BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

MANITOWOC COUNTY COURTHOUSE
EMPLOYEES LOCAL 986-A, AFSCME,
AFL-CIO

and

MANITOWOC COUNTY

Grievance concerning
Lynn Markowski dated
4-23-90

Case 234
No. 44347
MA-6259

Appearances:

Mr. Gerald D. Ugland, AFSCME Council 40 Staff Representative, PO Box 370, Manitowoc, WI 54221-0370, appearing on behalf of the Union.

Mr. Mark B. Hazelbaker, Corporation Counsel, 1010 South 8th Street, Manitowoc, WI 54220, appearing on behalf of the County.

ARBITRATION AWARD

The Wisconsin Employment Relations Commission designated the undersigned Arbitrator to hear and determine a dispute concerning the abovenoted grievance arising pursuant to the grievance arbitration provisions of the parties' 1988-90 collective bargaining agreement (herein Agreement).

The parties presented their evidence and arguments to the Arbitrator at a hearing held at the Manitowoc Courthouse in Manitowoc, Wisconsin, on October 17, 1990. No transcript was prepared. Briefing was completed on December 26, 1990, marking the close of the record.

STIPULATED ISSUES

At the hearing, the parties authorized the Arbitrator to decide the following issues:

1. Did the County violate the Agreement by employing Lynn Markowski on a part-time basis from April 1 to May 17, 1990?

2. If so, what is the remedy?

PERTINENT PORTIONS OF THE AGREEMENT

ARTICLE I - RECOGNITION AND BARGAINING UNIT

The employer recognizes the Union as the exclusive bargaining agent of all employes engaged in the operations of the various departments and functions of the Manitowoc County Courthouse, County offices, Manitowoc Counseling Center and such departments where represented by the Union excluding elected officials, managerial, supervisory, confidential, and temporary employes . . .

. . .

ARTICLE 3 - MANAGEMENT RIGHTS RESERVED

Unless otherwise herein provided, management of the work and direction of the working force, including the right to hire, promote, transfer, demote, or suspend, or otherwise discharge for just cause, and the right to relieve employees from duty because of lack of work or other legitimate reason, is vested exclusively in the employer. If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due him or her for such period of time involved in the matter.

. . .

Unless otherwise herein provided, the Employer shall have the explicit right to determine the specific hours of employment and the length of work week and to make such changes in the details of employment of the various employees as it from time to time deems necessary for the effective operation of Its department. . .

. . .

ARTICLE 10 - DEFINITIONS OF EMPLOYEES

A. Regular Full-Time: A regular full-time employee is a person hired to fill a regular full-time position. Full-time employees are eligible to receive all benefits in this Agreement.

B. Regular Part-Time: A regular part-time employee is a person hired to fill a regular part-time position. Regular

part-time employes shall not be used to replace, reduce or displace regular full-time employment.

Regular full-time employees hired prior to January 1, 1984 [sic], and working on a continuous basis through December 31, 1983 [sic], who subsequently become regular part-time employees and regular part-time employees hired prior to January 1, 1984, shall be entitled to all fringe benefits under this Agreement. (Holiday, vacation and sick leave benefits shall be pro-rated.)

Regular part-time employees hired on or after January 1, 1984, shall be eligible for all fringe benefits under this Agreement which shall be based on a pro-rata schedule effective January 1, 1984:

Hours Worked Per Week	% of Fringe Benefits
Less than 20	0
20 but less than 24	50%
24 but less than 32	60%
32 but less than full-time	80%

C. Seasonal: A seasonal employee is a person on the active payroll only during the season during which his or her services are required. Seasonal employees are not entitled to any of the fringe benefits under this Agreement. Seasonal employees shall not be used to replace, reduce or displace regular employment.

D. Temporary: A temporary employee is a person hired for a specified period of time (not to exceed six (6) months) and who will be separated from the payroll at the end of period. Temporary employees receive none of the benefits contained in this Agreement. Temporary employees shall not be used to replace, reduce or displace regular employment.

. . .

ARTICLE 22 - JOB POSTING

Notice of vacancies and new positions shall be posted within five (5) working days after the vacancy occurs on the bulletin board In each department as well as the bulletin boards in the Courthouse (located in the office of the County Clerk and the Personnel Department) for five (5) working days. The notice of posting shall include the following minimum information: wage rate, hours of work, department, position title, Job description, and qualifications. Any employe desiring to fill any such posted vacancy or new position shall make application in writing at the Personnel Department. After the conclusion of the posting period, the applications shall be opened at the Personnel department in the presence of a representative of the Union and a representative of the County Personnel Committee, or its designee, at a time to be mutually agreed upon.

