

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
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SHEBOYGAN COUNTY COURTHOUSE LOCAL 110, : Case 149
AFSCME, AFL-CIO : No. 46801
: MA-7072
and :
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SHEBOYGAN COUNTY :
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Appearances:

Ms. Louella Conway, Personnel Director, Sheboygan County, appearing on behalf of the County.
Ms. Helen Isferding, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the County respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to said agreement, the parties requested the Wisconsin Employment Relations Commission to appoint a member of its staff to hear the instant dispute. The undersigned was appointed by the Commission. Hearing was held in Sheboygan, Wisconsin, on March 18, 1992. No stenographic transcript was made. The parties completed their briefing schedule on May 12, 1992. Based upon the record herein, and the arguments of the parties, the undersigned issues the following Award.

ISSUE:

The parties at hearing stipulated to the framing of the issue as follows:

Did the County violate the contract including past practice when it denied Gina Ziolkowski wage step increases and benefits based on a hiring date of November 5, 1990?

If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE I

RECOGNITION

The Employer recognizes the Union as the exclusive bargaining agent for all regular full-time and part-time personnel employed by Sheboygan County in the Court House (sic) and in auxiliary departments and buildings (but specifically excluding therefrom all elected public officials, supervisors, professional employees of the Human Services Department, all deputized employees of the Sheriff's Department, all nurses, and all confidential employees, with regard to negotiations with the Employer on questions of wages, hours and conditions of employment.

ARTICLE II

WAGES, PAY PLAN AND SHIFT DIFFERENTIAL

I. WAGES

A. 1989

Effective January 1, 1989 and subject to the hereafter stated positions, the following job classifications shall exist and payment shall be made in accordance with the following compensation plan:

<u>GRADE</u>	<u>POSITION</u>	<u>Start</u>	6	12	24	36	48
			<u>Mos.</u>	<u>Mos.</u>	<u>Mos.</u>	<u>Mos.</u>	<u>Mos.</u>
		A	B	C	D	E	F
8	Cleaner Clerk Typist I Draftsman Trainee	6.34	6.57	6.80	7.05	7.31	7.60
9	Bus Driver Clerk-Planning Homemaker I Homespun Post Manager Reception Clerk Secretary I Social Service Aide I	6.57	6.80	7.05	7.31	7.60	7.87

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II. PAY PLAN

A. REGULATIONS OF THE PAY PLAN

1. New Appointees: A new employee shall not be paid less than the minimum rate of pay for employee's class.

2. Promotions: When an employee is promoted to a position in a higher class, the employee's pay shall be increased to the minimum rate for the higher class. If the employee's present rate is equal to or exceeds this minimum, the employee's pay shall be increased to the next higher step in the new class. Any employee promoted having more seniority in a classification shall not be paid less than the most recent department employee having less seniority in the same department classification.

3. Transfers: There shall be no immediate change in the pay rate of an employee who is transferred unless the employee's pay is below the approved minimum of the new position. If an employee is transferred to a position in a class having a higher pay range than the class from which the employee was transferred, such change shall be deemed a promotion and the provisions governing promotions shall apply. If an

employee is transferred to a position in a class having a lower pay range than the class from which the employee was transferred, such change shall be deemed a demotion and the provisions governing demotions shall apply.

4. Demotion: When an employee is demoted to a position in a lower classification the employee shall be paid at a rate which is within the approved range for the lower classification. The rate of pay for the position shall be set by the Personnel Committee.

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6. Change in Classification: Any change in a position classification as allocated herein must first be recommended by the appointing officer and approved by the Personnel Committee. The provisions governing promotions and demotions shall apply in determining the new pay level.

7. Wage Steps: The several rates or wage steps prescribed in the ranges are the standard rates of pay authorized for full-time and part-time employment.

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9. Temporary Employees: It is understood and agreed that temporary, seasonal, casual, part-time or extra help of any kind shall not be used to reduce, replace or displace regular full-time employment.

10. Salary Administration and Adjustment: In order to provide for financial recognition of employee growth, new employees, upon completion of the initial six (6) months of continuous employment shall be granted a one-step increase within the established pay grade for his/her class. Thereafter on the twelve-month anniversary date in a class the employee shall be granted one additional step increase until the employee shall have advanced to a maximum step within their job classification.

