

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

William R. Ojala,

Petitioner,

VS.

ORDER DENYING

RESPONDENT'S MOTION TO DISMISS

St. Louis County,

Respondent.

This matter is before Administrative Law Judge Barbara L. Neilson on Respondent's Motion to Dismiss. William R. Ojala, Attorney at Law, P.O. Box 217, Aurora, Minnesota 55705, appeared on his own behalf. Michael R. Dean, Assistant County Attorney, 100 North 5th Avenue West, #501, Duluth, Minnesota 55802-1298, appeared on behalf of the Respondent. The record with respect to the motion closed on March 29, 1992, upon receipt of the Complainant's final submission.

Based upon all the files, records, and proceedings herein, and for the reasons set forth in the Memorandum attached hereto, the Administrative Law Judge hereby ORDERS that the Respondent's Motion be DENIED.

Dated this day of May, 1993.

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

Introduction

The Respondent, St. Louis County ("the County"), has moved to dismiss this contested case proceeding based upon an argument that it was not required to apply veteran's preference in its hiring process for the unclassified position of Arrowhead Victim Services Coordinator. Because the parties have included

matters outside the pleadings in their filings in support of and in opposition to the motion, 1/ the motion will be treated as a motion for summary disposition.

I/ Because the County raised new contentions in its reply brief, the Administrative Law Judge has granted the Petitioner's request that his final reply brief be considered in this matter.

Summary disposition is the administrative equivalent of summary judgment.

See Minn. Rules pt. 1400.5500(K) (1991). Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03. A genuine issue is one which is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case. *Illinois Farmers insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland_Chateau v, MinnesotaA Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

The moving party, in this case the Respondent, has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary disposition, the nonmoving party, in this case the Petitioner, must show that specific facts are in dispute which have a bearing on the outcome of the case. *Hunt v. IBM Mid America Employees Federal Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986). The existence of a genuine issue of material fact must be established by the nonmoving party by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn. R. Civ. P. 56.05. *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1988). The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial. *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)). The nonmoving party also has the benefit of that view of the evidence which is most favorable to him, and all doubts and inferences must be resolved against the moving party. See, e.g., *Celotex Corp. v. Catrett*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Dollander v. Rochester State Hospital*, 362 N.W.2d 386, 389 (Minn. Ct. App. 1985).

As discussed more fully below, the Administrative Law Judge has determined that, although veteran's preference need not be applied to positions that are properly in the unclassified service, there is a genuine issue of fact in this case regarding whether the position in issue in this case, that of Arrowhead Victims Services Coordinator, was properly designated as an unclassified position. In addition, genuine issues of fact remain for hearing with respect to the nature of the minimum qualifications for the Coordinator position and the extent to which the Petitioner satisfied these minimum qualifications.

Background Facts

Since December 1987, the St. Louis County Attorney's Office has obtained

an annual grant from the Minnesota Department of Corrections for the Arrowhead Victim Services Program. Gustad Aff. at 2. The County has used a portion of the grant monies to fund the position of Arrowhead Victim Services Coordinator. Id. The Victim Services Coordinator position was established in 1987 or 1988 as a position in the unclassified service of the County Attorney's Office by negotiation and mutual agreement of the St. Louis County Attorney and the St. Louis County Civil Service Director. Bruno Aff. at 6; Mitchell Aff. at 3. The Coordinator is responsible for recruiting, training and supervising volunteers in the seven-county area, providing direct services to victims, coordinating victim and witness service program activities,

facilitating court appearances for victims and witnesses, and investigating funding sources to continue programs in the seven-county area. Gustad Aff. at 3; Mitchell Aff. at 4-5, 7.

Pursuant to the process used by St. Louis County since 1941, the County Civil Service Commission does not establish rates of pay or minimum qualifications for unclassified positions. Bruno Aff. at 3-5, 7. In addition, applicants for unclassified positions are not required to take competitive tests for employment, eligibility lists are not prepared by the County Civil Service Commission, and veteran's preference is not applied. Id.; Gustad Aff. at 4-5. The appointing authority (here, the St. Louis County Attorney's Office) establishes its own selection criteria with respect to unclassified positions and is responsible for hiring in such cases. Bruno Aff. at 4, 8; Gustad Aff. at 4-5; Mitchell Aff. at 3.

