BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LANGLADE COUNTY	Case 66 No. 48780 MA-7703
and	
LOCAL 36-A, AFSCME, AFL-CIO	

Appearances:
Mr. Steve Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO
Mr. Jeffrey Jones, Ruder, Ware, Michler, S.C., on behalf of the County.

ARBITRATION AWARD

According to the terms of the 1992-94 collective bargaining agreement between Langlade County (hereafter the County) and Local 36-A, AFSCME, AFL-CIO, (hereafter Union), the parties requested that the Wisconsin Employment Relations Commission appoint a member of its staff to serve as impartial arbitrator of a dispute between them involving the proper wage rate for Grievant Bonnie Bethel. The undersigned was designated arbitrator. Hearing was held on June 1, 1993, at Antigo, Wisconsin. A stenographic transcript of the proceedings was made and received by June 28, 1993. The parties filed their written briefs by September 14, 1993, which the undersigned exchanged for them. The parties reserved their right to file reply briefs at the instant hearing. Those were received by the undersigned and exchanged by October 5, 1993.

ISSUES:

The parties were unable to stipulate to the issues to be decided in this case. However, they agreed to allow the undersigned to frame the issues. The Union suggested the following issues:

> Did the County violate the 1992-94 collective bargaining agreement by placing the Grievant at the 18 month step in range 4 of the salary schedule rather than the 42 month step as of January 1, 1993?
>
> If so, what is the appropriate remedy?

The County suggested the following issues:

> Did the County violate the 1992-94 collective bargaining agreement by placing the Grievant at the 18 month step in range 4 of the salary schedule rather than the 42 month step as of January 1, 1993 in accord with the terms of the parties' settlement agreement for the 1992-94 term?

If so, what is the appropriate remedy?

Based upon the relevant evidence and argument, I find that the Union's issues shall be determined in this Award.

RELEVANT CONTRACT PROVISIONS:

ARTICLE 26 - WAGES AND CLASSIFICATIONS

A. Wage rates contained in Appendix "A" shall be part of this Agreement.

B. Employees shall advance to each successive step of the wage schedule upon successful completion of the specified months of service.

C. Promotions: Any employee promoted or transferred to a new level position shall receive the step in the new pay level which would constitute a minimum of three and one-half percent (3-1/2%) over the salary received prior to the action but in no event higher than the 42 month step. During the first forty-five (45) calendar days in the new position, the employee shall receive his current rate of pay and shall receive the appropriate rate of pay for the remaining forty-five (45) calendar days of the probationary period.

Employees promoted or transferred to a new level under this paragraph shall advance to the next step of the wage schedule upon the completion of the necessary amount of time since being so promoted (i.e., an employee promoted to Range IV, 6 months, shall wait 13 months before being moved to the 18-month step, regardless of hiring date).

. . .

FACTS:

The parties have had a collective bargaining relationship for many years. Attorney Jeffrey Jones has represented the County in collective bargaining negotiations for the 1990-91 and 1992-94 agreements. Wisconsin Council 40 Staff Representative Steve Hartmann also represented Local 36-A during negotiations for the 1990-91 and 1992-94 agreements. In the past, neither Hartmann nor Jones was involved in the reclasses, transfers or promotions which occasionally occurred during the term of the collective bargaining agreements between the parties.

The County has had an extra-contractual procedure/policy regarding mid-term reclassifications whereby individual employes can, by May 1st of any year, make a formal request to their Department Head for a pay increase based upon increased duties or responsibilities since they were placed in their current pay range. If the employe's Department Head recommends the reclass, an internal Oversight Committee then considers the reclass request and recommendation in June. If the Committee approves it, the Personnel Committee and then the County Board must approve the request for the employe to receive his/her reclass which is then effective in January of the next year. If at any point in this process the reclass is denied, the employe may ask the Union to seek an increase for the employe in contract negotiations. If the Union believes the request meritless, it is then finally dropped. But if the Union believes the request has merit, the Union then makes a request for an increase in pay for the employe during contract negotiations.

Union President Poltrock stated that requests for reclasses made mid-term of the contract have been treated differently from those made in bargaining; that the denial of mid-term reclass requests are not grievable subjects; and that following a County decision to grant a mid-term reclass request, the County has applied Article 26(C) such that reclassed employes have received a 3.5% increase (based upon their current rate of pay) and they are then moved to the month step which is closest to a 3.5% pay increase despite their seniority. Since at least 1990, this Article 26(C) procedure has apparently also been used when employes are "promoted or transferred to a new level position. . ." during the life of the agreement.

