**

The Board operates the Human Services Mental Health Center in Rhinelander, Wisconsin and provides services to the residents of Forest, Oneida and Vilas counties, as well as a resident drug and alcohol treatment facility. The Board provides a number of mental health services: a Community Support Program, which includes assessment and treatment of inpatient and outpatient mental illness and counseling; an outpatient mental health clinic – Northwoods Guidance Center; a Mental Health Outreach program; and an Emergency Services program. To be eligible for services provided through the Community Support Program, one must be 18 years or older and experiencing a major mental illness. To be eligible for services through the Mental Health Outreach Program, one must be 18 years or older and experiencing a chronic, severe mental illness. The Board also provides a residential alcohol and drug treatment facility, Koinonia, for adults addicted to drugs or alcohol. Bonnie LaRose is the Mental Health Services Administrator, and is responsible for all of the mental health services provided by the Board. Carol Wright is the Program Director at Koinonia.

The Grievant has been employed at Koinonia since 1975. She began as a relief worker on weekends, was a temporary House Manager, was a part-time assistant to the secretary and from 1989 until the Fall of 1991 was a Secretary II. In the summer of 1991, the Board created the position of Social Worker at Koinonia. Qualifications for the position included:

A. Education

A Bachelor's Degree in Social Work or related Human Services field.

B. Skills/Experience

1. Minimum of 2 years experience working with clients with disabilities.
2. Demonstrated knowledge of AODA treatment.

No one applied for the position and it was reposted in September of 1991 with the educational requirement of a bachelor's degree "in a human services field". The Grievant posted for the position. The Grievant was the only applicant with a degree, and was awarded the position. The Grievant has a Bachelor's degree in Home Economics Education, with a minor in Child Development. She has 42 additional credits concentrated in Child Development

and Family Relations. The original job description for the Social Worker position at Koinonia included the educational requirement of a bachelor's degree in "Social Work or related Human Services field", as did the 1993 revised job description for the position. The Grievant is certified as a Social Worker by the State. The position's duties included being responsible for case management; however, while the Grievant received and signed off on the treatment plans for a period of several years, as she was the only degreed person on the team, she did not write the plans and did not have clients assigned to her. For the past several years, the Grievant has been part of a multi-disciplinary treatment team, but has not been responsible for reviewing the treatment plans. The AODA counselors are responsible for case management at Koinonia.

By memorandum of February 12, 2003, the Grievant was notified that the Board was implementing the layoff of her Social Worker position at Koinonia and that she had to notify Wright within a week as to what position she intended to bump. The Grievant went to the Board's Human Service Center and asked a secretary there for a copy of the job description for the Mental Health Case Manager position held by a less senior employee, Nancy Pritzl. She was given a job description for the position dated March 22, 2000, which listed the following:

Knowledge, Skills, and Abilities:

1. Knowledge of behaviors/dynamics of mentally ill clients.
2. Knowledge of State Statutes pertaining to mentally ill clients.
3. Ability to assess client service needs and to develop and monitor service plans to meet those needs.
4. Ability to maintain emotional stability in stressful working situations.
5. Ability to communicate clearly both orally and in writing.
6. Ability to maintain records and reports accurately.
7. Ability to follow oral and written instructions.
8. Ability to use independent judgment in decision making.
9. Knowledge of community resources.
10. Ability to work effectively with others in coordinating services to meet the needs of clients.
11. Knowledge of OBRA regulations.

Position Qualifications:

Bachelor's Degree in the Human Services field.

The Grievant concluded from the job description that she was qualified for the position, and by memorandum of February 19, 2003, the Grievant advised Wright that she was bumping into the Mental Health Case Manager position held by Pritzl. The Grievant's memorandum to Wright was forwarded to LaRose, who is the overall supervisor of the positions providing

mental health services for the Board. In March of 2002, the Grievant had attempted to bump into the Mental Health Specialist position – a higher-rated position than Mental Health Case Manager that includes case management responsibilities, and had submitted a resumé, work history, her State Social Worker certification and the job description for the Social Worker position at Koinonia to support her request. LaRose had concluded that the Grievant was not qualified for the Mental Health Specialist position. In considering whether the Grievant was qualified for the Mental Health Case Manager position, LaRose again reviewed the materials the Grievant had submitted in 2002 and the Mental Health Case Manager job description and concluded that she was not qualified for the position. LaRose did not contact the Grievant for additional information or contact the Grievant's supervisor at Koinonia in making her determination. By the following memorandum of February 20, 2003, LaRose notified the Union's President, Janell Keeter, and the Grievant that she found the Grievant not qualified for the position:

TO: Janell Keeter

FROM: Bonnie M. LaRose, RN, MSN

DATE: February 20, 2003

RE: Memo of 2/19/03 to Carol Wright: Bumping

I have received the attached memo on my e-mail on February 20, 2003 (Attachment A). The memo indicated that Linda Carrier is bumping for the position of Mental Health Case Manager currently held by Nancy Pritzl.

In March of 2002, Linda Carrier indicated she was going to bump into the Mental Health Specialist role held by Julie McGuire (Attachment B). At that time, I requested information from Linda, which would speak to her educational and experience qualifications. Based on a review of a resumé and other information submitted to me by Linda Carriere, I found that Linda did not meet the requirements of the Mental Health Specialist's role and denied the bumping action (Attachment C).

I again reviewed this material and find that Linda Carrier does not meet the position qualifications, i.e. educational, experience, and the knowledge/skills and abilities of the Mental Health Case Manager position. If there is any additional material Linda would like to submit or if she has questions, please feel free to contact me.

In reaching her decision, LaRose had used the October 29, 2002 revised job description for Mental Health Case Manager and the “Knowledge, Skills, and Abilities” and “Position Qualifications” listed on that revised job description. The “Knowledge, Skills, and Abilities” were the same as those listed on the March 27, 2000 job description; however, the “Position Qualifications” differed:

**POSITION QUALIFICATIONS:**

Bachelor’s Degree in the Human Services Field. Two years of experience working with mental health clients. Knowledge of mental health/AODA systems of care. Wisconsin Driver’s License and insurance coverage required per Human Service Center practices.

