
In the Matter of the Arbitration
of a Dispute Between

RAMSEY COUNTY

Bobo Working Out of Classification
Grievance
12 PA 0982

and

AFSCME, COUNCIL 5, Local 151

APPEARANCES:

Ms. Marcy Cordes, Labor Relations Manager, appearing on behalf of the County

Mr. Chris Cowen, Filed Representative, AFSCME Council 5, appearing on behalf of
the Union

ARBITRATION AWARD

Ramsey County, hereinafter the County or Employer, and Council 5, American Federation of State, County and Municipal Employees, hereinafter Union, are parties to a collective bargaining agreement providing for the submission of grievances to final and binding arbitration before an arbitrator selected by them. A hearing in the captioned matter was held by the undersigned on May 31, 2012, at St. Paul, Minnesota. The parties submitted post-hearing briefs the last of which was received by the undersigned on July 2, 2012.¹

ISSUE:

The parties did not stipulate to a statement of the issue to be resolved by the arbitrator. The undersigned frames the issue as:

¹ At hearing, the parties waived the contractual requirement that the arbitrator issue his award within 30 days of receipt of the parties' briefs.

1. Was Bobo's grievance timely filed in accordance with the provisions of Article 15.4 of the collective bargaining agreement?
2. If so, did the County violate Article 13.8 of the collective bargaining agreement in not paying the grievant, Bobo, a Case Aide 3, at the Social Worker 1 rate for the period March 1, 2007 through September 30, 2009? If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE:

ARTICLE 13 WAGES

* * *

13.8 Employees assigned temporarily to a position in a higher classification for a period exceeding five (5) consecutive work days shall be paid for the entire period at the rate appropriate to the assignment. Employees who are assigned to a position in a higher class on a recurring schedule, e.g. two (2) days per week, shall earn this higher rate after a maximum five (5) days worked at the higher class. The rate of pay will be set in the same manner followed for regular promotions.

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ARTICLE 15 GRIEVANCE PROCEDURE

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15.4 Grievance Procedure – Grievances shall be processed in the following manner:

Step 1. The Union steward, with or without the employee, shall take up the grievance or dispute with the employee's immediate supervisor within ten (10) work days of the employee's knowledge of its occurrence. The

supervisor shall then attempt to adjust the matter and shall respond to the steward within five (5) work days.

* * *

BACKGROUND:

The grievant, Bobo, is currently employed as a Social Worker providing services within the Child and Family Services unit. He began his employment with the County in 1998 as a Correctional Officer. In 2005 he transferred to the Humans Services Department as a Case Aide 3. And, in 2010 he went into the Children in Crisis unit as a Case Aide 3.

In his grievance, Bobo contends that he performed duties of a Social Worker from March 1, 2007, through September 30, 2009, when the County stopped assigning him a Social Worker caseload. He testified that as a Case Aide 3 in the Delinquency unit he was assigned social work duties when there was an influx of cases. He stated that caseloads were increasing and his supervisor, Adams, in 2007, discussed with him and other Case Aides using them as Social Workers for new cases coming in. He said that Adams started assigning cases to the three Case Aides and the Clerk would show the Case Aides as the primary (responsible for the case) on those cases. He testified that he would meet with the clients and performed Social Worker services/duties on the cases he was assigned. Bobo said that when he worked as a Social Worker while still a Case Aide the distinction between the positions' duties was clear, and that Adams told the Case Aides that they were responsible for a caseload and their own work, just like a Social Worker.

Bobo also testified that he produced Probation Officer Reports for the Department of Corrections that were submitted to court and that function was a Social Worker duty. He said he produced those reports on a regular basis until the Department of Corrections found out that he was a Case Aide not a Social Worker and he was pulled from that work.

He said there were three Case Aides in the unit and all were qualified and had the education qualifications to be classified as a Social Worker. He testified that at the time he and the other Case Aides were being assigned a caseload they were aware of the out of classification contract language, but were also aware that if they complained or raised

issues about their pay that doing so would cause them to be “knocked down” in future opportunities. He testified on cross-examination that he wasn't contending that he would be disciplined if he would grieve his out of class assignment, but rather, “could be labeled as a troublemaker”. He testified that when Adams gave him a group of clients he didn't refuse because he had an interest in being promoted and accepting the cases would be good experience. He stated that, in addition to producing Probation Officer Reports for the Department of Corrections, he had up to 15 social work cases that involved meeting with clients.

Bobo and the other Case Aides filed reclassification requests to be reclassified from a Case Aide 3 to Social Worker 1. Bobo signed and dated his reclassification request on September 16, 2009, and it was received in the Human Resources Division on September, 29, 2009. Human Resources assigned Bobo's request to Templeton for review. Templeton reviewed the request, interviewed Bobo, his Supervisor, the other Case Aides who had also filed reclassification requests, and consulted with the Human Resources Division Director. On April 14, 2010, Templeton sent a memo to Bobo advising him that after reviewing his reclassification request it was determined that he should remain a Case Aide 3. In other words, the reclassification request was denied. Also, on the same date, April 14, 2010, Templeton sent another memo to Bobo advising him that as a consequence of his reclassification request she was made aware that he “was eligible for compensation for the time that you were assigned to work in a higher class”. She went on to state

“ * * * in January of 2007 you began taking a small caseload in addition to your other Case Aide 3 duties. * * * According to your supervisor, he considered the work you were doing was social work when he assigned you cases as the primary investigator. Otherwise you were assisting a Social Worker who was the primary investigator and doing case aide duties. * * *

Your supervisor provided a roster of close cases that had been assigned to you and there were 8 total clients that had been assigned to you between 1/1/2006 and 4/9/2010. Your supervisor states that an average full-time caseload is 24 clients. This means that over the period from January, 2007 until September 30, 2009 a full-time social worker would've handled 66 client files. Using the ratio of 8 to 66 you would've had 12% of the caseload of a social worker during this period. You were never noted in Summit as working out of class. According to your supervisor you were told to discontinue doing any social work activities in the

cases for which you were the primary investigator were reassigned to other social workers as of September 30, 2009. * * *

Therefore I have asked payroll to calculate the difference between what you were being paid as a Case Aide 3 and what you would've been paid as a Social Worker 1 for 12% of the time between January 1, 2007 and September 30, 2009. That amount will be paid to you as a payroll adjustment no later than the pay period ending May 14.”

Then, on June 16, 2010, Templeton sent Bobo another memo advising him that there had been a further analysis of his caseload that included “a complete review of records in SSIS, CSTS, and the records kept by the unit’s Clerk Typist”, and as a result it was determined that he should have been given credit for 15 clients for the period from January 2007 to October 2009, rather than the 8 clients that were originally attributed to him. Consequently, he should have received credit for 23% of a Social Worker caseload during that period.

Bobo received the earlier referred to 12% adjustment on April 30, 2010, and was advised that he would receive the difference between the 12% caseload adjustment and a 23% caseload adjustment in his check on July 9, 2010.

A first step grievance meeting regarding Bobo's out of classification grievance occurred on July 29, 2010. In that first step meeting the County advised the Union that the grievance was not timely. A second step meeting on the grievance was held on October 27, 2010, when the County again advised the Union that the grievance was untimely. The County again asserted its objection to the timeliness of Bobo's grievance on February 23, 2011. The Union appealed the grievance, which is the subject of this arbitration hearing.

DISCUSSION:

The County has raised a threshold procedural arbitrability issue of timeliness, contending that the grievance was not filed within the time limits established by Article 15.4 of the collective bargaining agreement. It raised this issue at the first step of the grievance procedure, reasserted it at each step of the contractual grievance procedure and reasserted it at the arbitration hearing. Union Steward Kocurek testified that the parties discussed the issue of timeliness at every step of the grievance. Thus, unlike what

happens all too often, this Employer did not wait until the arbitration step of the grievance procedure to, for the first time, assert a procedural arbitrability defense to the grievance. Thus, the County has not waived its right to assert its procedural arbitrability objection to the grievance.

Kocureck also testified that the Union cannot grieve reclassification request denials, but can grieve out of class pay occurrences. That is the nature of this grievance. On July 16, 2010, she sent an email to Adams stating she would like to initiate a Step 1 meeting to “discuss out of class for Ralph Bobo while he was in your unit and the partial compensation which was received on his July 9, 2010 payroll check”.

The County argues that this is not a timely grievance because the collective bargaining agreement requires that a grievance must be filed within 10 working days of the employee’s knowledge of its occurrence. It contends that the Union does not dispute that the partial caseload that Bobo had been assigned was taken away in October 2009, and therefore, at the latest, the grievance should have been filed no later than November of 2009. It argues that the grievance alleges that Bobo was not paid in accordance with Article 13.8 of the contract, Bobo admitted he was familiar with the application of Article 13.8 prior to October of 2009, was aware his co-workers had been paid in accordance with this provision during the time period in question, yet did not request compensation for working his own cases until after his reclassification request had been denied in June 2010. The County also asserts that Bobo admitted he didn’t file his grievance prior until October 2009, allegedly because he was afraid there would be some kind of retaliation, or negative impact upon his career, which itself is a tacit admission he didn’t file a timely grievance. The County contends there was no testimony presented to support his allegations, and therefore, Bobo’s testimony on this point lacks credibility.

The Union argues that it is grieving the time period starting on March 1, 2007. It contends that the County’s partial payments go back to January 1, 2007, and the County had Bobo stop working as a Social Worker as of September 30, 2009, after submission of the job study. Then, on April 14, 2010, the County after denying his reclassification request, granted Bobo partial Social Worker pay for that time period, and also made an additional payment to Bobo of Social Worker pay on July 16, 2009. The Union asserts that the occurrence of which the grievant had knowledge was the payment made on July

9, 2009, and the Union's Steward took up the grievance with Bobo's immediate supervisor on July 16, 2009, seven calendar days later, well within 10 working days. Thus, the Union asserts the grievance should be found to be timely.

It is clear from the grievance and Union arguments that the grievance is challenging the County's failure to pay Bobo as a Social Worker 1 for the period March 1, 2007 through September 30, 2009 "because he worked out of class and should receive full out of class compensation". Bobo knew and admitted he was working out of class at the time it was occurring. And, every time he received his paycheck he knew he was not being paid at the higher rate of pay, but was being paid the Case Aide 3 rate of pay. Bobo contends that he did not grieve at the time because he was concerned if he did it would have a negative impact upon his career with the County. However, no evidence was adduced to establish that this concern on his part was a reasonable concern based on fact. Indeed, he testified that he was happy to be given the assignments because they would provide him "good experience".

The question presented is can the grievance be considered timely because of the County's decision to award partial compensation to Bobo as a Social Worker 1, after it denied his reclassification request and more than 6 months after the social work assignments ended. The County argues it was not obligated by the collective bargaining agreement or its Personnel Rules to pay Bobo at the Social Worker 1 pay rate for being assigned a partial social work caseload, which goes to the merits of the grievance. Human Resources Manager Gramling testified that the County made the partial wage payments because, "we wanted to recognize the good work of the employee". Dehamer from Human Resources also testified that the reason the payments were made in April and July 2010 was because "we were trying to be fair and recognize they had been doing these duties for a long period of time – were trying to do something good for them".

At the time the payments were made to Bobo this grievance had not yet been filed. It wasn't until after Bobo received the second payment in July that the grievance was filed. To conclude that Bobo's grievance contending that the County violated Article 13.8 of the collective bargaining agreement by not paying him at the Social Worker 1 rate of pay for the period March 1, 2007 through September 30, 2009, requires a conclusion that the County's decision to voluntarily make those retroactive partial wage payments

retroactively tolled the Article 15.4 contractual time limits for filing a grievance effective as of March 2007. In the undersigned's opinion, no rationale has been presented for reaching such a conclusion, and it is unwarranted. The consequence of doing so would be to penalize the County for its attempt to recognize Bobo's work, while at the same time not prejudicing its position that even though it had assigned and held Bobo responsible for the performance of some social work duties as a Case Aide 3, it was not required by Article 13. 8 of the collective bargaining agreement to compensate Bobo at the Social Worker 1 rate of pay for all of his hours worked during this period, regardless of the level of duties performed. If a grievance had been pending the County could have proposed making the partial payments as a settlement of the grievance conditioned upon such a settlement being made without P&P (precedent and prejudice). However, there was no grievance pending at the time of the payments. Even so, it would be unreasonable to now conclude that the County, by failing to make clear it was continuing to maintain that it was not contractually required to pay Bobo at the Social Worker 1 rate of pay for the entire period, notwithstanding its partial payments to him, thereby somehow converted what was an untimely filed grievance into a timely one.

For these reasons the undersigned is persuaded that Bobo's grievance was not timely filed in accordance with the requirement of Article 15.4 of the parties collective bargaining agreement.

Based upon the testimony, exhibits and argument the undersigned enters the following

AWARD

Bobo's grievance was not timely filed in accordance with the provisions of Article 15.4 of the collective bargaining agreement. Therefore, the grievance is denied.

Entered this 5th day of September 2012.

Thomas L. Yaeger

Thomas L. Yaeger
Arbitrator