Mr. Jones stated that during the term of the 1990-91 agreement, the parties agreed to the creation of the new position of Child Support Specialist, to be placed in pay Range 4 where other Specialist employes were then listed. Grievant Bonnie Bethel received that new position. The parties offered no evidence to show what Bethel's pay rate was at this time. The month steps for Range 4 positions were as follows, effective January 1, 1991:

Start	6 mos.	18 mos.	30 mos.	42 mos.
7.46	7.69	7.90	8.20	8.44

The Child Support Specialist position never appeared in the 1990-91 contract.

During negotiations for the 1992-94 agreement, the Union proposed to give individual increases to certain unit employes: all Correctional Officers, the Probate Registrar, Grievant Bethel and Administrative Assistant Clerk, Kathy Jacobs. Regarding Bethel's increase, the Union provided support from among the County's comparables for an individual increase at bargaining. The County insisted upon re-titling Bethel's position from Child Support Specialist to Child Support Coordinator during negotiations. Notably, neither the Union nor the County ever made any proposal regarding the proper month step each of these positions should go to upon being placed in a new salary range, although specific talks occurred regarding what the salary ranges would be for each job. Ms. Poltrock stated that there was no reason to make proposals regarding each incumbent's month step because the Union had never done so before when seeking upgrades/reclasses for individuals in bargaining. Ms. Poltrock stated that the parties had discussed and were aware that Bethel's duties would be increased immediately by 1/4 to 1/2. Poltrock also stated the County never told the Union during negotiations that it intended to apply the 3.5% wage formula of Article 26(C) to the Union's request for individual increases. Similarly, the Union never told the County that it expected each incumbent to be moved to the same month step in each new pay range that they had been in prior to their being reclassed in bargaining.

The parties met on an unknown number of occasions before reaching a deadlock in negotiations. Thereafter, a petition for Interest Arbitration was filed and on March 17, 1992 the parties met with a WERC mediator. After a lengthy meeting, on March 17th, the parties reached a tentative settlement which was described and agreed upon by the parties at a joint session with the parties and the mediator present. At this joint session, no mention was made by the County of Article 26(C) or the 3.5% wage formula contained therein and no mention was made by the Union of its expectations regarding month step placement for reclassed employes.

On April 7, 1992 Attorney Jeffrey Jones, sent a letter 1/ to Union

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1/ County Board Chair Judy Rustick testified that the County sent the

representative Hartmann which read in relevant part as follows:

. . .

> In regard to the above matter, enclosed please find a revised Tentative Settlement based upon our discussions following the negotiation session with the Highway Department employees held on April 6, 1992. Please be advised that based upon the Personnel Committee's discussions with the Investigator, Jane Buffett, it understands that with regard to the reclassifications for the Courthouse employees per the terms of the settlement, the individuals moved will be placed at the appropriate step (i.e., month placement) in accord with the terms of Article 26 of the Labor Agreement as applied in the past with respect to all reclassifications.
>
> Please advise as to the outcome of the vote by the Courthouse employees in regard to the Tentative Agreement. Should you have any questions, please feel free to contact us. . . .

The document 2/ referred to and enclosed in the County's April 7th letter read in relevant part as follows:

. . .

April 7th letter to confirm their understanding regarding how the reclasses/upgrades would be calculated.

2/ The County ratified the tentative settlement based upon the contents of this document.

17. APPENDIX - WAGES AND CLASSIFICATIONS, revise as follows:

A. "Homemaker" in present Range 4 - retitle "Support Services Specialist" in new Range 3.

B. Deputies, Tax Lister and Zoning in present Range 4 - retitle "Deputy, Land Records" in new Range 3".

C. Deputy, Zoning in present Range 4 - retitle "Land Records Technician" in new Range 3.

D. Place Child Support Secretary in new Range 2.

E. Place Secretary - Assist. District Attorney in new Range 3.

F. Place S. Place, or any other employee off wage schedule, back on schedule.

18. APPENDIX - WAGES AND CLASSIFICATIONS, reclassifications to be effective July 1, 1992:

A. Delete Range 2 by moving Terminal Operator to present Range 3.

B. Retitle present Range 3 to Range 2, present Range 4 to Range 3, present Range 5 to Range 4.

C. Move Administrative Clerk (County Clerk) from Range 1 to new Range 3 and retitle as "Deputy".

D. Move Correctional Officers and Dispatchers in present Range 3 to new Range 3.

E. Create new Range 5 for Probate Registrar with the following wage scale:

Start - $8.66
6 mos. - $8.97
18 mos. - $9.30
30 mos. - $9.64
42 mos. - $9.99

19. APPENDIX - WAGES AND CLASSIFICATIONS, effective January 1, 1993, move Chi

The Union and Child Support Specialist have agreed that during the life of the new Labor Agreement, the Child Support Specialist will not seek a reclassification, or grieve, the wages paid for the position or maintain that reclassification of the Child Support Specialist position is justification for reclassification of other positions from present Range 3 to new Range 4. The Union and the Child Support Specialist recognize that the Child Support