After the Arrowhead Victim Services Coordinator position became vacant in July of 1992, the vacancy was advertised in several area newspapers as follows:

Position Available: Arrowhead Victim Services Coordinator; \$2,328-\$2,943 per mo., office in Virginia; apply by July 24, 1992.
Minimum qualifications: Bachelor's degree plus one year in a victim advocacy or counseling capacity. Send resume to: Arrowhead Victim Services, St. Louis County Attorney's Office, 100 N. 5th Ave. W., Rm. 501, Duluth, MN 55802.

Gustad Affidavit at 6-7. The Petitioner and 150 other individuals applied for the position. Gustad Affidavit at 8; Mitchell Affidavit at 8. The Petitioner submitted a cover letter and resume to the County in response to the advertised vacancy. See Petition for Relief under the Veterans Preference Act and Exhibits B and C attached to the Notice of Petition and Order for Hearing. These materials indicate that the Petitioner obtained a B.A. degree in 1949, a B.S. in Law in 1956, and a J.D. in 1957. In recent years, the Petitioner has taken three Human Services courses (including one entitled "The Helping Process") and a seminar in "Leadership Training." He also has taken approximately 45 college credits of coursework in the area of chemical dependency counseling. The materials submitted by the Petitioner to the County also indicated that he has maintained a general law practice with emphasis on trial work in criminal law, personal injury, and workers' compensation disputes; he has served as attorney for several municipalities

and has been involved with the legal aspects of problems encountered by Viet Nam era veterans; he has served as an advocate for a Union local; he has held several public offices, including School Board Chairman and Clerk, St. Louis County Commissioner, and State Representative; and he is a former member of the Advisory Board of the Mesabi Family Center, which his resume indicates is a counseling agency. The Petitioner's resume and the documents attached to the Notice of Petition and Order for Hearing indicate that the Petitioner served in the United States Marine Corps from 1942-45 and was honorably discharged.

Paul A. Gustad, the Director of Victim-Witness Services, evaluated the applications based upon victim advocacy experience, volunteer experience with respect to victims, experience in a victim counseling type of capacity, and baccalaureate degree. Gustad Aff. at 8. County Attorney Alan L. Mitchell determined that the most critical criteria for the position were experience in

victim advocacy programs, experience in a victim counseling capacity, related volunteer program experience, and the ability to investigate funding sources to continue the program. Mr. Mitchell decided that a desired criteria for the position was a baccalaureate degree. Mitchell Aff. at 7. Mr. Mitchell applied these criteria in selecting the individuals to be interviewed for the position. Mitchell Aff. at 11. Eleven applicants were selected for interview. Gustad Aff. at 9-10; Mitchell Aff. at 9-10. Two of the individuals who were interviewed lacked a bachelor's degree. Gustad Aff. at 9; Mitchell Aff. at 9. The Petitioner was not one of the eleven individuals selected for interview. Gustad Aff. at 10; Mitchell Aff. at 10. Msrs. Gustad and Mitchell believed that the Petitioner lacked necessary victim advocacy and victim counseling experience. Gustad Aff. at 10; Mitchell Aff. at 10, 13.

Anne Folman was ultimately selected for the job. Gustad Aff. at 11; Mitchell Aff. at 11. Ms. Folman has been the coordinator of a volunteer Guardian ad Litem Program in St. Louis County since 1988; a member of the Board of Directors of the Minnesota Association of Guardians ad Litem since 1990; a member of the Board of Directors of the Sexual Assault Program of northern St. Louis County since 1988; a co-facilitator for the St. Louis County Task Force for Children and Youth since 1990; and a member of the Minnesota Association of Volunteer Directors since 1990. She holds a bachelor's degree in business management and has had 50 hours of sexual assault advocate training as well as training in child abuse and exploitation investigative techniques training. Gustad Aff. at 12; Mitchell Aff. at 15.

Is Summary Disposition Appropriate?

In his Petition for Relief under the Veterans Preference Act, the Petitioner alleges that he is a qualified veteran who more than met the minimum qualifications for the Victim Services Coordinator position and that the County violated Minn. Stat. 43A.11 when it failed to interview him, notify him of his option to exercise his veteran's preference points, or inform him of the manner in which the applications were scored. The County does not dispute that the Petitioner is in fact a qualified veteran. The County does contend, however, that the Coordinator position was properly designated an unclassified position and is not subject to the application of veteran's preference pursuant to the 1941 statute which created the St. Louis County civil service system and that the Petitioner in any case did not possess the minimum qualifications for the position. These contentions will be considered below.