Whenever any vacancy occurs, it shall be given to the employee with the greatest seniority within seven (7) work days after the completion of the posting period.

When objections are made by the Department Head regarding the qualifications of an employee to fill the position, such objections shall be presented to the employee and the Union in writing by the Department Head or the Department Head's designee.

If there is any difference of opinion as to the qualifications of an employee, the County personnel Committee and the Union Committee shall take the matter up to adjustment through the grievance procedure.

. . .

ARTICLE 23 - HOURS AND PAY DATE

A. The guaranteed normal work day shall be Monday 8:30 a.m. to 5:00 p.m. with one-half (1/2) hour for lunch; and Tuesday through Friday shall be 8:30 a.m. to 4:30 p.m. with one-half (1/2) hour for lunch.

. . .

FACTUAL BACKGROUND

At the hearing, the parties submitted the following Stipulations to Facts:

1. Lynn Markowski was hired by Manitowoc County September 4, 1979. She worked part-time from that date until June 10, 1985 when she posted into a position in the Clerk of Circuit Court office. The final position she held was Deputy 3/Family, with a wage rate of $9.78 per hour on a 38-hour regular week.

2. Ms. Markowskils last day of regular full-time employment was March 30, 1990. She resigned her position March 1, 1990 effective March 30, 1990.

3. After Ms. Markowski submitted her resignation, the position of Deputy 3/Family which she would be vacating was posted. Theresa Shebesta, another employee in the Clerk of Circuit Court office, posted for and was awarded the position. Theresa took the position April 2, 1990. Theresa's position was posted and awarded in the sequence described in Joint Exhibit 11.

4. Because of a high volume of work and need to train the new employees assuming Ms. Markowski's duties, Clerk of Circuit Court Joan Hoffman asked Ms. Markowski to continue to work for several weeks beyond the date on which Ms. Markowski had indicated she would be leaving. Ms. Markowski agreed to delay her termination for six seeks provided she could continue to work only part-time.

5. By the letter which is Joint Exhibit 10, Ms. Markowski agreed to continue her employment on a part-time basis.

6. Ms. Markowski did continue to work from April 2, to May 17, 1990 on a part-time basis. She worked 120.75 hours. A full-time schedule during that period would have totaled 266 hours, a difference of 145.25 hours. During the part-time work, Ms. Markowski continued to receive County benefits. The County's contribution toward benefits was pro-rated at 53 percent of their cost as opposed to 100 percent of cost which would have been paid had the employment continued at full-time level.

7. The Union was not a party to any agreement for part-time employment of Ms. Markowski.

8. The grievance was timely filed and processed to the

arbitration stage.

The parties also submitted joint exhibits which provided the following additional information.

Joint Exhibit 2, the grievance initiation form dated April 23, 1990, asserts that the County "Created another temporary position with different benefits, etc. when there are arbitrations unsettled about such practices," in violation of ARTICLE 10 - Definitions of employees and any other Article that may apply," and requesting, "If such a position is to be created with benefits such as Lynn is receiving, it should be posted."

Joint Exhibit 5, Clerk of Circuit Courts Joan Hoffman's grievance answer dated May 4, 1990, reads as follows:

> I do not agree that a temporary position has been created. Although Ms. Markowski resigned her full-time position effective March 30, 1990, she generously agreed to continue assisting in the office until a certain amount of training of other office personnel has been accomplished. This was only the continuance of Lynn's employment, which will end May 17, 1990. No other employe will be brought in/employed to do this training in the future. I believe that the County was being unnecessarily, but appropriately, generous to continue to pay her former hourly rate and provide proportionate fringe benefits.
>
> Since the authorization to retain Ms. Markowski during this training period was for a limited period of time, and considering the amount of training needed to perform the duties assigned to her, there is no need to post the position.