Pritzl, the incumbent, was hired into the Mental Health Case Manager position in January of 2002 under the revised job description, after submitting a resumé and being interviewed by LaRose and employees in the program. Pritzl had a Social Work degree and 8½ years of case management experience in juvenile court intake and child welfare as a Social Worker with the local county’s Department of Social Services. Dennis Nelson, a Client and Case Management Coordinator and Union Steward, was a member of the team that interviewed Pritzl. Nelson testified that there is a set of the same questions that are used in each interview and that Pritzl was not asked if her experience included working primarily with mentally ill patients.

After being notified that LaRose did not consider her qualified for the Mental Health Case Manager position, the Grievant contacted Nelson regarding grieving the denial of her request to bump into the position. Nelson contacted LaRose to discuss the matter and LaRose agreed to meet with the Grievant. After the Grievant was laid off on March 1, 2003, LaRose met with the Grievant and Nelson and a grievance was filed with LaRose regarding her denial of the position to the Grievant. Nelson questioned LaRose as to the process she had used in determining that the Grievant was not qualified for the position. LaRose acknowledged that she had not asked for an updated resumé or contacted the Grievant’s supervisor, nor had she interviewed the Grievant. LaRose agreed to let the Grievant submit additional information and offered the Grievant an interview. The Grievant declined the offer of an interview, but submitted additional information to LaRose on March 27, 2003, which consisted of a cover letter summarizing her experience at Koinonia, an updated resumé which expanded on her education via continuing education and in-services related to mental illness and on her work experiences as Social Worker at Koinonia, and a letter of recommendation for the Mental Health Case Manager position from Dr. Holmgren, a psychiatrist at Koinonia. Under “Certification and Education” and “Professional Experience” the resumé stated:

## **CERTIFICATION AND EDUCATION**

Certified Social Worker, State of Wisconsin Department of Regulation and Licensing.

Post Degree work, Western Illinois University, Macomb, IL (42 quarter credits).

Course Concentration: Child Development and Family Relations

Bachelor of Science Degree, South Dakota State University, Brookings, SD

Major: Home Economics Education Minor: Child Development and Family Relations

I have extensive continuing education and in-service training specifically related to mental illness, psychiatric medications, working with the dually diagnosed client, motivating difficult clients to be healthy, motivating the resistive client, mental health assessment and diagnosis, cultural diversity, interviewing skills and financial counseling.

## **PROFESSIONAL EXPERIENCE**

**Human Service Center, Rhinelander, WI**

### **Social Worker/Manager – KOINONIA 1991 to 2003**

Case management and integration of services for clients at KOINONIA, many of whom have mental health as well as AODA issues. Determine client eligibility and appropriateness for services. Referral sources include a working relationship with the Tri-County Judicial System, Corporation Counsel, and Human Service Center Case Managers regarding Settlement Agreements, Commitments, and reporting on client progress. Member of the clinical team in all client treatment planning and staffing with the psychiatric consultant. Oversee client testing, psychological and other appropriate testing. Assist clients in navigating appropriate state, county and local services and provide appropriate follow-up services. Responsible for client referrals to all outside agencies. Quality Assurance Coordinator and KOINONIA resource on compliance with CBRF, Social Setting Detox and Residential AODA Treatment regulations and licensing. Train all staff in “Code of Ethics”, and regulations regarding Client Rights and Grievance Procedure and

Confidentiality. Orientation of House Managers, Resident Assistants and Relief Workers in job duties and client interactions. Provide client budgeting consultation. Maintaining the client records in accordance with state and federal regulations. HRSR reporting. Generate required monthly and quarterly reports for grant sources.

...

By the following letter of April 7, 2003, LaRose notified the Grievant that she was again denying her request to bump into the Mental Health Case Manager position:

Dear Linda:

Thank you for submitting additional information related to your Grievance 2003-1 filed on March 4, 2003. This grievance alleges that you are being unreasonably denied the appointment to replace a less senior employee, Nancy Pritzl, Mental Health Case Manager. The grievance also asserts that this denial is in violation of Article 5D of the Bargaining Agreement between the Human Services Board of Forest, Oneida and Vilas Counties and The Human Service Employees of Forest, Oneida and Vilas Counties, Local 79-A, Wisconsin Council 40 of the American Federation of County and Municipal Employees, 2002.

I have carefully reviewed all material you submitted and I again reviewed the job description of the Mental Health Case Manager and the interview questions used during the selection process for the most recent Mental Health Case Manager role, which Nancy Pritzl now holds.

...

In your letter dated March 27, 2003, you indicate that you have had working relations with community resources, eleven years of experience in social work and case management and that you participate in developing and implementing treatment plans. In the resumé you attached to your letter dated March 27, 2003, you list under Professional Experience "Social Work/Manager - Koinonia 1991 to 2003", many items that you were responsible for such as determining client eligibility and appropriateness for services, participation in client treatment planning and staffing with psych. Consult, overseeing client testing, being a trainer, Quality Assurance Coordinator, HRSR reporter, and providing budgeting consultation, etc. These responsibilities, however, do not meet the requirements for the Mental Health Case Management position.

Regretfully, I must stand by my original decision. While you have worked at Koinonia and interacted with AODA clients who may have mental health problems, it has not provided you the necessary knowledge, experience, skills, and abilities needed to perform the Mental Heal Case Manager role. Although certified as a Social Worker in the State of Wisconsin, your Bachelor of Science was in Home Economics. A minor and post-graduate work allowed for education in Child Development and Family Relations. The majority of your work experience seems to have occurred through secretarial, educational, referral, and oversight activities with individuals who are primarily diagnosed as AODA clients.

If you have any questions, please feel free to contact me.