> Specialist will likely be assigned additional responsibilities and job duties of a nature not yet determined but which will likely involve a substantial change in job duties.
>
> . . .

As of July 1992, Bethel was being paid $8.78 per hour (Range 3, 42 Month step). This rate included the across-the-board increase for 1992. Bethel was the only employe whose bargained reclass was delayed until January 1, 1993.

In late June or early July, 1992 the County Clerk called Union President Poltrock and asked her how to calculate the reclasses or upgrades due to the Correctional Officers, the Probate Registrar and Administrative Clerk Jacobs. Poltrock told the County Clerk that she believed the parties had agreed to place each person in the same month step they had been in before, in the new range, but that the Clerk should confirm this with County Board Chair Rustick. 3/

County Board Chair Judy Rustick stated that the County Clerk contacted her prior to the date that the reclasses would be effective in July 1992, and inquired only about how to calculate Administrative Clerk Jacobs' new pay rate -- whether Jacobs' should be treated like everyone else, or placed at the 42 month step (where she was prior to July 1, 1992) in the new pay range for her job. Rustick stated that she told the Clerk that she would have to check into this. Rustick checked her bargaining notes and later told the Clerk that Jacobs should be moved to the 42 month step. 4/ However, Rustick admitted at the instant hearing that she had made a mistake and that she discovered her error when Grievant Bethel timely filed the instant grievance in early 1993.

The grievance was denied in the initial steps of the grievance procedure and by letter dated February 17, 1993, Attorney Jones formally denied the grievance as follows:

> Please be advised that after reviewing the facts of the above matter at its February 16, 1993, meeting, the Langlade County Personnel Committee denied the Grievance. The Committee found no violation of the terms of the Labor Agreement or the 1992-94 settlement. Please also be advised that with respect to the step placement for the Administrative Clerk (i.e., Kathy Jacobs), the Committee adopted a motion which will correct the error in her step placement which occurred in July of 1992. However, the Committee chose not to seek reimbursement from the Administrative Clerk for the higher wages erroneously paid to her from July of 1992 forward since the error in her placement was that of the County.
>
> . . .

3/ The County did not call the County Clerk as a witness. Therefore, Poltrock's testimony regarding this conversation stands uncontradicted.

4/ Again, because the County Clerk was not called as a witness, Rustick's testimony stands uncontradicted regarding the contents of these conversations.

However, apparently through County error and lack of follow-through, Ms. Jacobs' pay was never reduced and as of the date of the instant hearing, she remained at the 42 month step of the new pay range for her job.

The County offered testimonial and documentary evidence to dispute the Union's assertions (through Poltrock) that Article 26(C) had never been applied to negotiated reclasses/upgrades. Chairperson Rustick stated that during her many years as a member of the County Personnel Committee and her four years as County Chair, the 3.5% formula of Article 26(C) (including the month step movement backward) had always been applied to reclasses negotiated at bargaining. Rustick stated that Article 26(C) had been applied to promotions, transfers and reclasses. County Finance Director Mundinger confirmed this based upon his analysis of County records, although Mundinger was hired by the County in July of 1992 and was not employed by the County when the County calculated Jacobs' increase or at the time the events occurred which led to the filing of the instant grievance. These assertions were flatly contradicted by Union President Poltrock.

Positions of the Parties

Union:

The Union observed that during bargaining for the 1992-94 contract, the Union proposed certain "upgrades/reclasses" including that of Grievant Bethel. Bethel's a hotly contested upgrade, was the only upgrade intended to be effective on January 1, 1993 -- all others were effective July 1, 1992. The Union found significant that in June, 1992 the Union President and the County Board Chair agreed on the placement of Jacobs and others receiving upgrades in July, 1992, at the pay step representing their actual bargaining unit seniority. However, the County treated Bethel differently in January, 1993. The County thereafter neglected and refused to change the pay of Jacobs in accord with Bethel's, even though the County admitted it had erred in paying Jacobs at her bargaining unit seniority step. The Union asserted that the County can give no good reason for treating Bethel differently from Jacobs and that the facts demonstrate that these two upgrades were to be treated the same.