Joint Exhibit 6, the Human Resources Director Beth Huber's grievance answer dated July 6, 1990, refers to the subject matter as "Grievance regarding temporary position within the courthouse." The body of that answer reads as follows:

> Upon further review of the grievance regarding the creation of a new temporary position within the Clerk of Court Office filed by Local 986A, I must deny the grievance. No new position was created for Lynn Markowski. Rather, due to the fact that there was substantial turnover and transfer of at least four positions/employes within the Clerk of Court Office at that time the manager requested Lynn to work part-time for approximately 6 weeks in order to train her replacement, Theresa Shebesta. This was well within

> management's rights. This was not the creation of a new position; temporary, permanent or otherwise. No other employee is scheduled to be brought in to perform these training functions in the future.
>
> Secondly, because management requested that Lynn continue working for the County on a part-time basis for this temporary period of time, the County continued to pay her what was her ending salary with continued benefits at a pro-rated amount. If we would have classified this extension of employment as a new, temporary position, Lynn would not have received her regular wages nor any benefits. Under these circumstances management was well within their rights and more than generous with a long-term and valued employee.
>
> Once again, this was not the creation of a new and temporary position and therefore the position was not posted nor should it be posted. It was a voluntary extension of Lynn's employment in order to assist a department which was in total disarray.

Joint Exhibit 7 is a letter sent to Huber from then Union District Representative Michael J. Wilson before Wilson had received Joint Exhibit 6, above. In his letter, Wilson states the following:

> I have not to date received a written response to the above referenced grievance. Nevertheless I am prepared to close the file on this matter so long as it is understood that the Union is of the opinion that said assignment violates the terms of the collective bargaining agreement. The violations include but were not limited to the failure to post the job. Temporary employment is not supposed to be used in such a manner as to replace, displace or reduce regular employment.
>
> The decision not to appeal the grievance should not be interpreted as any type of acceptance of or acquiescence to County's interpretation of the contract. An appeal is not made at this time because the issue is moot. The assignment has been terminated.
>
> As you know there is a continuing controversy regarding the use of temporary employment. A unit clarification is pending as well as the temporary employee grievance which is being held in abeyance pending the outcome of the unit clarification case.

> Should you not agree with the closure of the instant grievance as described above, please so advise. The grievance will then be appealed to arbitration in accordance with your wishes.

Joint Exhibit 8, in which Wilson wrote Huber a July 10, 1990 letter "Re: Lynn Markowski Temporary Part-time Assignment Grievance," which read as follows:

> Thank you for your letter of July 6, 1990 (postmark of July 9, 1990). Our last letters apparently crossed in the mail, as I received yours today.
>
> The union herein serves notice of the appeal of the above referenced grievance to arbitration. Please forward a check in the amount of $12.50 payable to the WERC as the County's share of the filing fee.
>
> Whereas the contract has a guaranteed work day and work week, Lynn Markowski is due the difference between what she was paid and what she should have been paid. Other violations are as we previously discussed.

Joint Exhibit 10, a March 20, 1990 memorandum from Hoffman to Huber with Lynn Markowski's written acknowledgement that she had read the memo agrees to be available for the training period as described therein, and with a stick on note stating "20 hrs./week is 53% in benefits." The memo read as follow:

> On March 1, 1990, Lynn Markowski submitted a resignation from her position as Deputy 3 - Family Unit because she has chosen not to continue to work full time. Although her letter stated that the resignation was effective on March 30, she also indicated that she would be available to assist with any necessary training after March 30.
>
> Lynn's position has been posted and the position has subsequently been awarded to Theresa Shebesta. Theresa's position as Deputy 4 - Accounting has been posted, and that posting will end at 4:30 p.m. on March 23, 1990.
>
> Theresa has had prior experience in the Family Unit position, and I do not expect to her to need a great deal of training. However, I anticipate that Theresa's replacement in the Accounting position will

require a lengthy training period.

I request authorization to have Lynn work past March 30 for a six-week training period. During that time, she will train Theresa in additional aspects of the Family Unit position, and also relieve Theresa from some daily duties to allow Theresa time in which to train a replacement in the accounting position. I anticipate that Lynn would work approximately 20 hours per week, as her schedule allows, and that she would be paid $9.78 per hour during the training period following March 30.

I understand that if this procedure is authorized, Lynn will not be terminated from the payroll until approximately May 11, 1990. I hope that if for any reason Theresa's replacement does not begin her training by April 2, Lynn's actual termination date could be reconsidered.