1. Are veteran's preference requirements applicable to unclassified positions in St. Louis County?

As a threshold matter, the parties dispute which statutory veteran's preference provision in fact applies to the hiring procedures of St. Louis County. The Petitioner argues that Minn. Stat. 43A.11, as made applicable to counties by Minn. Stat. 197.455, governs this proceeding. Section 43A.11 (1992) provides in pertinent part as follows:

Subdivision 1. Creation. Recognizing that training and experience in the military services of the government and loyalty and sacrifice

for the government are qualifications of merit which cannot be readily assessed by examination, a veteran's preference shall be available pursuant to this section to a veteran as defined in section 197.447.

the Subd. 3. Nondisabled veteran's credit. There shall be added to
so competitive open examination rating of a nondisabled veteran, who
obtained a elects, a credit of five points provided that the veteran
credit a passing rating on the examination without the addition of the
points.

the Subd. 4. Disabled veteran's credit. There shall be added to
a competitive open examination rating of a disabled veteran, who so
credit a elects, a credit of ten points provided that the veteran obtained
points

Chapter 43A applies only to hiring by the State of Minnesota. A statute originally enacted in 1975, however, renders section 43A.11 applicable to all counties within the state:

in The provisions of section 43A.11 granting preference to veterans
rules the state civil service shall also govern preference of a veteran
a or regulations of a county, city, town, school district, or other
qualified municipality or political subdivision of this state, except that
43A.11 notice of rejection stating the reasons for rejection of a
is void to the extent of such inconsistency

Minn. Stat. 197.455 (1992).

In contrast, the County argues that a separate statute which was enacted in 1941 governs the application of veteran's preference with respect to hiring by St. Louis County and that section 43A.11 therefore is inapplicable. The statute, which established the St. Louis County civil service system, is now

codified in Minn. Stat. 383C.03 through 383C.059 (1992). The law created a county civil service commission and the position of civil service director. The duties of the director are defined in the statute to include the formulation of job descriptions for positions in the classified service; the classification of positions; the determination of wage rates and ranges for groups of positions in the classifications, with the approval of the Civil Service Commission; the formulation of competitive tests to determine the relative qualifications of candidates for employment; the creation of employment lists for classes of positions; the certification of the names of eligibles to the appointing authority; the determination of the length of probationary periods; and the maintenance of performance records. The statute also recognizes that certain positions may be designated as unclassified. Minn. Stat. 383C.035 (1992).

The St. Louis County statute contains a specific provision relating to the application of veteran's preference in hiring. Minn. Stat. 383C.054 (1992) provides that "[h]onorable discharged veterans of the United States Army, Navy or Marine Corps, who have served in past wars, shall be entitled to preferential rating or preference in appointment as provided for in Laws 1939, chapter 441, section 31." The 1939 law to which the St. Louis County statute refers was codified as Minn. Stat. 43.30 and related to the application of veteran's preference in the state civil service system. The 1939 law was codified in chapter 43 of the Minnesota Statutes and repealed and reenacted as 43A.11 in 1981. See *Hall-v.-City of Champlin*, 463 N.W.2d 502, 504 (1990).²¹ Section 43A.11 retains the requirements in the 1939 law that a five- and ten-point preference be given nondisabled and disabled veterans and that veterans be entered on an eligible list ahead of nonveterans with the same rating, but incorporates a broader definition of covered veterans and no longer requires that disabled veterans be placed at the head of the eligible list.

The Administrative Law Judge concludes that, for several reasons, section 43A.11 is properly deemed to govern St. Louis County's veteran's preference procedures. First, the plain meaning of Minn. Stat. 197.455 clearly renders the provisions of 43A.11 applicable to govern the according of veteran's preference by counties regardless of any conflicting statutory or regulatory provision. Second, such a construction is necessary to comport with the decision of the Minnesota Supreme Court in *Hall,v. City of Champlin*. The Court noted in *Hall* that the Minnesota Legislature intended by virtue of its enactment of Minn. Stat. 197.455 in 1975 "to create a uniform system for the application of veterans preference in hiring" and that "[o]nly a uniform policy applicable to all veterans throughout the state can effect the intent of

²¹ As the Minnesota Supreme Court described in *Hall*, 463 N.W.2d at 504, Minnesota law prior to 1939 required that all governmental units in the state accord veterans an absolute preference in hiring. See 1907 Minn. Gen. Laws, ch. 263. In 1939, the State Legislature retained the absolute hiring preference with respect to counties and other governmental subdivisions but adopted a more flexible approach with respect to the state civil service system. Under the more flexible approach, the "examination rating" of veterans applying for state employment was increased by five points for nondisabled veterans and by ten points for disabled veterans. 1939 Minn. Gen. Laws ch. 441, 31. The 1939 law was limited in coverage to veterans of wars pre-dating 1939. It specified that non-disabled veterans who were able to perform the position sought with reasonable efficiency and who received a passing grade by virtue of the augmented rating were to be placed on the list of eligibles and that their names should be entered ahead of nonveterans when their ratings were the same. The 1939 statute required that disabled veterans who were able to perform the duties of the position sought with reasonable

efficiency and received a passing grade by virtue of the augmented rating be placed at the head of the eligible list for the position. 1939 Minn. Gen. Laws, ch. 441, 31. The 1939 law further recognized that positions in the classified service could be filled without "competition" only in limited circumstances. See 1939 Minn. Gen. Laws, ch. 441, 20. It was not until 1975 that the Legislature made the more flexible point-based preference procedure applicable to counties and political subdivisions as well as the state civil service system. 1975 Minn. Gen. Laws, ch. 45; see Minn. Stat. 197.455.

the legislature." The Court concluded that Minn. Stat. 43A.11 and 197.455 "apply to all political subdivisions of the state regardless of the type of personnel system used." 463 N.W.2d at 505.

Finally, it is appropriate to construe the adoption of 43A.11 as repealing by implication the inconsistent provisions of 383C.054 relating to veteran's preference. The doctrine of repeal by implication is not favored but is properly applied where a "later statute fully covers the subject of the prior one and is manifestly inconsistent with the prior statute." 17B Dunnell Minnesota Digest, Statutes E DFFRUG 0LQQ Stat. 645.39 (1992) ("[w]hen a general law purports to establish a uniform and mandatory system covering a class of subjects, such law shall be construed to repeal preexisting local or special laws on the same class of subjects"). Section 43A.11, which was enacted in 1981, established a uniform statewide system of preferential rating and appointment for all veterans. Section 383C.054, which was enacted in 1941, incorporated by reference a 1939 statute which provided a preference only to veterans of wars that predated 1939. The two statutes are obviously inconsistent in application and cannot be reconciled. The Legislature cannot have intended that St. Louis County only provide a preference in hiring to pre-1939 veterans and deny any preference to veterans serving after 1939. 3/ In construing a statute, it is presumed that the legislature does not intend a result that is absurd or unreasonable. Minn. Stat. 645.17 (1992). Thus, applying principles of statutory construction and the holding of Hall v. City of Champlin, the Judge concludes that St. Louis County is obligated to provide veteran's preference pursuant to the provision of 43A.11.

Although veterans applying for employment in St. Louis County thus are found to be entitled to preferential rating or preference in appointment as provided for in 43A.11, the Administrative Law Judge concludes that such preference is only applicable to positions in the classified service. The Petitioner correctly notes that 43A.11 does not specify that veteran's preference shall apply only to classified positions. A fair reading of the state and St. Louis County civil service statutes, however, requires such a construction. Section 43A.11 requires that five or ten points be added to the "competitive open examination ratings" of veterans. This term is defined in

Minn. Stat. 43A.02, subd. 15 (1992), to mean situations in which "eligibility to compete in an examination for state employment is extended to all interested persons." Chapter 43A requires that competitive open examination S "shall, upon, public notice, be open to all applicants who meet reasonable job-related requirements fixed by the Commissioner." Minn. Stat.