The Union contended that the County has relied on an incorrect interpretation of the parties' bargaining history as well as an incorrect reading of Article 26(C) to justify its actions here. On the bargaining history point, the Union asserted that the County failed to submit any evidence to show that during the negotiations for the 1992-94 agreement, the parties agreed to move upgraded employes to a step on the schedule that would result in a minimum 3.5% raise regardless of their seniority. The Union pointed out that its President emphatically denied that the Union ever agreed to such a scheme and that such a scheme had never been discussed . Rather, the Union asserted, it reasonably relied upon Article 26(B) which requires employes to be moved through the wage steps based upon seniority, and that Mr. Jones' letter of April 7th actually supports the Union's approach.

Finally, the Union argued that the County's reliance upon Article 26(C) was misplaced because that Section is inapplicable to this case. In this regard, the Union noted that Section C of Article 26 specifically applies only to "promotions" and "transfers"; that none of the usual promotion/transfer actions were taken regarding these upgraded employes -- no postings were made and no reassignments to different positions were made. Thus, the Union asserted that Article 26(C) is inapposite to this case, given the fact that the upgraded employes continued performing the same jobs as they had done before but at a new rate of pay.

County

The County asserted that the Union was aware that the County intended to apply Article 26(C) to the Grievant's negotiated reclass. The County asserted that it advised the mediator of this fact in a separate caucus at the March 17, 1992 mediation session when the County Team became concerned that the Union know that these reclassifications were going to be done as they had been done before, pursuant to Article 26. The County's attorney then confirmed the settlement terms in writing, listing the increases as "reclassifications" and referring to the application of "Article 26".

The County contended, therefore, that the Union was fully notified of the County's position and that it was up to the Union to correct the County's clearly contrary intent. On this point, the County observed that Union representative Hartmann admitted that during bargaining the Union team was aware that the County might try to apply Article 26(C) but that he interpreted Article 26(C) and found it did not apply to reclasses. The County contended that the record evidence showed that the County has consistently applied Article 26(C) to all reclasses over the past eight to ten years, including the reclasses negotiated into the 1989 contract.

The County argued that principles of reason and equity if applied to this case would support the County's view. In this regard, the County noted that if the grievance were sustained, the Grievant would receive a 14% increase in 1993 while she would receive a 7.5% increase were the grievance denied. The amount of increase sought by the Union, the County urged, is simply unreasonable in the context of collective bargaining.

In addition, the County argued that the clear language of Article 26(C) should be applied and that the undersigned should hold that the Grievant was "transferred to a new level position" by her reclass, so that the 3.5% was correctly applied. The County also pointed out that the second paragraph of Article 26(C) was thereafter properly applied to establish the Grievant's proper movement after transfer (or "the reclassification of her position") through the wage progression.

The County also contended that the specific terms of the settlement agreement regarding the Grievant's reclass preclude consideration of the instant grievance. The County also asserted that the Union's reliance on Article 26(B) was misplaced; and that the more specific language of Article 26(C) should control over Article 26(B)'s more general language. The County inquired, if the parties had intended reclassed employes to automatically flow through the wage progression, why had they included the second paragraph of Article 26(C)?

Reply briefs

Union:

The Union urged that the record evidence failed to support the County's assertions that it expressed its clear intent to apply Article 26(C) at any time during negotiations or mediation. In addition, the Union argued that Mr. Jones' April 7th letter also failed to express this intent.

The Union contended that because Article 26(C) fails to use either the term "reclass" or "upgrade", the parties never intended this section to apply to the case at hand. Thus, the Union asserted, the application of the rule of specificity would be inappropriate. The Union also observed that the prior application of Article 26(C) to transfers, promotions and to reclasses occurred when those actions were requested or taken during the life of the effective

collective bargaining agreement, not during negotiations. This fact itself makes Article 26(C) inapposite to this case, in the Union's view.

The fact that in many cases, the bargained upgrades were limited to approximately 3.5% both prior to the 1992-94 contract and thereunder, does not mean that Article 26(C) was applied to these situations, in the Union's opinion. The Union noted that this effect was the result of coincidence. The Union observed that after County Board President Rustick had received Mr. Jones' April 7th letter, she instructed payroll to give Jacobs a step-to-step transfer (preserving Jacobs' unit seniority step) and to figure Jacobs' July 1, 1992, increase thereon. This act, the Union argued, showed the County's true and binding intent.