Thank you for your consideration

And finally, Joint Exhibit 11, which the parties characterized as a "Schedule of position/personnel changes in Clerk of Circuit Court office during early 1990," reads as follows:

April, 1990 CLERK OF CIRCUIT COURT

Position Title	Incumbent	Date Vacated	Date Posted	Date Filled	Employee Position was Awarded to
Deputy II, Civil	D. Weber	1/5/90	12/12/89	1/8/90	Joyce Vnuk**
Secy./Clerk I	J. Vnuk	1/8/90	12/22/89	1/15/90	Lori Norkosky
Deputy III/Family	L. Markowski	3/30/90	2/9/90	Posting was withdrawn*	
Deputy III/Family	L. Markowski	3/30/90	3/2/90 Reposted	3/12/90	Teresa Shebesta**
Deputy IV/Acctg.	T. Shebesta	3/12/90	3/16/90	4/2/90	Karen Kraftcheck**
Account Clerk III	K. Kraftcheck	4/2/90	3/15/90	4/2/90	Dawn Fruzen**
Records Clerk II	D. Fruzen	4/2/90	3/26/90	Reclassified & reposted	
Secy./Clerk III	D. Fruzen	4/2/90	4/12/90	5/1/90	Jeanne Hartwig (New hire;)

Child Support Sp.	S. Becker	4/12/90	4/2/90	4/9/90	Lynn Skarvan**

* The 2/9/90 posting occurred when Lynn posted into a regular part-time position at the Aging Resource Center. The incumbent in that position returned to her position; therefore bumping Lynn back to her position,as Deputy III/Family.

** Employed in the Clerk of Court office; posted into new position within same department.

In addition:
1) Lynn Markowski was on maternity leave from approximately November 22, 1989 to February 26, 1990. Teresa Shebesta filled in for her during her maternity leave.

2) Phyllis Gass, a temporary employee, was scheduled to fill in for Teresa Shebesta while Teresa was doing Lynn Markowski's job. Phyllis, however, obtained other employment and resigned on February 14, 1990

3) Lynn Markowski was kept on the payroll as a regular employee working part-time from April 1, 1990 through May 17, 1990 to assist during the transition of the above employees in their new positions.

In response to questions from the Arbitrator at the hearing, the parties further agreed that the practice under the Agreement has been that the County posts vacancies occurring in regular part-time and regular full--time positions but does not post temporary positions; and further that if the Arbitrator finds that Lynn Markowski was paid in excess of the compensation provided for by the Agreement for the time period in question, she should not be required to pay the difference back to the County.

POSITION OF THE UNION

Stipulation 4 and Joint Exhibits 10 and 11 clearly establish that Markowski's work during the period in question was on a regular part-time basis. This precludes the notion that Markowski was a temporary employee. The Joint exhibits also reflect the fact that although Shebesta was well qualified to replace Markowski, Kraftcheck needed extensive training to replace Shebesta. It is undisputed that the Union was not a party to the agreement between the County and Markowski to extend Markowski's employment on a regular part-time basis, and that the difference between what Markowski earned during the period and what she would have earned under the guaranteed 38 hour work week is $1420.54 plus the portion of fringe benefits not paid for her during the period in question.

By having Markowski continue to perform her duties, the County was able to delay the time when Shebesta actually took on the duties of Markowski's position. That delay deviated from the results that should have flowed from Shebesta's selection under the contract posting procedure. The County should have contacted the Union and obtained its consent before deviating from the normal application of the posting procedure. The posting procedure expressly provides for the County to notify the Union when it considers the senior employ (here Kraftcheck) not qualified for a vacant position on which the employe has bid; but the County failed to follow that procedure.

By employing Markowski on a regular part-time basis, the County materially changed the nature of her position from the full-time position Markowski had previously been performing. The resultant regular part-time position should have been posted or the County should have contacted the Union and obtained its consent before deviating from its

contractual obligation to post that position.

Because Grievant was employed as a regular part-time employe during the period in question, it cannot be concluded that she was a temporary employe so as to be ineligible for any fringe benefits.

By employing Markowski in a part-time position doing the duties she previously performed on a full-time basis while Shebesta was occupied training Shebesta's successor, the County essentially replaced Markowski's full-time position with Markowski working part-time. This violates the Agreement provision against using regular part-time employes to replace, reduce or displace full-time employes.

The County worked out an arrangement with Markowski--without the Union's involvement or approval--under which Markowski worked fewer than the 38 hours guaranteed by Article 23. It follows that Markowski experienced an economic loss, and the County should be required to make her whole for what she would have received for working the guaranteed 38 hour workweek for the period of time in question. Specifically, Grievant should be paid the $1,420.54 salary shortfall plus an appropriate amount for her fringe benefit loss.