Sincerely,

Bonnie M. LaRose /s/  
Bonnie M. LaRose, RN, MSN  
Administrator, Mental Health Services

While the Union has some issues with how the grievance was subsequently processed, the dispute was processed through the parties' contractual grievance procedure. 1/ Being unable to resolve the matter, the parties proceeded to arbitrate their dispute before the undersigned.

---

*1/ The Grievant requested to bump into the position of Women's Client Assistant while her grievance proceeded. The Board denied her request and gave her the option of choosing one or the other. She was subsequently "hired" into that position while she was on layoff. Evidence in this regard was admitted into the record for the limited purpose of remedy.*

---

### **POSITIONS OF THE PARTIES**

#### **Union**

The Union takes the position that management erred when it determined that the Grievant was not qualified to perform the duties of Mental Health Case Manager. LaRose testified that the primary deficiencies that made the Grievant unqualified were her lack of the required education and experience. With regard to the required education, in denying the Grievant's request to bump, management stated that they checked job descriptions. While they

may have checked the job description for Mental Health Case Manager that LaRose used to deny the bump, they did not check the job description given to the Grievant by the administrative secretary prior to her layoff which required a “Bachelor’s degree in the Human Services field.” They also did not reference any of the three job descriptions under which the Grievant worked for Koinonia from 1991 until 2000, the last two requiring a Bachelor’s degree in “Social Work or related human service field.” The Grievant worked for the Human Service Center for eleven years in job titles that called for a “Bachelor’s degree in a Human Services field” without any issues. By its own actions, the Board has answered the question of the Grievant’s meeting the educational qualifications for the Mental Health Case Manager position, as she has worked for the agency in a position that had essentially the same educational requirements.

The Union also notes that while LaRose chose to diminish the importance of the Grievant’s minor in Child Development and her post-graduate work in the same field, it could just as easily have been found that those achievements were sufficient. It is also noted that the Grievant was granted a Social Worker license by the State of Wisconsin. Additionally, the agency repeatedly sent the Grievant for various forms of training at least 61 times in 12 years, and approximately two-thirds of these trainings or in-services were for topics related to mental health. Thus, the Grievant clearly has the education to be a Mental Health Case Manager.

As to the claim that the Grievant lacked experience working with clients with mental health issues, the Director at Koinonia, Wright, conceded that many of the residents there suffer from depression or have personality disorders. The Union finds much of this debate to be semantics and subjective. Whether primarily or secondarily, many of the Grievant’s clients at Koinonia suffered with mental health issues. She also worked for 11 years with job descriptions that required the skills and experience or minimum qualifications of “demonstrated knowledge in working with clients with disabilities”, “minimum of two years experience working with clients with disabilities”, and “a minimum of two years experience in working with AODA and special needs clients.” While the Grievant worked at a facility which was primarily responsible for treating people with substance abuse problems, this does not diminish the reality that many of those people also dealt with mental health issues. Further, there is a letter from the psychiatrist who works at Koinonia, in which he noted that “Ms. Carriere possesses good knowledge and experience regarding AODA clients (many of whom have mental health needs as well)” and that “her skills would be cross-applicable to mental health clients as well.” LaRose’s subjective assessment concerning whether a person is primarily an AODA or mental health client cannot change the fact that the Grievant worked for more than a decade with people with special needs who are disabled, which included mental health issues.

The Union also takes issue with the process by which the Grievant was found unqualified. The Union notes that while it is not its function to tell management how to

determine qualifications, it does have the reasonable expectation that the qualifications would be reasonable and the process uniform for any prospective candidate. Here, the Grievant approached management for a job description for the position. The one she was given was not current and she was laid off without ever seeing the current job description. The Grievant announced her intention to bump into the position on February 19, and on February 20, LaRose denied the bump based on information that was given to her in a different, albeit similar, matter approximately a year earlier. At no time was the Grievant afforded an interview before she was denied the right to bump and subsequently laid off. Nor did LaRose consult with any managerial colleagues from Koinonia before denying the bump. The procedure for finding qualified applicants for vacancies in the past, including the incumbent in the position, was quite different from the Grievant's experience in this case. Previously, a group of potentially qualified applicants would have their submitted materials reviewed by Human Service Center employees and a determination made to give a smaller group interviews. From the smaller group a top candidate was chosen. The Union questions why a 28-year employee was not given an interview and asked the same questions that were used in the interview for selecting the incumbent in the position.

The Grievant testified that she was capable of performing the essential elements of the Mental Health Case Manager position. LaRose testified that the Grievant could not successfully perform the duties, at least in part because she did not have sufficient experience in working with people with mental health issues. The Union believes that an unbiased assessment of the introduction letters and resumés offered by the Grievant and the incumbent in the position, Pritzl, would not result in any meaningful difference that would merit the selection of one over the other. In fact, the Grievant may have a slight edge. Yet, Pritzl was afforded a process that included an interview, while the Grievant was denied the bump in less than one day and never interviewed or asked any of the questions.

In summary, the Union questions the process that uses identical words to mean different things in different departments of the agency. From the testimony and documentation offered into evidence, it is demonstrated that the Grievant was capable and qualified to fill the Mental Health Case Manager position and the Board acted unreasonably in denying her right to bump into that position. The Union asks that the grievance be sustained and that as a remedy, the Grievant be made whole for any wages, benefits or any other loss deemed appropriate from February 19, 2003 to the present, and that she be awarded the position of Mental Health Case Manager. The Union requests that the Arbitrator retain jurisdiction for ninety (90) days from the date of the award to insure implementation.

### **Board**

The Board takes the position that it did not violate the agreement when management concluded that the Grievant did not satisfy the minimum qualifications for the Mental Health Case Manager position and denied her request to bump into the position.

The Board cites numerous arbitral precedents for the principle that absent a limiting contractual provision, an employer possesses the inherent authority to determine employee qualifications for a position, and that unless a different standard is set forth in the agreement, an employer's determination in this regard is only subject to challenge as being arbitrary, capricious, discriminatory or unreasonable. The Union bears the burden of proof in this regard. The Board cites an arbitrator's opinion that a decision is arbitrary and capricious "if it lacks a rational basis or results from an unconsidered, willful and irrational choice of conduct." Citing, DEERFIELD COMMUNITY SCHOOL DISTRICT, MA-9017 (Arbitrator Crowley, 1995).

In this case, the agreement not only does not contain any language limiting the Board's inherent right to determine whether an employee satisfies the minimum qualifications for a position, but Article 2 – Management Rights, explicitly provides the Board with the authority to "determine the competence and qualifications of employees", as well as the authority to deny a more senior employee's bumping request, the agreement providing in Article 5, that "Employees selected for layoff shall have the right to replace less senior employees in the same or lower rated classification in a position provided the employee is capable and qualified to perform the work of the position." (Emphasis added). In accord with the language of Article 5, and that found in Article 2, the Board determines the qualifications of an employee seeking to bump into a position. The Board requests that the Arbitrator follow the well-established arbitral principle cited, and the rule that the Board possesses the inherent authority to determine the qualifications of the Grievant, and that the determination may only be challenged on the basis of being arbitrary, capricious, discriminatory or unreasonable.

Next, the Board cites a number of arbitration awards for the principle that an employee seeking to bump a less senior employee must possess the present ability to perform the duties of the positions sought, i.e., they must be able to perform the work immediately without any additional on-the-job training, because the more senior employee will be displacing an employee who is already qualified to perform the work and is capably performing the work.

The Board asserts that its determination that the Grievant did not satisfy the minimum qualifications for the Mental Health Case Manager position was not arbitrary, capricious, discriminatory or unreasonable. As Article 5 of the Agreement requires that the employee bumping be capable and qualified to perform the work of the position, the critical issue is whether the Grievant, who requested to bump a less senior employee from the Mental Health Case Manager position, was capable and qualified to perform the work of the position. The process of making that determination began when LaRose, who supervised the position, received the Grievant's request to bump. Initially, LaRose reviewed the information obtained from the Grievant in March of 2002 when she had requested to bump into the Mental Health Specialist position, which included the Grievant's resumé and Social Worker certification, and the job description for the Grievant's Social Worker position. After reviewing the information

and the minimum qualifications for the Mental Health Case Manager position, LaRose concluded that the Grievant did not possess a Bachelor's degree in the Human Services field and did not have two years of experience working with mental health clients. In denying the Grievant's request, LaRose ended her memorandum stating, "If there is any additional material Linda would like to submit or if she has questions, please feel free to contact me." LaRose subsequently met with the Grievant and Union Steward Nelson on March 3, 2003 to discuss LaRose's decision. LaRose reiterated the Grievant could submit additional information for LaRose to review and consider and also informed the Grievant that she could choose to participate in a team interview for the position to determine whether she satisfied the minimum qualifications. The Grievant rejected LaRose's invitation for an interview, but submitted additional information, which LaRose thereafter reviewed. As Mental Health Services Administrator, LaRose was familiar with the treatment provided at Koinonia and the job duties performed by the Grievant at that facility. In making her decision, LaRose also considered these factors, including meeting with Wright to discuss the Grievant's job responsibilities.

Ultimately, LaRose concluded that the Grievant did not satisfy the minimum qualifications for the Mental Health Case Manager position and denied the request to bump. LaRose correctly concluded that the Grievant did not have a Bachelor's degree in a human services field, as her degree was in Home Economics. LaRose also considered the Grievant's post-graduate work; however, the Grievant did not receive a degree in a human services field as a result of that post-graduate work. The fact that a representative of the Board may have looked past this fact when initially hiring the Grievant for the Social Worker position does not bind LaRose to reach the same incorrect conclusion. Further, the Board's requirement that an individual in the Mental Health Case Manager position possess a Bachelor's degree in a human services field is supported by the recommendations set forth in the State's Wisconsin Medical Assistance Provider Handbook and the Targeted Case Management "Standards of Practice" published by Milwaukee County.

LaRose also concluded that the Grievant did not have two years of experience in working with mental health clients. LaRose was aware of the duties performed by the Grievant at Koinonia and the fact that it is a treatment facility that services adults addicted to drugs or alcohol. The Grievant's experience at Koinonia did not involve servicing clients with the primary diagnosis of mental illness and the Grievant did not obtain any experience there performing case management duties with mentally ill clients, an essential function of the Mental Health Case Manager position. LaRose testified that the Grievant was not qualified to perform the case management duties of the Mental Health Case Manager position, including the ability to "assess service needs of clients referred for case management services", to "arrange for and authorize treatment services for clients when needed", and to "develop and implement individual program plans which provide for appropriate mental health services." LaRose's determination is again supported by the State's Wisconsin Medical Assistance Provider Handbook and the Targeted Case Management "Standards of Practice" published by

Milwaukee County, both of which state that an individual handling case management responsibilities must have experience working with the targeted population. The Grievant did not have two years of experience working with mental health patients; rather, she had experience working with adults addicted to drugs and/or alcohol. LaRose, who has 31 years of experience in the mental health field, testified that there is a distinction between AODA and mental health work and doing case management in those areas. Clients utilizing the Board's mental health programs have a primary diagnosis of mental illness and are suffering from a chronic, severe mental illness. LaRose correctly concluded that the Grievant's experience at Koinonia did not expose her to, or prepare her to handle the case management of clients with a primary diagnosis of mental illness. The Board notes that if a provider fails to abide by the recommended qualifications set forth in the *Wisconsin Medical Assistance Provider Handbook*, it risks being unable to bill for its services. Consequently, the Board relies upon the recommended qualifications identified in that handbook.

The Grievant admitted that clients are not placed at Koinonia because they have a mental illness; rather, they are placed there to address drug and alcohol problems. Koinonia is never the primary service provider for a client with a mental health disorder. The work performed by the Grievant at Koinonia has not prepared her in any manner to handle the case management responsibilities for mentally ill clients. The Grievant admitted that she has never been responsible for creating a case management plan for a client suffering from drug or alcohol addiction, much less prepare a case management plan for a client suffering from a mental illness, nor has she ever implemented a treatment plan for a client that addressed a mental health need. The Grievant is also not a certified AODA counselor, and thus may not provide counseling services to clients suffering from AODA. Although earlier in her career as a Social Worker at Koinonia the Grievant would sign off on treatment plans, that is all she would do, and only because she was the only degreed employee at the facility; she would never re-write or amend a treatment plan as she did not have the certification to do so. The Grievant also had no contact with federal or state regulations governing the treatment of individuals suffering from mental illness. Her role at Koinonia related to transmitting information and she was not involved in assessing or conducting the treatment plan. The individual responsible for the treatment plan was the individual to whom the client was assigned and the Grievant never had a caseload. The Grievant's entire case rests on the assertion that Koinonia admits clients with a dual diagnosis, i.e., primary diagnosis of AODA and secondary diagnosis of a mental illness, and that her exposure to these individuals qualifies her to perform the duties of Mental Health Case Manager.

The Board notes that the Union asserts that the cover letters submitted by Pritzl in applying for the position and the letters submitted by the Grievant are very similar and identify the same qualifications. However, the Union fails to recognize that Pritzl was not awarded the position on the strength of her cover letter; rather, she was granted an interview, and based on the interview it was concluded that she qualified for this position. In this case, although

LaRose believed the Grievant was not qualified, she offered the Grievant a chance to be interviewed in order to determine whether she in fact satisfied the minimum qualifications. However, the Grievant chose not to accept that invitation. The Board concludes that the Grievant's exposure to dual-diagnosed clients is immaterial, as the duty she performed in relation to the clients were administrative and in no way relevant to creating or managing a treatment plan. The Grievant only coordinated services, and contacted the Board's agencies that provide mental health services, informing them that Koinonia had a patient in need of their services.

The Board asserts that the record demonstrates that it reviewed all information submitted by the Grievant in support of her bumping request, considered the job duties performed by the Grievant at Koinonia, and correctly concluded that she did not satisfy the minimum qualifications for the Mental Health Case Manager position. The Board asserts that the Union has not met its burden in this case because the Board's determination that the Grievant did not satisfy the minimum qualifications for the position was not arbitrary, capricious, discriminatory or unreasonable.

The Board cites arbitral precedent for the principle that it is well established that an employer's determination with regard to an employee's qualifications and ability to perform specific job duties should be given considerable weight. It asserts that the application of this principle is even more compelling in this matter. Article IV, Grievance Procedure, Section B, 5, limits the authority of the arbitrator to the interpretation of the agreement in the area where the alleged breach occurred, with no authority to modify, add to, or delete from the express terms of the agreement. As the Board has the inherent authority, and pursuant to Article 2, the contractual authority, to determine the competence and qualifications of employees, and there is no provision limiting that authority, deference should be given to the Board's determination as to the Grievant's qualifications or lack thereof. The Board requests that the grievance be denied in its entirety.

### **Union Reply**

In its reply brief, the Union asserts that the only evidence that the Grievant is incapable of performing the duties of the Mental Health Case Manager position is LaRose's mistaken and inadequate evaluation process. There was no failed trial or probationary period, no test results, no group evaluation, only LaRose's conclusion that the Grievant was not capable. The Union disagrees that the Grievant lacked the educational requirement and lacked experience with people with mental illness. When the agency needed to fill the position, it followed a process of accepting applications, and after discussion with a panel of the current employees of the Department and LaRose, likely qualified candidates were identified and an interview conducted with an individual being selected from that group. This process was not adhered to in this case. Contrary to the Board's argument that its determination that Pritzl was qualified

for the position is immaterial, the Union believes that Pritzl was qualified and that she impressed the panel during her interview. The agency did not offer to interview the Grievant until after she was laid off. There is also nothing in the record to support the premise that at the time of her hire, Pritzl had any experience working with people who were diagnosed with mental illness. Regardless, the requirement of two years' experience working with people with mental illness was ignored and Pritzl was hired and has performed well. The distinction in this case is that the agency does not need to fill the position and is satisfied with the incumbent. The Board does not want the inconvenience of bumping to upset the established order; thus, the sudden need for strict adherence to qualifications to justify the denial of the Grievant's right to bump.

The claim that the clients at Koinonia were not diagnosed primarily with mental health illness, and that therefore the Grievant could not claim two years' experience working with clients with mental illness, is absurd. The psychiatrist at Koinonia understood that the clients with whom he worked could have both mental illness and substance abuse problems. Despite the Board's distinction of primary or secondary diagnoses, such a distinction does not appear on any job description used in this case. The job description for the Mental Health Case Manager position that LaRose used to determine qualifications asks that one have knowledge of mental health/AODA systems of care. Some meaningless distinction exists under the Board's reasoning between mental health and AODA systems, as it relates to persons who suffer with these problems, as if the degree that someone is mentally ill or a substance abuser can be accurately quantified.

The Board attempts in its brief to create a sense of time having passed with the use of adverbs such as "initially", "subsequently", and "ultimately", to somehow give duration to a process that lasted one day - the time it took for LaRose to decide the Grievant was not qualified. The Board also attempts to shift the burden of not participating in an interview to the Grievant. In that regard, it is undisputed that before she was laid off, the Grievant requested a job description for the position for which she believed she would be qualified and was given an archaic job description that included qualifications under which she had worked for almost 11 years. She reasonably concluded that she could perform the duties of Mental Health Case Manager. LaRose ignored the qualifications that were part of the Grievant's previous job descriptions since 1991 or she never actually reviewed them. In her denial letter of February 20, 2003, LaRose stated that she reviewed material submitted a year earlier in March of 2002, however, the Grievant did not submit her job descriptions from Koinonia for LaRose's review, as the employer already had those descriptions in their records. The references to a job description in LaRose's February 20 letter were the job descriptions for the Mental Health Case Manager position and there is no indication that LaRose ever considered any job description from the Grievant's Social Worker position at Koinonia. While the Board suggests that LaRose consulted with Wright, there is no evidence that she did so before determining the Grievant was unqualified on February 20. Further, the Grievant worked as a

Social Worker at Koinonia for seven years before Wright was employed there, and Wright testified that she did not know what the Grievant's job duties were before she came to the agency.