The Union asserted that the County's "reason and equity" arguments actually supported the Union's assertions in this case. Although the amount of the Grievant's increase under the Union's approach should be deemed irrelevant, the Union pointed out that the increase granted to Jacobs by the County was in excess of 12% and that despite the County's claims of error, it has continued to pay Jacobs the allegedly erroneous higher pay rate (without seeking recoupment) for approximately one year. The Union asked the undersigned, in evaluating the County's claims, to consider when, if ever, an employer had taken a similar position, paying a higher wage rate than allegedly necessary to one employe.

Finally, the Union noted that the ordinary meaning of Mr. Jones' tentative agreement language regarding the Grievant was not to preclude her from filing and pursuing any grievance regarding her pay rate, but to preclude her from requesting an additional reclass during the 1992-94 agreement.

County:

The County asserted that the Union misstated certain facts regarding past practice in its initial brief. In this regard, the County contended that the record clearly supports its contention that Article 26(C) has been consistently applied whenever employes have been reclassed. The County observed that it was mere coincidence that the employes (other than Jacobs and Bethel) who were reclassed in 1992 received 3.5% and retained their level of seniority in the new pay range they were moved into.

The County urged that the Union lacked any factual basis for its claims that the County acted arbitrarily or harbored animus against Grievant Bethel. The County further argued that the Union had shown no basis for its assertions that the County did not care or wish to correct its error regarding Jacobs' pay rate. The County contended that Mr. Jones' April 7th letter, the terms of the settlement which referred to "reclassifications", as well as the Union representatives' admitted knowledge of the County's position on this point, require a ruling in favor of the County.

The County pointed out that Article 26(C) refers to employes being "transferred to a new level position" which is exactly what occurs when an employe is reclassified. Because the County proved that Article 26(C) had been consistently applied to reclasses and because Article 26(C) has been in the contract for several years, it was up to the Union to make clear that it intended that Article 26(C) would not apply to the 1992-94 reclasses.

The County pointed out that the Union's reliance on Article 26(B) was misplaced because Section (B) applies only to an employe's horizontal advancement from step to step within a Range, upon completion of the specified months of service. The County observed that logically, no question of

horizontal movement was raised by the 1992-93 reclasses. The agreed-upon movement would necessarily be vertical for these reclasses of employes from one Range to another. The County therefore urged that the grievance should be denied and dismissed.

Discussion:

Although Article 26(C) does not specifically refer to reclassifications or upgrades, I find that based upon the evidence herein and the language of Article 26, Section C, that its terms should reasonably be applied to this case. It is undisputed that the pay guidelines of Article 26(C) were used when employes, who had requested reclassifications, were granted these by the County mid-term of the labor agreement; and that these reclasses were granted pursuant to a policy not contained in the contract and not subject to the grievance procedure. It also appears to be true that the County believed it had in the past consistently applied the pay scheme of Article 26(C) to reclasses or upgrades granted to specific employes pursuant to collective bargaining negotiations. However, coincidentally, the pay raises granted since 1989 as a result of bargaining could have been figured as the Union urges (step-to-step) as easily as they could have been figured as the County urges (3.5%).

It is in this context that in 1992, the parties negotiated substantial supplemental wage increases for Kathy Jacobs, Administrative Clerk and Grievant Bethel, due to the increased duties and responsibilities of their positions. It is undisputed that at no time during face-to-face negotiations, or during the wrap-up joint session describing the parties' tentative agreement did the parties tell each other exactly what rate of pay they envisioned Jacobs and Bethel would make when their reclasses/upgrades became effective.

However, both parties' representatives admitted that they considered whether Article 26 would be applicable prior to settlement. Although the Union specifically considered whether Article 26(C) would be applicable to the 1992-94 reclasses/upgrades, they did not raise any questions thereon during negotiations or thereafter. Union representative Mr. Hartmann stated:

> . . . All I can tell you is that when I read 26C during the course of bargaining, I am going this doesn't apply to anything we are doing. I mean, we looked at it. That's why when I got the letter (of April 7, 1992) I am going 26C doesn't have nothing to do with this, so why should I worry about your letter when it says what I am going to agree with.

(Jones) Q. You looked at Article 26C?

(Hartmann) A. Absolutely.

(Jones) Q. You were aware of what it said?