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ARTICLE 12

LONGEVITY PAY

In addition to the base pay, all employees who have continuously worked for the following period of years shall be paid the additional percentage of base pay as hereinafter set forth:

After 5 years - 2 1/2% of the hourly base pay
After 10 years - 5% of the hourly base pay

After 15 years - 7 1/2% of the hourly base pay
 After 20 years - 10% of the hourly base
 After 25 years - 12 1/2% of the hourly base pay

The continuous years of service shall be calculated from the last date of hire.

ARTICLE 18

HOLIDAYS

All employees except as herein provided, shall be granted eleven (11) paid holidays during calendar year 1989, 1990 and 1991. They are as follows:

HOLIDAY	1989	1990	1991
1. New Years Day	Mon., Jan 2	Mon., Jan. 1	Tues., Jan. 1
2. Good Friday Afternoon	Fri., March 24	Fri., April 13	Fri., March 29
3. Memorial Day	Mon., May 29	Mon., May 28	Mon., May 27
4. Independence Day	Tues., July 4	Wed., July 4	Thurs. July 4
5. Labor Day	Mon., Sept. 4	Mon., Sept. 3	Mon., Sept. 2
6. Thanksgiving Day	Thur., Nov. 23	Thur., Nov. 22	Thur., Nov. 28
7. Day after Thanksgiving	Fri., Nov. 24	Fri., Nov. 23	Fri., Nov. 29
8. Christmas Eve Day	Fri., Dec. 22	Mon., Dec. 24	Tues., Dec. 24
9. Christmas Day	Mon., Dec. 25	Tues., Dec. 25	Wed., Dec. 25
10. New Years Eve Aft.	Fri., Dec. 29	Mon., Dec. 31	Tues., Dec. 31
11. Floating Holiday			
12. Floating Holiday			

a. One (1) Floating Holiday may be taken any time after an employee has worked the first ninety (90) days in any calendar year and the remaining holiday any time after the employee has worked six (6) months during the calendar year. The actual day of the holiday may be designated by the employee after notifying the department head five (5) days in advance of such election and the department head shall respect the wishes of the employee as to the day off insofar as the needs of the County will permit.

b. Employees who are required to work on the holiday shall be paid at time and one half (1-1/2) of the regular rate of pay for the hours worked. The employee shall be permitted to take equivalent holiday time at such time as they may select within the next succeeding thirty (30) days subject to the scheduled approval of the department head or at the employee's election may receive the equivalent pay at the regular rate.

c. To be eligible for holiday pay the employee must have worked the scheduled hours of work on the last workday prior to the holiday and the scheduled hours of work on the workday following the holiday, except:

i. Where absence is with written permission of the

County except those covering a formal leave of absence granted under the Leave of Absence paragraph of this contract;

- ii. Because of illness verified by a statement from a doctor (the County will pay for the cost of obtaining such statement), or,
- iii. Accident sustained within sixty (60) days prior to the holiday.

d. Probationary employees shall be eligible for the herein described holiday pay except two (2) "Floating Holidays" as defined by contract as they occur while serving their probationary period, and the preceding paragraph (c) rules shall apply. It is further understood that if the probationary employee does not complete the required probationary period, the holiday pay that has been received shall be deducted from the employee's final paycheck.

e. Part-time employees shall receive holiday pay or time off on a pro-rated basis.

ARTICLE 19

VACATIONS

1. Employees Who Earn Vacation: All employees shall earn vacation, except temporary employees.

2. Continuous Service: Continuous service shall include all the time the employee has been in continuous employment status in permanent position. The continuous service of an employee eligible for vacation shall not be considered interrupted if he/she:

- a. Was absent for less than thirty (30) calendar consecutive days;
- b. Was on an approved leave of absence;
- c. Was absent on military leave;
- d. Was absent due to injury or illness.

3. Computing Years of Service: In determining the number of full years of service completed, credit shall be given for all time employed by Sheboygan County in a permanent position. Any absence of more than thirty (30) calendar days except for military leave and absence due to injury or illness arising out of county employment and covered by the Worker's Compensation Act shall not be counted. Only the most recent period of continuous service may be counted in determining an employee's length of service.

4. Eligibility: After completion of the first twelve (12) months in a permanent position, employees shall be granted non-cumulative vacation based on accumulated continuous service as follows:

<u>Years of Service</u>	<u>No. of Vacation Days</u>
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1 year	12 days
2 years	15 days
8 years	21 days
13 years	22 days
14 years	23 days
15 years	24 days
16 years	25 days
17 years	26 days
18 years	27 days

- a. Part-time Employees: Employees who are regularly employed for less than twelve (12) months out of the year in continuous county employment shall be granted pro-rata vacation.

5. Computing Vacation:

- a. Vacation credits in any given year shall not be earned for any period of absence without pay except that for administrative purposes any approved leave or leaves of absence totalling thirty (30) calendar days or less in a calendar year may be disregarded.
- b. Upon termination of employment vacation shall be pro-rated and paid.
- c. Effective January 1, 1981, the vacation year will be on a calendar year basis.

6. When Vacation May Be Taken: In determining vacation schedules the head of the department shall respect the wishes of the eligible employees as to the time of taking their vacation insofar as the needs of the county will permit. Vacation allowances shall be taken during the vacation year except that employees who are required by their department head to defer all or a part of their vacation for a given vacation period may be permitted to take it within the first six (6) months of the ensuring vacation year, after which it will be lost.

ARTICLE 20

SICK LEAVE

1. Employees Who Earn Sick Leave: All permanent employees shall earn sick leave.
2. Accrual of Sick Leave: Sick leave shall hereafter accrue at the rate of eight (8) hours of sick leave for each calendar month of service for each employee working a regular shift of forty (40) hours and employees working a regular shift of thirty-seven and one-half (37 1/2) hours shall earn seven and one-half (7-1/2) hours of sick leave for each month of service.
- a. Sick leave allowance shall be accumulated in the employee's sick leave account until a maximum of nine hundred (900) hours has been accrued, except for Custodian, Maintenance

Man I, Maintenance Man II, Soil Conservation Technician, Programmer Analyst, Programmer II, Programmer I, Control Clerk II, Control Clerk I, Computer Operator II, and Computer Operator I positions whose maximum shall be nine-hundred sixty (960) hours.

- b. Sick leave credits in any given year shall not be earned for any period of absence without pay or time otherwise not worked or paid for, except that for administrative purposes any approved absence or absences totalling thirty (30) calendar days or less in a calendar year may be disregarded.
- c. All sick leave in excess of the maximum hours specified in (a) above accumulated during any calendar year shall on the first payday in the following January be paid to the employee at the rate of one hundred percent (100%) of the employee's previous year's hourly wage.
- d. Sick leave shall not be used until it has been accrued.
- e. Part-time employees shall accrue sick leave pro-rated on the basis of time worked.
- f. for new or returning employees, seven and one-half (7-1/2) or eight (8) (as applicable) hours of sick leave shall be added if the employment commences before the 16th day of the month, and if the employee commences work on the 16th day or thereafter, no sick leave shall be added for that period.

3. Eligibility for Sick Leave: Each permanent employee who has earned sick leave credits shall be eligible for sick leave for any period of absence from employment which is due to his/her illness, bodily injury, exposure to contagious disease, attendance upon his/her immediate family (defined as wife, husband, and children) where employee's presence is required or death in the immediate family (defined as husband, wife, children, parents, brothers and sisters, grandparents, step children, and step parents) of the employee or spouse.

- a. The department head has the duty to require that the employee make other arrangements, within a reasonable time for the attendance upon children or other persons in the employee's care.
- b. The department head may require a medical certificate to justify the granting of sick leave in excess of three (3) days' duration.
- c. Sick leave shall be withdrawn on an hourly basis calculated on the basis of the regularly

scheduled work shift of the employee involved. (That is to say an employee working eight (8) hours day out on a sick leave shall have withdrawn from his/her account eight (8) hours of sick leave for each day of absence. Likewise, an employee scheduled on a seven and one-half (7-1/2) hours for each day of absence.) Withdrawals for portions of the work day shall be on the basis of the actual time lost, rounded out to the next one-half (1/2) hour.

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ARTICLE 22

PROBATIONARY PERIOD

All newly hired employees without previous county experience in the job to which they are hired, shall serve a probationary period of six (6) months. Probationary employees may be terminated without recourse to the grievance procedure, but the requirements for the termination reports shall be followed.

The following definitions shall apply:

- a. A regular full-time or regular part-time employee is hereby defined as a person hired to fill a regular position.
- b. A temporary employee is one hired for a specified period of time and who will be separated from the payroll at the end of such period.
- c. A temporary employee who becomes a regular employee without a break in continuous service shall be deemed to have served their probationary period upon completion of six (6) months of service. His/her seniority shall date from the original time of hiring.

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ARTICLE 24

SENIORITY

Sheboygan County shall, during the life of the herein contract, for the employees covered by the same, recognize seniority as herein provided.

A. Accumulation

1. Full-time Employees

Seniority shall be accumulated on a month-to-month basis or major portions thereof for continuous months of service. Absence from work because of illness, layoff, suspensions

for less than thirty (30) days or authorized leave shall not interrupt the accumulation of seniority.

2. Part-time Employees

Seniority shall be accumulated on a prorated basis.

B. Vacancy/Job Posting

1. Whenever an approved vacancy is to be filled within the bargaining unit, notice of said vacancy shall be posted for five (5) working days prior to the public posting for the information of all employees on appropriate bulletin boards where bargaining unit employees work.

The vacant position shall be awarded to the most senior qualified applicant in the department where the vacancy exists. If no one within the department applies for the position, the position shall then be offered to the most senior qualified bargaining unit employees before filling the position with a non-bargaining unit employee. Any employee filling a position under this section shall serve a probationary period of six (6) months, unless waived or lessened by the department head.

C. Layoff

For the purpose of the layoff, the County recognizes seniority therefore, whenever the County determines it is necessary to decrease the work force and to layoff employees, such layoff shall, subject to the following procedures, be inverse order of the employee "seniority". The order of layoff shall be as follows:

1. Temporary Employee/Position: Temporary employees in the involved department in which the work force is being reduced shall be laid off first.
2. Probationary Employees/Position: Probationary employees in the involved department in which the work force is being reduced shall be laid off second.
3. Part-time Employees/Position: Part-time employees in the involved department in which the work force is being reduced shall be laid off third.
4. Full-time Employees/Position: Full time employees in the involved department where the work force is being reduced shall be laid off fourth.

In determining the above priorities and carrying out

layoffs, the following conditions shall apply:

- a. Seniority: Seniority for layoff purposes shall date from the employees most recent starting date of employment with the bargaining unit.
- b. Full-Time Employee: Full time employees who are laid off have the right to elect to induce layoff consideration (bumping) of any less senior employee. The employee must have the training and experience to carry out the work responsibilities. Bumping may not be exercised against employees in a higher position.
- c. Part-time Employees: Part time employees shall be given the opportunity of taking a full-time job from another employee with less seniority (seniority being given the part-time employee on a pro-rated basis.) In that event the part-time employee shall be able to utilize the prorated seniority and bumping privileges. The employee must be qualified to perform the position to which they are bumping. In the event such part-time employee shall refuse to take a full time job, he/she shall be on layoff status.

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FACTS:

The grievant, Gina Ziolkowski, was hired as a temporary employe in the Public Health Nurse Office on November 5, 1990. The position was clerical in nature and located in the reception area. A request was later made to the County Board to add twelve positions to the Human Services Department, one of which was the position of Secretary I. Ms. Ziolkowski was hired into this permanent position on February 4, 1991. She was advised that her seniority date would be November 11, 1990; however, her benefit date would be the later date of February 4, 1991.

On July 2, 1991, the Union filed the instant grievance contending that the grievant was denied a pay step increase and benefits due to her from the original hire date of November 5, 1990.

POSITIONS OF THE PARTIES:

Union

The Union maintains that both the contract language and past practice of the parties support employes receiving wage scale, probationary period and benefit credit for time worked as temporary employes if there has been no break in continuous service between temporary and regular employment.

It points to the probationary language, Article 22, specifically definition c. and the seniority language, Article 24, subsection A.2. to support its position. The Union also relies upon the wage schedule itself which shows time in a position as a basis for movement on the schedule. Since Ziolkowski performed the same job as a temporary which she now performs as a Secretary 1, she should receive credit and be advanced accordingly. The Union notes that the agreement does not require by express language that an employe start over or spend six months at the starting contractual rate of pay upon

becoming a regular full-time or regular part-time employe.

Stressing that the parties do not seem to have a disagreement as to temporary employment being credited for longevity and for probation purposes, the Union argues these benefits are no different from those in dispute. It avers that all benefits with a continuous service factor should be treated the same.

Referring to the past practice of the parties, the Union claims that time spent as a temporary employe has consistently been credited. Citing three past-grievances, those of employes Ann Lorenz, Martha Westbrook and Sandra Lutzke, it maintains that the County has bound itself to crediting temporary service. In response to County claims that temporary employment was not credited for another employe, Linda Guse, the Union distinguishes her situation from that of the two employes referred to above by pointing out that Guse had a break in service of more than 30 days. It admits that another employe, Tracy Felde, is not a good example for the wage schedule practice but notes that she used vacation after a year from her original date of hire, thus having her time spent in temporary employment count towards using vacation.

Citing both contract language and a supportive past practice, the Union requests that the grievance be sustained and that the grievant be made whole.

County

The County avers that Ziolkowski was reclassified from a temporary position to the "regular" position of Secretary I. It asserts that Ziolkowski's employment as a temporary employe was not covered by the collective bargaining agreement and that Ziolkowski was aware of this fact.

It emphasizes the omission of any references to temporary help in the recognition clause and pay plan, Articles I and II, as dispositive of the issue before the undersigned. According to the County, the only reference to temporary employes is Article II, Section II, Sub. 9, which states that "temporary, seasonal, casual, part-time or extra help of any kind shall not be used to reduce, replace or displace regular full-time employment."

The County stresses that Article II, Section II, Sub. 10 provides for step increases "within the established pay grade for his/her position." No reference, it argues, is made to "temporary help" being eligible for any step increases.

With respect to vacation, the County maintains that Article 19 expressly exempts temporary employes from earning vacation. Similarly only permanent employes shall earn sick leave under Article 20. According to the County, these provisions make it clear that temporary employes are not eligible for benefits and that only regular employes in positions covered by the agreement are eligible to receive step increases premised upon time spent in the permanent position.

The County disputes the Union's contention that a past practice exists whereby it has previously credited employes for temporary employment. The County insists that all the instances cited by the Union involved situations where the employes remained in a temporary position beyond six months. Only those employes, it submits, who were temporary for more than six months received credit for their temporary employment. It argues that there is no basis for Union arguments that other temporary employes received benefits back to their starting date nor is there reason to believe that floating holidays are available based upon temporary employment.

In conclusion, the County submits that it has acted correctly in granting pay and benefits to the grievant according to the express provisions of the

agreement. It avers that it did not violate the agreement or any past practice.

DISCUSSION:

Any determination as to whether the grievant is entitled to credit for her service as a temporary employe with respect to wage classification and benefits must begin with an extensive analysis of the applicable contract language.

With respect to longevity pay and the probationary period, the agreement makes it clear that temporary employment, where there is no break in service, is to count towards both of these benefits. Article 22 c. expressly states that a "temporary employee who becomes a regular employee without a break in continuous service shall be deemed to have served their probationary period upon completion of six (6) months of service. His/her seniority shall date from the original time of hiring. (Emphasis added) Similarly with respect to the longevity pay, Article 12 specifically states that "... , all employes who have continuously worked for the following period of years shall be paid.... The continuous years of service shall be calculated from the last date of hire." (Emphasis added)

Because these two provisions exist and expressly address situations where a temporary employe becomes a regular employe, it is evident that the parties knew how to draft language covering such a contingency and expressly provided for credit with respect to longevity and seniority.

Just as the language with respect to longevity and probation credits temporary service, contractual language regarding vacations and sick leave clearly exempts temporary service from being credited. Article 19, Sec. 2 defines continuous service for vacation purposes as including "all the time the employee has been in continuous employment status in a permanent position." (Emphasis added) Section 3 of Article 19 reaffirms the express exclusion of temporary service in Sec. 2 by determining the number of full years of service completed on the basis of "all time employed in Sheboygan County in a permanent position." Section 4 reiterates the parties' intent to deny employes credit for temporary service regarding vacation benefits by providing that "after completion of the first twelve (12) months in a permanent position, employes shall be granted non-cumulative vacation based upon accumulated continuous service...." (Emphasis added) This language is clear and unambiguous in its intent to credit only service spent in regular employment status for vacation purposes.

While not as crystal clear as the vacation language referred to above, the collective bargaining agreement's sick leave provision also excludes temporary service from being credited for sick leave purposes. Article 20, Sec. 1 specifies under employes who earn sick leave that "all permanent employes shall earn sick leave." (Emphasis added) The clear inference of this clause is that temporary employes do not earn sick leave and that no sick leave is earned during temporary service. Section 3 provides that each permanent employe who has earned sick credits shall be eligible for sick leave for any period of absence from employment which is due to his/her illness...." (Emphasis added) Because the parties did not premise the sick leave accumulation language in the contract upon uninterrupted continuous service, as they did for longevity pay, but rather restricted the earning of sick leave to permanent employes exclusively, it must be concluded that they did not intend to grant credit for temporary service insofar as sick leave was concerned.

With respect to holidays, Article 18, the first sentence is actually quite broad. It states that "all employees except as herein provided, shall be granted eleven (11) paid holidays during the calendar year 1989..." (Emphasis added) Section c. sets forth eligibility premised upon employes having worked

scheduled hours on the workday prior to and after the holiday with certain exceptions. Section d. grants probationary employees holiday pay including the floating holiday provided the floating holiday rules contained in Section a. and Section c. apply. Pursuant to Section a., one (1) floating holiday may be taken any time after an employe has worked the first ninety (90) days in any calendar year and the remaining holiday any time after the employe has worked six (6) months during the calendar year. (Emphasis added). As noted above, the language is extremely broad in its scope. Probationary employees are eligible under these rules provided that they meet the calendar year and other requirements. Because there is no qualifying language excluding temporary employees or limiting said benefit to permanent employees, it is reasonable to conclude from a fair reading of the language as a whole that regular employees may credit time spent in temporary employment for purposes of ascertaining entitlement to the floating holidays provided that they meet the requisite calendar year and work schedule requirements. It is not evident from the record whether or not the grievant received the requisite floating holiday for her first year of employment. She should be credited with her temporary service and granted said holidays, provided that she met the additional calendar year and work schedule requirements.

The applicable contract language as it relates to the wage schedule issue is not quite as clear. Article II, Section II, A.9 does demonstrate that the parties were aware that temporary employees would be utilized by the County from time to time. There is, however, no place in Subsection A.9 which expressly references whether temporary service should be credited toward advancement on the pay plan once an employe becomes a permanent or regular employe. Given the express mandates set forth in the longevity and probation provisions, the absence of similar language here supports the County's contention. Article 11, Section II, A.10 further buttresses the County's position because Subsection A.10, entitled Salary Administration and Adjustment, states "in order to provide for financial recognition of employee growth, new employees, upon completion of the initial six (6) months of continuous employment shall be granted a one-step increase within the established pay grade for his/her class." Thereafter, on the twelve-month anniversary date in a class the employe shall be granted one additional step increase until the employe shall have advanced to a maximum step within their job classification." (Emphasis added) Although the first clause speaks of "completion of the initial six (6) months of continuous employment," this phrase is qualified by providing that the one-step increase will be within the established pay grade for his/her class." Moreover, on the twelve-month anniversary date "in a class" the employe will receive the additional step. These express qualifiers strongly indicate that, as the County argues, step increases only take place within the established pay grade and class. The Union argues that Ziolkowski is performing the same work as a Secretary I which she previously performed as a temporary employe. While this may have been the case, it is not contended that "temporary help" received the same wages or fell into the same pay grade and classification as a Secretary I in the bargaining unit. Review of the payment grid coupled with both sentences in subsection A.10 convinces the undersigned that step increases are premised exclusively on time spent within the established pay grade and that the contract language itself does not permit credit for temporary employment with respect to step increases.

In the framing of the issue the parties stipulated that the past practice of the parties should be considered in addressing the questions before the arbitrator. The difficulty is that the parties themselves disagree as to what their past practice has been with respect to crediting temporary employment. The Union maintains that the County has routinely granted such credit citing the Lorenz, Westbrook, and Lutzke grievance settlements. The County asserts that its resolution of these grievances and credit of temporary service is premised upon the fact that in each instance the employe was kept in a temporary capacity for a time beyond six months, thus arguably violating Article 11, Section II, Subsection A.9. To remedy these violations, the County

avers, it treated each employe as a regular employe from the date of hire as a temporary.

Examination of the grievance documents reveals that this was in fact the County's stated written position with respect to the 1991 Lorenz grievance. Since the Union asserted a violation of Article 11, II A.9 as one of many provisions violated in the 1991 Westbrook grievance, the County's explanation in this case is plausible. The Lutzke grievance in 1984 makes no mention of such a violation in the "applicable violation" section of the grievance form nor is there any written explanation for the County's rationale in crediting the temporary service. The facts surrounding the Lutzke grievance as adduced at hearing were as follows: Lutzke was hired as a temporary employe on July 18, 1983. A day or so before January 13, 1984, she was temporarily laid off and then rehired 10 days later. The County initially refused to credit her temporary service but on reconsideration of her grievance, she was granted such credit. The Lutzke grievance does provide some support for the Union's position. The factual circumstances surrounding said grievance however, suggest that the County was attempting to remedy a layoff which may have been implemented to avoid contentions of benefit entitlement premised upon continuous service.

The County in response to Union examples cites two other examples, Linda Guse, and Tracy Felde to support its position that temporary employment is not credited. The Guse example may be distinguished because she had a break in service of more than 30 days between her temporary employment and employment as a regular full-time employe. Felde, who was employed as a regular employe without a break from her temporary employment, did not receive credit for her temporary employment. She did not, however, convert to permanent employment in the same job that she was performing when serving as a temporary employe.

The examples cited above constitute the only relevant past practice of the parties as it relates to the instant dispute. At first blush, these instances appear to favor the Union's position, especially the earlier examples such as the Lutzke grievance resolution. It must be noted, that even here, the County has been able to produce an opposite example, that of Guse, where an opposite treatment occurred.

The more recent 1991 examples are certainly the most instructive in ascertaining any existing practice. Based upon the examples presented, it may certainly be concluded that a practice of granting vacation, sick leave, and step placement credit for temporary service exists when an employe has been held in a temporary position beyond six months from his/her starting date and converts to regular employment without a break in service. There is, however, insufficient evidence to conclude that such a practice exists for those regular employes who worked less than six months in a temporary position before converting to regular employment status without a break in service.

Even should such a practice exist, the clear language of the vacation and sick leave provisions would prevail over such a practice. Only the wage step increase policy would be affected because of the ambiguity in the present language. However, because the undersigned is not convinced that such a practice exists with respect to regular employes who served less than six months in a temporary position, she relies exclusively upon the applicable contract language and the inferences to be drawn therefrom. In light of the applicable contract language, the undersigned must conclude that, at least with respect to the latter category of regular employes, i.e., those who had worked less than six months as temporary employes, the past practice is insufficient to warrant a different outcome from that mandated by the contract language itself.

Accordingly, it is my decision and

AWARD

1. That the County did not violate the contract including past practice when it denied Gina Ziolkowski wage step increases and vacation and sick leave benefits based on a hiring date of November 5, 1990.

2. That the County did violate the contract if it denied her floating holiday based on said hiring date.

3. That the County shall make the grievant Gina Ziolkowski whole for any harm incurred as a result of the denial of said floating holidays.

Dated at Madison, Wisconsin this 31st day of July, 1992.

By _____
Mary Jo Schiavoni, Arbitrator