43A.10, subd. 5 (1992). Moreover, section 43A.11 further specifies with respect to the ranking of veterans that "eligibles" with ratings augmented by veteran's preference shall be entered on "eligible lists" ahead of nonveterans with the same rating, requires that governmental agencies provide "eligibles" with the "final examination ratings preference credits," and states that "certified eligibles" who have received veteran's preference and are rejected must be notified in writing of the reasons for the rejection. It is only the selection process for positions in the classified service that involves competitive testing, examination ratings, and certification of eligible lists or employment lists. See, e.g., Minn. Stat. 43A.10, 43A.12, 43A.13, 43A.15, 383C.034, 383C.041, 383C.042, and 383C.043 (1992). The statutory

3/ Indeed, St. Louis County's rules define "veteran" by reference to persons defined as veterans by the 1939 law "and amendments thereto," which would expand the application of 383C.054 to post-1939 veterans.

scheme thus clearly contemplates that veteran's preference points shall be awarded in the context of competitive open examinations for positions in the classified service, where final examination ratings are given and eligible lists are compiled, and not in the context of selections for unclassified positions where such procedures are not required to be followed. Such an interpretation is also consistent with the regulations which govern the operation of the state and St. Louis County civil service systems. 4/

The Petitioner relies on the case of *Hall v. City of Champlin*, 463 N.W.2d 502 (Minn. 1990), in support of his argument that the veteran's preference requirements apply both to classified and unclassified positions. In *Hall*, the Minnesota Supreme Court considered whether the point-based veteran's preference requirements applied to the City's selection of a laborer based on a written application and an informal rating of interviewed candidates. The Court held that the veteran's preference requirements were not restricted to cities with civil service systems but also applied to cities which had adopted other types of personnel hiring systems. The Court held that "political subdivisions of the state must adapt their hiring systems to a 100-point rating system to enable the allocation of veterans preference points." 463 N.W. 2d at 505-06. The *Hall* case is distinguishable from the present case, however, because the laborer position that was at issue is of the sort that would invariably be deemed a "classified" position.

In accordance with the plain meaning of the statutes governing both the state civil service system and the St. Louis County civil service system, the Judge thus is compelled to conclude that veteran's preference is inapplicable to the selection process for positions which are properly deemed to be in the unclassified service. 5/

4/ The regulations promulgated by the Department of Employee Relations with respect to state civil service positions indicate in a provision relating to the scoring of examinations and the determination of candidates' rating that veteran's preference points will be "applied only after a candidate has attained a final passing examination rating." Minn. Rules pt. 3900.4500 (1991). The DOER regulations also recognize that, "[u]nless otherwise specified in a statute, an appointing authority may appoint to an unclassified position any person he or she considers qualified." Minn. Rules pt. 3900.9100 (1991). The St. Louis County civil service regulations describe the manner in which veterans will be given preference points in "open" examinations and the order of their placement on the "eligible list." See St. Louis County Rule 5.12, appended to Petitioner's brief in opposition to the County's Motion.

5/ The St. Louis County statute specifically provides that any inconsistent acts, including the then-existing Veteran's Preference Law, are repealed "to the extent necessary to give effect to the provisions of sections 383C.03 to 383C.059" Minn. Stat. 383C.056 (1992). The Minnesota Court of Appeals held in *Schoen v. County of St. Louis*, 448 N.W.2d 112 (Minn. Ct. App. 1989), that the provision of the St. Louis County civil service statute which permits the discharge of a probationary employee without a

hearing superseded the hearing requirements of the relevant portion of the current Veterans Preference Act (set forth in Minn. Stat. 197.48).

Because

the portion of the St. Louis County civil service statute relating to veteran's preference has been repealed by implication, there is no inconsistency and this provision does not come into play in the present case.

2. Was the Arrowhead Victim_Services Coordinator position properly categorized as an unclassified position?

The St. Louis County Attorney and the St. Louis Civil Service Director determined at the time that the Victim Services Coordinator position was created that it was to be an unclassified position. The County asserts that the Coordinator position was properly designated in the unclassified service.

In his Affidavit, the County Attorney characterizes the Coordinator job as a "professional position of special investigator." Affidavits filed by the County Attorney and the Director of Victim-Witness Services assert that the Coordinator "holds a confidential relationship with and serves at the pleasure of the County Attorney" and "work[s] in confidential relationships with the attorneys involved in litigation." Mitchell Aff. at 5-6; see also Gustad Aff.

at 4. The County also contends that the unclassified designation is appropriate because the position involves access to and the review of highly sensitive and private information and law enforcement investigative data, the coordination of programs in which confidential services are provided to victims and witnesses, and the facilitation of victims' and witnesses' court appearances. The County further emphasizes that the Coordinator is a "year-to-year position dependent upon future grant funding." Mitchell Aff. at

4-5; Gustad Aff. at 2. In response, the Petitioner asserts that the St. Louis County Civil Service statute makes no provision for unclassified positions that are not "assistant county attorneys" or "special investigators" and does not authorize the County Attorney and the Civil Service Director to "negotiate" any exceptions to the statute.

The St. Louis County Civil Service statute specifically provides in section 383C.035 that "[t]he unclassified service shall comprise: (e) Assistant county attorneys or special investigators in the employ of the county attorney." The same statutory provision goes on to state that "[t]he classified service shall include other positions now existing and hereinafter created in the service of the county or any board or commission, agency, or offices of such county." Id. Unlike other county civil service statutes, the St. Louis County Civil Service statute does not include language which indicates that positions which are temporary, limited in duration, or funded by grants of intermittent or limited funding duration are to be deemed unclassified positions, nor does the St. Louis County statute provide that additional unclassified positions may be designated if certain criteria are satisfied (such as significant discretion and substantial policy involvement). See, e.g., Minn. Stat. 383A.286, subs. 2(j) and 3 (1992) (Ramsey County); Minn. Stat. 383B.32, subd. 2(f) and (g) (1992) (Hennepin County).

In essence, the St. Louis County Civil Service statute specifies that all

positions in the County Attorney's office other than those of Assistant County Attorney or Special Investigator are to be deemed to be positions in the classified service. It is a well-established rule of statutory construction that exceptions to general rules are to be strictly construed. See, e.g., *Ratcliffe v. Ratcliffe*, 135 Minn. 307, 160 N.H. 778 (1917); *Pitzl v. Winter*, 96 Minn. 499, 105 N.W. 673 (1905). In addition, "exceptions expressed in a law shall be construed to exclude all others." Minn. Stat. 645.19 (1992); accord *Maytag Co. v. Commissioner of Taxation*, 218 Minn. 460, 17 N.W. 2d 37 (1945) and *Board of education v. Public School Employees Union Local No. 63*, 233 Minn. 144, 45 N.W.2d 797 (1951) (where a statute enumerates exceptions,

the exclusion of one thing includes all others). The County has not provided any evidence describing the duties of Special Investigators or comparing such duties with those of the Coordinator, nor has it established that the Coordinator is in fact denominated a Special Investigator. While the County argues that the Coordinator position is within the "general types" of positions set forth in the statute, the County's own rules specify that "'[c]lassified [s]ervice' means all positions in County service except those specifically placed in the unclassified service as defined by Section 6 of the Act." St. Louis County Rule 13 (9), appended to Petitioner's memorandum in opposition to the County's motion (emphasis added). The County thus has not provided sufficient evidence at this stage of the proceedings from which the Administrative Law Judge may conclude that the Coordinator position is one of Special Investigator. A genuine issue of material fact remains for hearing regarding the propriety of the classification of the Coordinator position within the unclassified service.

3. Does the Petitioner-meet the minimum qualifications for the Coordinator position?

The County argues that the Petitioner does not have the requisite one year of experience in a victim advocacy or counseling capacity and that he thus does not possess the minimum qualifications for the Coordinator position. The County acknowledges, however, that two of the eleven candidates selected for interviews did not meet minimum qualifications in that they lacked a bachelor's degree. Moreover, based upon the information supplied by the County, it is not clear that the individual who was ultimately selected for the Coordinator position had the requisite victim advocacy or counseling experience. The materials submitted by the County merely indicates that Ms. Folman coordinated a volunteer guardian ad litem program and served as Board member and "co-facilitator" for several programs and organizations. The Administrative Law Judge thus concludes that genuine issues of material fact remain for hearing regarding what the minimum qualifications for the Coordinator position actually were, what experience would suffice to meet any experience requirement that was imposed, and whether the Petitioner possessed the minimum qualifications.

Because the Complainant has shown that specific facts are in dispute that have a bearing on the outcome of the case, the Respondent is not entitled to judgment as a matter of law. Accordingly, the Respondent's Motion for Summary Judgment has been denied.

B.L.N.