(Hartmann) A. We were aware that you might try the three and a half percent argument. (Tr. 85)

Furthermore, it is clear that County Attorney Jones also looked at Article 26 during mediation, yet he too said nothing at the joint session regarding settlement to assure that the Union knew he intended to apply Article 26(C) to the reclasses/upgrades. Mr. Jones stated that during separate caucuses:

> . . . You know, the Personnel Committee would continue

> to discuss proposals. One issue that came up was make sure the Union knows that these reclassifications are going to be done as we have done before with reclassifications under Article 26, because I had the contract, and I was looking at the 3.5 percent issue. . . . (Tr. 78).

Later, Attorney Jones' letter of April 7, 1992 indicated that reclassed employes would be moved to "the appropriate step (i.e., month placement) in accord with the terms of Article 26 . . . as applied in the past with respect to all reclassifications." Mr. Hartmann admitted he did not question Mr. Jones' April 7th description of the settlement.

(Jones) Q. When you see this letter why didn't you respond?

(Hartmann) A. Because I thought it said what it said, and it was fine with me. In other words, my perspective was 26 was the article we were relying on. Our whole case was based on the contract says what it says. You are just saying the contract says what it says, and I am going yeah.

(Jones) Q. Were you aware that in regard to past reclassifications the procedure that was used, the 3.5 percent?

(Hartmann) A. But those were reclassifications during the life of an agreement. That was nothing to do with collective bargaining and coming in and making demands and receiving satisfaction on those demands. (Tr. 85-6).

Mr. Hartmann also stated in part, with regard to his analysis of Mr. Jones' April 7th letter:

> . . . "To all reclassifications", I assumed that the phrase all reclassifications was the reclassifications that we just got done doing. Be applied properly as in the past to these. That's the way we read it. I mean, we didn't see nothing in here about 26C, and there isn't anything in 26C about reclassifications in any event, so I wouldn't have responded. . . . (Tr. 83).

In these circumstances, it is clear to me that Mr. Jones had put Mr. Hartmann on notice that there was at least some possibility that a misunderstanding existed regarding what the pay rate would be for the reclassed/upgraded employes. Mr. Jones' reference to "Article 26" in his April 7th letter made in conjunction with Jones' reference to "the reclassifications" indicated his belief that he intended to treat Jacobs and Bethel's raises as if they had been mid-term reclasses. Jones' further reference to "appropriate step" and "month placement" although oblique and inexact, at least brought into question the language of Article 26(C), not Article 26(B). Thus, I am not persuaded that at this point it was reasonable to simply rely upon Article 26(B) and make no inquiries as the Union did. Indeed, Mr. Hartmann admitted that during bargaining he had considered that the County might try to assert the "3.5 percent argument." In addition, Article 26(B), in my view, has no bearing upon this case, as that section

refers merely to the proper and normal time progression of employes from step-to-step, in the absence of the occurrence of a reclass, a promotion or a transfer to a new level position. 5/

However, the fact that the County overpaid Ms. Jacobs from July, 1992 forward and that, as of the instant hearing date, it had neither rescinded the allegedly erroneous raise nor attempted to recoup the overpayments weighs heavily in the Union's favor in this case. The reason for its failure to recoup the overpayment was assertedly due to the fact that the County had erred in setting Ms. Jacobs' pay level. In Mr. Jones' letter of February 17, 1993 to the Union, he claimed that the County had, on February 16th, adopted a motion to "correct the error" in Ms. Jacobs' step placement. Significantly, however, the County never acted upon its own motion. Rather, the Personnel Committed decided to leave Ms. Jacobs' pay at the erroneous level, pending the outcome of this case. 6/

Based upon the relevant evidence and argument in this case, I issue the following

AWARD

The County did not violate the 1992-94 collective bargaining agreement by placing the Grievant at the 18 month step in Range 4 of the salary schedule rather than the 42 month step as of January 1, 1993.

The grievance is therefore denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 3rd day of December, 1993.

5/ Contrary to the Union's implicit assertions, I do not find the language of Article 5, Job Posting is relevant or instructive. That Article refers to "vacancies" and "new positions created in the bargaining unit." Here, there were incumbents of the positions, the duties and responsibilities of which were increased so that a supplemental wage increase was called for.

6/ It is clear based upon the facts of this case that the County has no responsibility nor did it ever have a responsibility to pay Ms. Jacobs at the 42 month step in Range 4 for her Administrative Clerk position. The County should, in fairness, treat Bethel and Jacobs the same in terms of their pay, consistent with the County's position and argument in this case.

By Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator