BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

KENOSHA COUNTY LOCAL 990C, AFSCME, AFL–CIO

and

KENOSHA COUNTY

Case 254
No. 65917
MA-13365

(Reassignment of Caseload While on A & S)

Appearances:

Mr. Thomas G. Berger, Staff Representative, AFSCME Council 40, P.O. Box 044635, Racine, Wisconsin 53404-7013, appeared on behalf of the Union

Ms. Lorette Pionke, Assistant Corporation Counsel, County of Kenosha, 912 56th Street, Kenosha, Wisconsin 53140, appeared on behalf of the County

ARBITRATION AWARD

On May 22, 2006 Kenosha County Local 990C, AFSCME, AFL-CIO and Kenosha County filed a request with the Wisconsin Employment Relations Commission requesting the Commission appoint William C. Houlihan, a member of the Commission's staff to hear and decide a grievance pending between the parties. Following appointment, a hearing was conducted on October 17, 2006, in Kenosha, Wisconsin. No record of the proceedings was taken. Post-hearing briefs were filed and exchanged by November 29, 2006.

This dispute involves the caseload reassignment following a return from Accident and Sickness leave.

BACKGROUND AND FACTS

Beth Portilia, the grievant has been employed as an Economic Support Specialist (ES) by the County for approximately eight years as of the hearing. Ms. Portilia handles a caseload of childcare, medical, W-2, and food stamp cases. Ms. Portilia began a contractually authorized

Accident and Sickness (A&S) leave effective Wednesday, October 27, 2004. Her then existing caseload was assigned to be covered by a group of co-workers. The duration of the leave was uncertain at the time. The coverage assignment was intended as temporary, in anticipation of her return.

In a status memo, dated December 14, 2004 Ed Kamin, Economic Support Manager advised unit employees that:

> It appears that Beth P. may be out for a while yet, I do not know how long….
>
> After consulting with the ES sups we have decided to split Beth's caseload up among the es staff with her W2 cases staying in her FEP team. I hope to have the cases transferred by the end of the week.
>
> You have the option of keeping these cases separate (but they will be in your number) or combining them with your regular caseload. As soon as Beth comes back I will build her a caseload using either her old cases, new cases that I pick or a combination of the two and do a caseload equalization.

. . .

Ms. Portilia ultimately returned to work on Monday, April 4, 2005. In early April, 2005 Marlene Cline, another Economic Support Specialist was the successful bidder for a pre-screener position and filled that position on Monday, April 4, 2005, leaving her Economic Support caseload behind. Upon her return to work, Ms. Portilia was assigned Ms. Cline's former caseload. The cases remaining open from Ms. Portilia's prior caseload were left with her co-workers.

On, or about April 27, 2005 a grievance was filed protesting the caseload assignment. The grievance contends that Ms. Portilia was entitled to her original caseload back, following her return from A&S leave.

The typical Economic Support worker handles a caseload of approximately 400-500 cases. The Department opens and closes 300-400 cases a month. Cases are assigned randomly, except if an ES worker has cases with a particular client, additional cases involving that individual would be assigned to that ES worker. Approximately every two months, caseloads are equalized.

Historically, if an employee leaves on A&S, cases are temporarily reassigned for coverage, and upon the employees return, are reassigned back to the employee. Cases do turn over, and upon Ms. Portilia's return, approximately 50% of the cases in her caseload in October were still open. There have been few leaves as long as 5 months. Only one, that taken by Phyllis Saliture in 1997, was documented and briefed. It appears that Ms. Saliture was off for approximately 3 months, returned for two weeks, and was off again for another 2 months. What

remained of her caseload was restored upon her return. Other documented leaves lasted 3 months or less, and each of the returning employees had their caseloads restored.

Mr. Kamin testified that it was policy to reassign caseloads for those on temporary leave. If the employee returned within 3 months, the employees' prior caseload would be restored. If the leave extended beyond 3 months the reassignments would be treated as permanent, and the returning employee would be given other cases. Kamin described this as best practice. The restoration of cases following longer leaves has an adverse impact on clients and other workers. The transfer of cases brings turmoil and is disruptive to the clients. Once the clients are stable with a new ES they have someone to deal with.

Kamin never advised the Union that any such three month policy exists.

The Union objects to the refusal of the County to give Portilia her old caseload back. It is a much greater work burden on Portilia to take on a completely new caseload upon her return to work. It is more difficult. She found the caseload unorganized, and found herself in an immediate backlog, from which she has not been able to get caught up. Different caseworkers handle their cases differently. Portilia knew her former clients, they had a history, and had developed a rapport. Aside from the qualitative aspects of the familiarity, it allowed an efficiency in case handling that is absent from a new set of clients.

Union witnesses testified that formal job postings identify incumbent employees, which allows potential bidders to see what the caseload will be. Employees take on an ownership of their cases and clients. Such an attitude toward work promotes enhanced customer service.

ISSUE

The parties stipulated to the following issue:

Did Kenosha County violate the practice and/or labor agreement when it refused to return the caseload of an employee returning from Accident and Sickness leave to her when she came back to work?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE I – RECOGNITION

. . .

Section 1.2 Management Rights.

Except as otherwise provided in this Agreement, the County retains all the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote or suspend or otherwise discharge or discipline for proper cause; the right

to decide the work to be done and location of work; to contract for work, services or materials; to schedule overtime work…

. . .

ARTICLE VI – SENIORITY

. . .

Section 6.2. Seniority – Personnel Actions.

The practice of following seniority in promotions, transfers, layoffs, recalls from layoffs, vacations and shift preference to fill vacancies shall be continued….

Section 6.3. Temporary Assignments.

The County, in exercising its rights to assign employees, agrees that an employee has seniority in a job classification, but may be temporarily assigned to another job to fill a vacancy caused by a condition beyond the control of management….

ARTICLE VII – JOB POSTING

. . .

Section 7.2. Contents of Posting.

The job requirements, qualifications, shift and rate of pay shall be part of the posting and sufficient space for interested parties to sign said posting, or they may in writing notify the department head of their application. When an employee is absent from work, his steward may sign said posting for such absent employee.

ARTICLE XXII – MAINTENANCE OF BENEFITS – SEPARABILITY

. . .

Section 22.1 Benefits

Any benefits received by the employees, but not referred to in this document, shall remain in effect for the life of this agreement.

POSITIONS OF THE PARTIES

It is the view of the Union that there exists a long standing practice of restoring caseloads to employees returning from A&S leaves. The Union points to the testimony and experience of Saliture in support of its claim. It is the view of the Union that returning from sick leave is

difficult enough without the added stress of taking on a new and more difficult caseload. The Union points to testimony that employees review the caseloads of vacant positions as a consideration in whether or not to post for the job.

The Union cites an Arbitration Award by Arbitrator Hahn (MA-9844) between these parties in support of the claim that a practice exists. The Union contends that the first time the 3 month rule has been advanced by the County is in this proceeding.

It is the view of the Union that Kamin simply took the easy way out, instead of following the provisions of the Agreement and the parties practice. Article XXII broadly protects the employees benefit in retaining their caseloads.

It is the view of the County that no practice exists, in that there have been so few leaves in excess of three months. Portilia is the first in several years. Saliture occurred many years ago, is isolated, and in reality was a 3 month leave, followed by two weeks at work, and another 2 month leave.

The County points out that Kamin did not know how long the leave would last, and points to the testimony of County witnesses to the effect that it is better practice to permanently reassign the caseload after a protracted leave.

Caseloads are regarded as generic caseloads, over which employees have no proprietary interest. Caseloads are fluid, and are redistributed periodically by the equalization process. The County contends that prior Arbitration Awards, neither cited nor submitted, support its contention related to caseload assignment.

It is the view of the County that it has a right to decide the work to be done and the location of work under Article 1.2.

DISCUSSION

It was Kamin's testimony that he did not know how long Ms. Portilia's leave would last. Documents in the record corroborate his testimony. Initially, he distributed her cases, with the intent to restore them to her upon her return. Approximately 6 weeks into her leave, on December 14, Kamin indicated that he was considering options relative to her caseload, one of which was to give her an entirely new caseload. Portilia's leave lasted longer than is typical. The record indicates very few instances of A&S leave extending beyond 3 months.

By the time Portilia returned in April, approximately 50% of her caseload had closed, and Cline was on the way out the door. The Union contends that assigning Portilia to Clines caseload was a matter of administrative convenience. The County asserts that the assignment was made to minimize disruption and stress to clients. Both are probably true.

Both parties have spent considerable effort addressing the professional wisdom of the assignment. That is not the question framed for decision. It is the application of the Collective Bargaining Agreement, and accompanying practices, that is before me.

The Union contends that the County was required to restore Portilia's caseload upon her return to work.

The Union advances three basic claims.

The Union construes Article XXII, "Maintenance of Benefits", as preserving to Portilia the right to her caseload upon her return to work. The key to this claim is whether or not entitlement to a caseload under these circumstances is a "benefit" within the meaning of the Agreement. In the view of the Union, the job content defines the job, and as such is a fundamental benefit. The County disagrees, and contends that this very matter has been litigated in favor of the County, though no Award or citation was offered. The common use of the term "benefit" is as a reference to non wage compensation paid employees, such as vacation and health insurance. c.f. Roberts Dictionary of Industrial Relations (4th Ed.) Harold S. Roberts, BNA, Washington D.C., 1994, p. 269-270.

Here the claim is that an employee is entitled to restoration of that portion of her caseload which remains following an indeterminate leave of absence, lasting more than 3 months. No words in the contract support that claim. Section 1.2 preserves to the County "..a normal right and function of Management." The right to assign work is typically viewed as such a right. There is no dispute in this proceeding that the County has exercised the right to assign cases in creating and shaping caseloads. This right is further implicitly recognized in Section 6.3. In this context I do not believe it appropriate to read the term "benefit" to include case assignment following A&S leave.

The second claim advanced by the union is that a prior Arbitration Award, issued by Arbitrator Hahn (WERC Case MA-9844) entitles employees to their cases. The Hahn Award addressed the employers obligation to post jobs that had been significantly altered. It acknowledged the reasonable expectation of employees posting into a vacant position that they receive the caseload of the previous incumbent. That Award, and the practice it describes, explains the expectations of employees relative to position job content. However, that is not the matter before me. The parties in the Hahn proceeding specifically acknowledged the right of the employer to modify the job content. Their dispute was over the posting consequences of the changes. It is the essence of the Union claim here that the employer is not free to modify the job content. The Union claims in this proceeding that Portilia was entitled to receive that portion of her caseload which remained upon her return to work. I do not believe the Hahn decision supports that claim.

The third claim of the Union is that there is a practice of restoring caseloads to employees returning from leave. Here, the employer has drawn a distinction between leaves lasting more than three months and those lasting less than three months. For policy reasons it is the view of the County that for the longer leaves, caseloads should be permanently distributed to minimize the disruption to the clients. It is unclear where three months came from. That date was never provided the Union. However, the context is that it exists in the management of caseloads. It is rare that leaves extend so long. It appears that the management of caseloads is fluid. Kinds and numbers of cases are assigned and adjusted to attempt balance.

The County has drawn a line at three months. The record suggests that employees whose leave lasts three months or less can expect to have their prior cases restored. This dispute is about those leaves that exceed three months. The Union cites one example, Ms. Saliture, whose caseload was restored following a five month leave. This occurred in 1997. It appears that Ms. Saliture's leave was broken by a two week return following the first three months off. The County offered testimony relative to an employee (Mary Ann Lathe, s.p.) who took a one year leave in 1989 and whose caseload was not restored upon her return to work.

There is no practice, at least with respect to leaves extending beyond three months. The events are too infrequent. The results vary. The employer has exercised control over the assignment of cases.

The caseloads handled by the ES workers in this proceeding are large and fluid. Through the passage of time the cases turn over. Portilia's caseload had turned over 50% in five months. The practice claimed by the Union goes to the heart of managing the work, i.e. the assignment of cases. Through the passage of time cases left behind become less and less the province of the absent employee, and more and more integrated into the workload of the active employee. The County has drawn a line at three months. Given the nature of the caseloads, and the uncertainty surrounding longer duration leaves, I do not regard that marking period as unreasonable.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 4th day of June, 2007.

William C. Houlihan /s/
William C. Houlihan, Arbitrator

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