POSITION OF THE COUNTY

The Agreement clearly authorizes employing persons on a part-time basis in Art. 10.B. Moreover, Art. 3 reserves to the County "the explicit right to determine the specific hours of employment and the length of work week and to make such changes in the details of employment of the various employees as it, from time to time, deems necessary for the effective operation of its department." The Art. 23 hours provisions cannot appropriately be read to preclude the creation of a part-time position. The stipulated facts show that the County did not use Markowski's part-time employment "to reduce, displace or replace regular full-time employees." Indeed, Markowski's part-time employment actually put the unit one-half position above its ordinary size for a short time. No one was displaced or reduced or replaced by Markowski during her part time work. No one lost any hours or opportunity to work full time hours as a result of the decision to double fill Markowski's positions. Therefore there was no violation of Art. 7 or 23.

There was also no violation of the Art. 22 Job Posting provision, either. For the work performed by Markowski from April 1 to May 17, 1990 to have been posted, there would have to have been a "vacancy." There was none. Markowski was not working a new position. She was continuing in the same Deputy 3 position she held for years. The position was simply "double filled" for training purposes, with the regular full-time position posted and filled by Shebesta and Markowski continuing in her former position on a part-time basis during training. There was no new vacant position, so there was nothing to post.

Finally, the County had no obligation to negotiate with the Union about the hours of work for Markowski before implementing the change. The parties have already negotiated on the subject of whether and under what circumstances the County can employ people on a part-time basis. As noted above, the Agreement recognizes the County's rights to make such changes in Arts. 3 and 10, and there was therefore no obligation for the County to negotiate further with the Union before exercising those rights.

In sum, Markowski resigned her full-time position, but to help train her successor and deal with the workload in the Clerk of Circuit Courts department, the County decided to "double fill" her position during the transition. Markowski's hours changed, but the County has the authority to employ regular part-time employes so long as full time employment is replaced, reduced or displaced. The County had no obligation to bargain with or obtain the consent of the Union before exercising the rights reserved to it in the Agreement.

The grievance therefore is without merit and should be denied in all respects.

DISCUSSION

The STIPULATED ISSUES make the exclusive focus of this award the employment of Markowski on a part-time basis from April 1, 1990 to May 17, 1990.

The record as a whole persuades the Arbitrator that during that period of time, Markowski's employment was that of a "temporary employe" defined in Art. 10.D. as "a person hired for a specified period of time (not to exceed six (6) months) and who will be separated from the payroll at the end of period." Joint Exhibit 11 describes the employment as "for a six-week training period" and Joint Exhibit 5 notes that "No other employee will be brought in/employed to do this training in the future."

The employment arrangements put into effect for Markowski during the period in question were more than merely the establishment of an end point to Markowski's full-time employment. For example, it is undisputed that Markowski's hours during the period in question were part-time rather than the full time hours she had been working previously. Those arrangements were more than simply "double filling" Markowski's prior position since Markowski did not continue to work the same hours and with the same compensation arrangements as had been in effect for her before April 1. Rather, the County created a new set of work arrangements of a part-time nature "for a specified period of time [that was] not (going] to exceed six (6) months," and filled that position with Markowski who was to "be separated from employment at the end of [that temporary) period." By so doing, the County created a new temporary part-time position.

While Joint Exhibit Exhibit 11 characterizes markowski as being "a regular employee working part time from April 1, 1990 through May 17, 1990," neither party can persuasively rely on that characterization in the face of the facts noted above. Especially so since the County seeks to justify paying Markowski in a manner that is not consistent with any of the benefits/ contributions levels prescribed in the Agreement for regular part-time employes, and since the Union seeks a remedy that would have Markowski paid for more hours than a regular part-time employe would work under the Agreement.

Article. 10.D. authorizes temporary employment without limiting same to full-time or part-time, and Art. 3 reserves to the County the residual right to "to determine the specific hours of employment and the length of work week and to make such changes in the details of employment of the various employees as it from time to time deems necessary for the effective operation of its department." Taken together those provisions reserve to the County the right to create a temporary part-time position so long as its use of that position does not contravene the other limitations contained in Art. 10.D. Just as the "guaranteed work day" language in Art. 23.A. does not preclude the regular part-time employment expressly authorized in Art. 10.D., the Arbitrator concludes that Art. 23.A. also does not preclude temporary part-time employment authorized by Arts. 10.D. and 3.