The Union notes that the job description for the Social Worker at Koinonia in July of 1991 and the Mental Health Case Manager job description asked for identical educational requirements. Under "Experience" the Social Worker job description required:

- 1) Demonstrated knowledge in working with clients with disabilities.
- 2) Demonstrated knowledge of AODA.

The Mental Health Case Manager job description requires:

- 1) Two years' experience working with mental health clients.
- 2) Knowledge of mental health/AODA systems of care.

The Union also finds similarities in the responsibilities listed under these two job descriptions.

The process by which LaRose found the Grievant unqualified did not include a thorough consideration of the job descriptions under which she worked, a review of her credentials by the panel or committee that had been used in the past to fill the position, or by an interview. It was a decision made, in substantial part, on uninformed opinion, and thus was "arbitrary". The decision was also "capricious". The Board asserts that while one of its representatives may have overlooked the Grievant's Bachelor's degree in initially hiring her for the Social Worker position, LaRose is not bound to reach the same incorrect conclusion. The meaning of "qualifications" in a job description should not be redefined by each new manager. When the same words are used in several job descriptions to state educational requirements, as in this case, it is inexplicable that an employee who worked for 11 years under three job descriptions that called for identical educational credentials could be found to be lacking on that criterion. The Board's decision and treatment of the Grievant was also "discriminatory". When the Board chose to fill this position in the past, it ignored its requirement for experience working with mental health clients, while referencing that same criterion as a reason to find the Grievant unqualified. The Board also refused to allow the Grievant to continue in employment in another position while grieving the Board's decision, causing the Grievant to be unemployed for seven months.

The Union also finds the Board's decision to be "unreasonable". The process by which the Grievant's qualifications were evaluated by management was inadequate and therefore unreasonable. The Grievant was pressured to select the position in which to bump in a short period of time and was then given the wrong job description to assist her in making her choice. No one in upper management, including LaRose, met with the Grievant before she was laid off

after 25 years of employment. Then, management attempted to coerce the Grievant into giving up the instant grievance by taking the position that if she did not, she could not remain employed in the agency. LaRose made the decision that the Grievant was unqualified, ignoring almost the entire process used by the agency to fill positions. LaRose did not consult with the Grievant, her supervisor, or the job descriptions under which the Grievant had worked for a decade, before determining that she was unqualified. The educational experience, skills and ability requirements under both the Grievant's Social Worker position and the Mental Health Case Manager job descriptions are very similar, and although the Grievant does not have a Social Worker degree, the State has judged her work experience and education sufficient to grant her a Social Worker license. Thus, the effect of the Board's evaluation process denied the Grievant her right to maintain her employment at the agency.

The Union concludes that while management has the right to determine qualifications, subject to challenge only if its determination is "arbitrary, capricious, discriminatory or unreasonable", in this instance the decision of the Board was all of those things. The Union requests that the grievance be sustained, and the Grievant be made whole.

### **Board Reply**

The Board asserts that the Union attempts to attack the Board's decision on two fronts and relies on misstated and irrelevant facts in doing so. Initially, the Union challenges the Board's determination that the Grievant did not satisfy the minimum qualifications for the Mental Health Case Manager position. The Union highlights the fact that the Grievant is certified as a Social Worker; however, certification as a Social Worker is not a minimum qualification for the position, nor does it help her satisfy the actual minimum qualifications for the position. The Union also asserts that to some degree, whether primarily or secondarily, many of the Grievant's clients at Koinonia suffered with mental health issues. The truth is that patients who have a primary diagnosis of mental illness are not treated at Koinonia, as it is a drug and alcohol treatment facility, not a mental health facility. Further, the Grievant's exposure to clients at Koinonia who have a primary diagnosis of alcohol or drug addiction and a secondary diagnosis of mental illness is immaterial, because the duties she performed in relation to the clients were administrative only. Neither the Grievant, nor anyone at Koinonia provided mental health services to the dual-diagnosed clients. As expected, the Union also claims that because a representative of the Board concluded in 1991 that the Grievant's Bachelor's degree in Home Economics was a Bachelor's degree in the Human Services field for purposes of the Social Worker position at Koinonia, the Board is bound by that incorrect determination for all future decisions. The fact that a representative of the Board may have looked past this fact when initially hiring the Grievant for the Social Worker position when she was the only applicant with a college degree, does not bind LaRose to reach the same incorrect conclusion. Finally, the Union relies on the letter from the psychiatrist at Koinonia, Dr. Holmgren, to support its position that the Grievant satisfied the minimum qualifications for

the Mental Health Case Manager position. The letter is irrelevant in that regard, as Dr. Holmgren acknowledged in his letter that “I cannot attest to the specific skills needed to meet” the job qualifications for the position. In light of that admission, it is clear that his letter is not material to the resolution of this grievance.

The second prong of the Union’s attack is to challenge the process by which the Board concluded the Grievant did not satisfy the minimum qualifications for the position. The Union references the fact that the Grievant was given an outdated job description for the Mental Health Case Manager position. This error is immaterial. The Grievant testified she believes she is qualified for the position under the minimum qualifications in either job description, and LaRose testified she does not believe the Grievant satisfies the minimum qualifications under either job description. It is undisputed that in order to bump into the Mental Health Case Manager position, the Grievant must satisfy the minimum qualifications set forth in the current job description. The fact that the Grievant was inadvertently provided with an outdated job description is irrelevant. The Union also criticizes the Board for using a different process with the Grievant than the process that was used to fill a vacant position. There is a difference. The Board was filling a vacant position from a number of applicants, requiring the Board to go through an interview process which included an initial review of the applicants’ cover letters and resumés and a weeding-out process. Conversely, the Grievant was not applying for a vacant position along with a number of other applicants. She was attempting to displace an employee who was already qualified to perform the work and who was doing so. Thus, the Board did not have to utilize the interview process, as it was only required to review the Grievant’s qualifications and work experience to determine whether she satisfied the minimum qualifications for the position and it did so. The Union’s most egregious mischaracterization of the facts is its criticism of the Board for not interviewing the Grievant, when in fact, it offered to interview the Grievant and she refused the interview.

The Union’s references to a second position into which the Grievant sought to bump is also irrelevant, as the Arbitrator clearly stated at hearing that exhibits in that regard were only being admitted into the record for purposes of remedy. As the Union is not referencing those exhibits or facts for purposes of remedy, the facts should be ignored.

The Union’s assertion that approximately two-thirds of the Grievant’s training and in-services were related to mental health is incorrect and not supported by evidence in the record. Last, the assertion that LaRose did not consult with any managerial colleagues from Koinonia before she denied the Grievant’s bump is only half-true. LaRose did not do so prior to her initial determination, but did consult with Wright when she reviewed the Grievant’s qualifications and work experience a second time. LaRose met with Wright and discussed the Grievant’s job responsibilities at Koinonia. The Board requests that the grievance be denied in its entirety.

## DISCUSSION

The Union does not dispute the Board's right under the agreement to lay the Grievant off from her Social Worker position at Koinonia. Nor does the Union dispute the Board's right under that agreement "to determine the competence and qualifications of employees. . ." The Union and Board are also in agreement that the Board's determination in that regard is subject to challenge on the basis that it was "arbitrary, capricious, discriminatory, or unreasonable." The Union asserts that LaRose's, and hence the Board's, determination that the Grievant was not qualified to bump into the Mental Health Case Manager position was all of these things. The Board disputes this.

In deciding the primary issue in this case, it is first necessary to determine what the minimum qualifications are for the Mental Health Case Manager position. The Union notes that the Grievant was given an outdated job description for the position when she requested a job description for the position from the secretary at the Human Service Center. The Grievant relied on the qualifications listed on that job description in making her decision to bump into the position. The qualifications listed on the outdated March of 2000 job description differ from those listed on the current (October, 2001) job description in that in addition to a Bachelor's degree in the Human Services field, the latter also requires "Two years experience working with mental health clients."

While the Union contends that the Grievant's experience as a Social Worker at Koinonia meets that requirement under either job description, it seemingly wants the error as to the job description the Grievant was given somehow counted against the Board in determining the reasonableness of LaRose's decision regarding the Grievant's qualifications. There is no basis for doing so, as there is no evidence that this was anything but an inadvertent error that no one became aware of for some time. LaRose sent the Union's President the current job description on February 24, 2003, at the latter's request. While this was four days after she had initially denied the Grievant's request, it was before LaRose met with the Grievant and agreed to reconsider her decision. There also has been no showing that the revised job description is not accurate. Therefore, there is no basis for not applying the qualifications listed on the revised job description for the Mental Health Case Manager position. 2/ Those qualifications include:

---

2/ *The listed required "knowledge, skills and abilities" are identical on both job descriptions.*

---

"Bachelor's Degree in the Human Services field. Two years of experience working with mental health clients. . ."

The parties dispute whether the Grievant's Bachelor's degree in Home Economics satisfies the education requirement. It is undisputed that when the Grievant was awarded the Social Worker position at Koinonia in 1991, the Board was willing to accept the Grievant's degree as satisfying the requirement of a degree in the "Human Services field." Apparently, the position had been posted twice and the Grievant was the only applicant who possessed a college degree, so the Board was willing to accept her degree. The Grievant continued in the Social Worker position until her layoff without any question being raised as to whether she met the position's educational qualification.

The Board contends that it should not be thereafter bound by its earlier actions to accept the Grievant's degree for other positions having the same education requirement. The undersigned agrees. Article 2 – Management Rights, Secs. J and L, effectively reserve the right to the Board to set the qualifications for a position and to determine whether those qualifications have been met. The qualifications must be reasonably related to the position's duties and responsibilities and management's determination as to whether an employee meets the qualifications must have a reasonable basis in fact. The Board's requirement of a Bachelor's degree in the Human Services field for the Mental Health Case Manager position is also stated as a qualification for a case management position that performs assessments and case planning in the Wisconsin Medical Assistance Provider Handbook provided by the State to agencies such as the Board. There really is no question that the requirement is reasonably related to the duties of the position.

As to whether the Grievant meets the educational qualifications, it is undisputed that her Home Economics degree is not in the Human Services field. While the Grievant has 42 additional credits in Child Development and Family Relations, 30 of which she feels are in the human services field, it does not constitute a degree. The fact that the Board exercised its discretion to accept the Grievant's degree under the circumstances in 1991, does not require that it automatically do so for a position with significantly different duties and that is covered by different regulations. The Grievant conceded that unlike the Mental Health Case Manager position in the Board's Mental Health Outreach program, her position at Koinonia was not covered by the State's Medical Assistance Providers regulations and requirements. LaRose, who is responsible for the Board's mental health services, testified that those regulations require that certain qualifications be met for staff in case management positions in order to be able to bill for the services provided clients with medical assistance, and that if the qualifications are not met, the State could audit the agency and require reimbursement. This, along with the differences in responsibilities, is a sufficient distinction between the Grievant's Social Worker position at Koinonia and the Mental Health Case Manager position to justify management's decision not to accept the Grievant's Home Economics degree as meeting the educational qualification for the latter position.

With regard to the requirement of two year's experience working with mental health clients, while that requirement is more stringent than the one year of experience required in conjunction with a degree under the qualifications set forth in the Wisconsin Medical Assistance Providers Handbook, it is reasonably related to the duties of the position and well within the Board's discretion to require. It is also noted that this requirement was added to the position's job description in October of 2001, and did not arise concurrent with the Grievant's attempt to bump into the position. The Union asserts that the Grievant's experience at Koinonia with AODA clients, many of whom had been diagnosed with mental illness, satisfies this requirement. The Board disputes that assertion on the basis that clients at Koinonia, by definition, have a primary diagnosis of a drug or alcohol addiction, even though some might have a secondary diagnosis of mental illness, and that regardless, the Grievant's duties regarding such clients related only to their AODA diagnosis, and not their mental illness. The Board also stresses that the Grievant had no case management responsibilities with respect to the mental illness aspect of any clients with mental illness in her position at Koinonia.

The experience requirement must be read in the context of the responsibilities to be performed in the Mental Health Case Manager position and the knowledge, skills and abilities needed to perform those responsibilities. In that regard, it is not sufficient that the Grievant had contact with clients at Koinonia who had a mental illness diagnosis; the nature of that contact is also important. It appears from the Grievant's testimony that her "case management" responsibilities have been limited to signing off on treatment plans when she was the only degreed person on staff other than the Director. She did not write or amend the plans herself. Her subsequent involvement in developing treatment plans has been to provide input as part of an interdisciplinary team and, at some point, doing referrals and follow-up. The Grievant also had been responsible for performing client assessments, including psychological, but was no longer doing assessments other than financial assessments. The Grievant has not been performing case management responsibilities with clients beyond those mentioned. Both LaRose and Nelson testified that the primary duties of the Mental Health Case Manager's position is, as the title suggests, case management. Further, while one suspects that a significant portion of the clients at Koinonia have some degree of mental health issues, according to Wright, the Program Director and the Grievant's supervisor at Koinonia, in the three years she has been in her position, it has been rare to have clients at Koinonia with a diagnosis that would qualify them for mental health services <sup>3/</sup> and there have only been a "few" in that time.

---

*3/ "The Human Service Center Policy/Procedure: Admission Process: Mental Health Outreach/Case Management Program: lists the admissions criteria, which include "chronic mental illness" with a diagnosis code of specific severe mental disorders. (Employer Exhibit 3).*

---

There is little doubt that the Grievant's experience with clients at Koinonia would be enough, at least as to that aspect of the qualifications, to qualify her for an interview as an applicant for the Mental Health Case Manager position. LaRose admitted as much. However, as the Board asserts, this is not a matter of filling a vacancy from a group of applicants. In that case, having the basic qualifications that would enable one to be trained for the job might be sufficient. Here, the parties' agreement recognizes there is someone already satisfactorily performing the job, and provides at Article 5, Sec. D, that an employee selected for layoff has the right to bump a less senior employee in the same or lower-rated classification, "provided the employee is capable and qualified to perform the work of the position." The parties have qualified the right to bump so as to minimize the disruption in the Board's operation. In other words, other than a brief familiarization period, the employee must be capable of doing the job more or less immediately after bumping into the position. It is not enough that one could be trained to do the job. To that extent, what the Board had been willing to accept in an applicant for the vacant Mental Health Case Manager position is not dispositive in a layoff/bumping situation.

LaRose and the Grievant have a substantial difference of opinion as to the Grievant's ability to perform what are considered to be the case management duties of the Mental Health Case Manager position, a number of which the Grievant conceded she had not performed in the past, but felt she could perform, e.g., counseling, writing treatment plans, and developing discharge plans with clients and staff at treatment facilities. LaRose based her conclusion on the materials the Grievant had previously submitted in March of 2002 and the updated resumé (with a more extensive description of her responsibilities at Koinonia) the Grievant submitted after she and Nelson met with LaRose, and a discussion and review with Wright of the Grievant's duties and responsibilities as Social Worker at Koinonia.

The Union makes much of the short time it took LaRose to initially determine that the Grievant was not qualified for the position. LaRose's initial determination was based on the information the Grievant had submitted the previous year for a position that, though it is higher rated than the Mental Health Case Manager position, included case management as a major portion of its duties. Contrary to the Union's assertions, that information included a job description for the Social Worker position at Koinonia. However, to the extent that process was flawed, it was adequately rectified by LaRose's willingness to meet with the Grievant and Nelson and to consider any additional information the Grievant wished to submit to support her request, including giving the Grievant an opportunity to interview. The evidence in that regard does not lead to a conclusion that LaRose's consideration of the information the Grievant submitted after filing her grievance was merely a façade. LaRose's February 20, 2003 denial of the Grievant's request invited the Grievant to submit additional material. The Grievant was also subsequently offered the opportunity to interview with a team from the Mental Health Outreach Program, but rejected the offer. LaRose testified that she reviewed the additional information the Grievant submitted (Joint Exhibit 11), as well as the job descriptions for the

positions the Grievant had held at Koinonia, and the job description for the Mental Health Case Manager position, and met with Wright to review the duties the Grievant had performed in her Social Worker position at Koinonia. While the Union might suspect otherwise, the evidence supports a conclusion that LaRose was willing to reconsider her initial decision that the Grievant was not qualified for the position and gave due consideration to the additional information submitted by the Grievant, as well as her experience at Koinonia.

In sum, the Board had a reasonable basis for not accepting the Grievant's Home Economics degree and additional credits as satisfying the educational qualifications for the Mental Health Case Manager position. Further, the Board reviewed the relevant information, including that additionally submitted by the Grievant, and reasonably concluded that the Grievant's experience as a Social Worker at Koinonia, and the responsibilities she performed in that position, did not satisfy the experience qualifications of the Mental Health Case Manager position and did not qualify her to perform the position's duties upon assuming the position.

Based upon the testimony and the exhibits, it is concluded that the Board did not act arbitrarily, capriciously, discriminatorily or unreasonably in determining that the Grievant was not presently capable and qualified to perform the duties of the Mental Health Case Manager position. Therefore, the Board did not violate the parties' agreement when it did not allow the Grievant to bump into the Mental Health Case Manager position.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

### **AWARD**

The grievance is denied.

Dated at Madison, Wisconsin, this 1st day of September, 2004.

David E. Shaw /s/

---

David E. Shaw, Arbitrator

DES/gjc  
6716