The parties' agreement at the hearing that in practice, regular full-time and regular part-time positions are posted whereas temporary positions are not confirms that the parties have a mutual understanding the Agreement does not require Art. 12 posting of the temporary part-time position in which Markowski was employed during the time period in question. This practice seems entirely reasonable and practical given the limitations on the length of and kind of use that can be made of temporary employment under Art. 10.D. If, as the Union asserts, Shebesta spent a significant portion of her time training her successor while Markowski performed the Deputy 3/Family duties on a part-time basis, it remains true that Shebesta had been appointed to the Deputy 3/Family position and was being paid for that job. In the circumstances, the Union has not proven a violation of the posting provision. The Union's reliance in this case on the Art. 12 procedure for notice to the employe and the Union "When objections are made by the Department Head regarding the qualifications of an employee to fill the position" is misplaced. That procedure appears intended for situations in which the Department Head concludes that someone other than the employe with the greatest seniority should be selected fill the position. Here, the Department Head was not taking the position that Kraftcheck did not have the qualifications to

fill the position such that someone else should be appointed to it, only that Kraftcheck needed a lengthy period of training.

The evidence also satisfies the Arbitrator that the County's use of Markowski as a temporary employe did not violate the Art. 10.D. prohibition against use of a temporary employe "to replace, reduce or displace regular employment." Again assuming that Shebesta was spending a significant amount of her work time training her successor while Markowski performed her old duties on a part-time basis, it remains the case--for the reasons noted in the summary of the County's position above and in light of the prompt filling of regular employment vacancies as they arose--that the County did not use Markowski during the period in question to replace, reduce or displace regular employment.

The propriety of the County's employment of Markowski on a part-time basis during the period in question does, however, run afoul of the clear language in Art. 10.D. that, "Temporary employees receive none of the benefits of this Agreement." Contrary to that provision, the County provided Markowski with Agreement benefits and the County contributed 53% toward the cost of benefits provided.

The County has characterized the compensation arrangements it made for Markowski as "more than generous with a long-term and valued employee" (Joint Exhibit 6) and "unnecessarily, but appropriately, generous" (Joint Exhibit 5). The Union has characterized those compensation arrangements as the result of the County's "dealing individually with Markowski in circumvention [of) the provisions of the contract." While the County's arrangements may have been motivated out of generosity and appreciation for Markowski's past service and willingness to work part-time temporarily during the transition, the language of the Agreement does not permit the County to work out such individual arrangements with employes without the Union's consent. While Art. 3 speaks of an "explicit County right to make such changes in the details of employment of the various employes as it from time to time deems necessary for the effective operation of Its department," that right is expressly limited by the language preceding it which states, "Unless otherwise herein provided." The Art. 10.D. provision that temporary employes "shall receive none of the benefits of this Agreement" prohibits the County from providing benefits to a temporary employe. Thus, if the County wanted to be able to offer to provide benefits to Markowski, it needed to discuss the matter with the Union and obtain the Union's consent to an exception to that prohibition in Markowski's case. The County failed to seek or obtain the Union's agreement to such an exception. Accordingly, the County violated Art. 10.D. by providing Markowski benefits as it did while she was working as a temporary employe during the period in question.

As noted above, the parties agreed at the hearing that if the Arbitrator concluded that Markowski received more than she was entitled to under the Agreement, she should not be required to pay the excess back to the County.

Therefore, the Arbitrator has concluded that the remedy in this matter shall consist only of the declaration that the County violated the Agreement for the reasons noted above.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole it is the DECISION AND AWARD of the undersigned Arbitrator on the STIPULATED ISSUES noted above that:

> 1. When the County employed of Lynn Markowski on a part-time basis from April 1, 1990 to May 17, 1990, it employed her as a temporary employe within the meaning of Art. 10.D. of the Agreement. Because the County--without the consent of the Union--provided Markowski with Agreement benefits and contributed 53% toward benefit cost during the time period in question, the County violated the Art. 10.D. provision that "Temporary employees receive none of the benefits contained in this Agreement." The County's employment of Lynn

Markowski on a part-time basis from April 1, 1990 to May 17, 1990 did not violate the Agreement in any of the other respects asserted by the Union herein.

2. Given the parties' agreement that Markowski shall not be required to repay the County for compensation received by her in excess of that provided for by the Agreement, the sole remedy for the violation noted in 1, above, shall be the declaration herein that the Agreement prohibits the County---without Union consent--from providing Agreement benefits to individuals employed as temporary employes within the meaning of Art. 10.D. and from contributing toward the cost of such benefits to such employes.

3. The Union's requests for other relief are denied.

Dated at Shorewood, Wisconsin this 8th day of March, 1991.

By Marshall L. Gratz /s/
Marshall L. Gratz, Arbitrator