

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

PORTAGE COUNTY COURTHOUSE, HEALTH  
CARE CENTER, DEPARTMENT OF HEALTH  
AND HUMAN SERVICES, AND LIBRARY  
SYSTEM EMPLOYEES, LOCAL 348, AFSCME,  
AFL-CIO

and

PORTAGE COUNTY

Case 117  
No. 51883  
MA-8768

Appearances:

Mr. Jeffrey J. Wickland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 0044, Stevens Point, Wisconsin 54481-0044, for Portage County Courthouse, Health Care Center, Department of Health and Human Services, and Library System Employees, Local 348, AFSCME, AFL-CIO, referred to below as the Union.

Mr. Gerald E. Lang, Personnel Director, Portage County, Portage County Courthouse, 1516 Church Street, Stevens Point, Wisconsin 54481, for Portage County, referred to below as the County, or as the Employer.

ARBITRATION AWARD

The Union and the County are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Michelle Laucke, referred to below as the Grievant. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on October 19, 1995, in Stevens Point, Wisconsin. The hearing was not transcribed, and the parties filed briefs by December 21, 1995.

ISSUES

The parties stipulated the following issue for decision:

Did the Employer violate Article 23 when it rejected the reclassification of the Grievant's position in the District Attorney's office from Legal Secretary I to Legal Secretary II?

RELEVANT CONTRACT PROVISIONS

**ARTICLE 23 - RECLASSIFICATION PROCEDURE**

- A) A request for reclassification may be initiated by: (1) the employee, with department head concurrence (2) the supervisor or department head; (3) the appropriate governing committee; (4) the Personnel Committee; or (5) the Union. A request for reclassification should include the following supporting documentation: A current job description, organization chart for the appropriate work unit, suggested classification or pay grade, reason for the reclassification request, and an indication of other positions performing comparable work.
- B) In general, reclassification requests shall be processed in the following manner:
- 1) The appropriate governing committee shall recommend a proposed new classification or pay grade;
  - 2) An audit will be conducted by the Personnel Department to determine what adjustment, if any, should be made in the classification;
  - 3) The recommendation contained in the above-referenced audit shall be acted on by the Personnel Committee.

Requests for reclassification will be accepted each year no later than May 15. Audits will be conducted by the Personnel Department by September 1 and recommendations forwarded to the Personnel Committee for action in September. However, the Personnel Committee may initiate a reclassification at any time it feels a particular department would benefit from it. A report on the fiscal impact of

upgrade and/or reclassification will be forwarded

to the Finance Committee for review. If a reclassification is granted, the appropriate wage upgrade shall be effective July 1 of the year initiated.

By the end of May, the Employer shall provide the Union with a list of all bargaining unit employees and positions for whom a reclassification request has been made. The Employer shall furnish the Union with a copy of the results of the Personnel Department's audit. The Personnel Committee shall make a decision to approve or to reject the reclassification by the end of September. The decision of the Personnel Committee shall be subject to the grievance procedure.

- C) There are three primary reasons for considering the reclassification of a position or upgrade of a classification; (1) If it is felt that the position was improperly classified or graded when it was first placed on the salary schedule; (2) If the duties and responsibilities of a position undergo a major alteration, either expansion or curtailment, it may be necessary to amend the class plan to reflect such changes; and (3) more commonly, there is a gradual growth of a position as additional duties and responsibilities are assigned.

If the duties and responsibilities of a position gradually increase to the extent that they substantially exceed the normal requirements for the class, a reclassification may be in order. It must be understood that the classification is based on the kinds and levels of duties assigned to the position, not the employee's skills or level of performance. Reclassifications should not be used as a performance award.

## BACKGROUND

The grievance, filed on September 30, 1994, challenges the Personnel Committee's rejection of the Grievant's reclassification as a violation of Article 23. The Grievant moved from the Register of Deeds office into the District Attorney's office in late September of 1992. At that time Susan Lynch was District Attorney.

Lynch became District Attorney in January of 1991. At the time she assumed the office,

three employees classified as Legal Secretary handled the clerical duties of the office. Two of these three positions were assigned to two of the staff attorneys and the third split her time between the District Attorney and the remaining staff attorneys. Each of these positions had clearly defined duties and areas of specialization.

In January of 1991, one of the three Legal Secretaries went on a long-term leave of absence. A limited term employee was hired to cover this absence, but Lynch felt the absence painfully illustrated the shortcomings of the specialization within the position of Legal Secretary. She determined to reorganize the office and cross train the Legal Secretaries so that any one of the secretaries could perform the duties performed by the other secretaries. As a function of this reorganization and what Lynch perceived as the growing size and complexity of the caseload processed through the District Attorney's office, Lynch requested that the Personnel Committee create the classification of Legal Secretary II and move each of her office's three secretaries into that classification.

Lynch made the formal request in a memo dated May 8, 1992, which states:

Please consider this as a request for the restructure and upgrade of the three legal secretarial positions in the District Attorney's Office.

This request is based upon the gradual increase in all of their duties and responsibilities due to the new programs, services and mandates created in the District Attorney's Office.

. . .

The following are the new programs in the District Attorney's Office which have been added but never addressed in the job descriptions of these secretaries. Also included is the increase in a variety of new services provided by the District Attorney's Office in the interest of the citizens of our County:

1. Victim/Witness Services Program.
2. Mandatory State of Wisconsin Domestic Abuse Program.
3. Justice Alternative Program; and Juvenile Second Chance Program.
4. Truancy Cases.
5. Immunization Compliance.
6. Weatherization Program.
7. Preparation of Traffic Fact-Finding Sheets/Complaints

All of the above have demanded job performance in a qualitative manner. A great majority of the work done requires collecting and compiling data, drafting correspondence and legal pleadings, and a great deal of contact with the public as well as law enforcement and other governmental agencies. These duties are not a simple matter of typing dictaphone tapes . . .; they are duties requiring their singular abilities to use their own knowledge and judgment to perform the job professionally and responsibly. They require little or no direction from their immediate supervisor. The performance of the secretaries in these additional services and programs, has made the processing of prosecution less burdensome for the District Attorney, Assistant District Attorneys and Victim/Witness Coordinator in the office. These new programs and services have, in the long run, saved the County many thousands of dollars in criminal prosecution.

The restructure/upgrading is proposed in the context of a general revision of legal secretarial duties and office reorganization. It is expected that all legal secretaries are able to handle all of the legal secretarial duties either as their primary job responsibility or as back-up.

To the best of my knowledge, the other legal secretaries in the County do not perform the types of duties the secretaries in the District Attorney's Office are required to perform . . .

Lynch's request was evaluated in a job audit which was presented to the Personnel Committee on September 21, 1992. The conclusions of the audit were stated thus:

POSITION:	Legal Secretary, District Attorney
INCUMBENTS:	Debra Gilbert, Jacalyn Cisewski, (one position vacant)
	. . .
FINDINGS:	The District Attorney has requested the three Legal Secretarial positions be reclassified to a new classification of Legal Secretary II because the

responsibilities of these positions have grown through State mandates and new programs. These new programs include: Victim/Witness Services, Domestic Abuse, Justice Alternative and Juvenile Chance, Truancy Cases, Immunization Compliance, Weatherization, and preparation of traffic fact-finding sheets/complaints. A great majority of the added responsibility requires collecting and compiling data, drafting correspondence and legal pleadings and contact with the public, law enforcement and other governmental agencies. These responsibilities require independent judgement and knowledge of the programs as there is minimal supervision from their immediate supervision.

Based on the above information and discussions with the incumbents, I am recommending the position of Legal Secretary II be created at a rate of 50 cents higher than the Legal Secretary.

RECOMMENDATION: Create Legal Secretary II position at \$9.51/hour for the three Legal Secretaries in District Attorney's office

The minutes of the Personnel Committee meeting of September 21, 1992, state the following deliberations concerning this recommendation:

8. Reclassification Requests

Chairman Steinke stated that the Finance Committee may be revising the policy relating to the funding of reclassifications wherein reclassifications would have to be funded within department budgets. Erler added that she will only be able to support requests that have added significant increase in duties.

. . .

Legal Secretary - District Attorney's Office - Susan Lynch is requesting the creation of a Legal Secretary II classification.

Murphy moved to approve the reclassification request for the two senior employees as recommended by Lang, Jakusz seconded, motion carried all ayes.

Lynch, in a memo dated May 12, 1994, formally requested that the Grievant be reclassified to Legal Secretary II. That memo states:

. . .

The primary reason this reclassification request is being presented at this time is due to the fact that the cross training of legal secretaries within this department which was started two years ago is completed. You will recall that the Legal Secretary II positions were created two years ago as a result of expanded duties and responsibilities of each position. Also, and at least as significantly, there was a cross training effort between those two positions. This cross training has now expanded to the third legal secretary within this department.

In addition, this position has taken on newly designated assignments as outlined in the attached document, specifically creation of visual aids and limited backup for Administrative Assistant.

Therefore, because each of the three legal secretary positions is performing comparable work, the job descriptions and classifications should be equalized.

. . .

Lynch's request included a job description for Legal Secretary I, a copy of the May 8, 1992 memo noted above, and the following summary of "the expanded duties and responsibilities of this position:"

**NEWLY ASSIGNED RESPONSIBILITIES WITHIN THE  
WORTHLESS CHECK PROGRAM**

- 1) Open and enter all criminal worthless check files on "courts" management computer system assigning court file numbers



(previously responsibility of Clerk's Office) in addition to the District Attorney File number.

- 2) Negotiate plea agreements and present to attorney for approval. (not a previous practice)
- 3) Draft and type criminal complaints on all worthless checks.
- 4) Draft and type waiver and pleas on all worthless check files.
- 5) Negotiate repayment agreements with the worthless check issuer. (previously done by attorney)
- 6) Enter and maintain voucher payments in computer for Business Administration from restitution account.

#### LEGAL SECRETARY (II) CROSS TRAINING DUTIES AND RESPONSIBILITIES:

- 1) Assist in maintaining law library books and updates when regular secretary not available.
- 2) Act as a back up secretary to all attorneys when other secretary(s) not available.
- 3) Assist in second chance program. (this program new to DA office)
- 4) Assist in immunization programs. (this program new to DA office)

#### NEW ASSIGNED DUTIES

- 1) Create charts and visual aids for Court as needed.
- 2) Process office vouchers & payroll under guidance of Administrative Assistant.

#### ADDITIONAL KNOWLEDGE, ABILITY AND SKILLS

- 1) Ability to negotiate payment options with bad check writers.

- 2) Ability to draft legal documents with minor guidance.
- 3) Ability to work efficiently in high stress situations.
- 4) Ability to operate word perfect program.
- 5) Knowledge of Courts management program.
- 6) Knowledge of worthless check program, and statutes that govern issuance of worthless checks.
- 7) Knowledge of Law Enforcement computer system.

In response to Lynch's request, the County Personnel Department performed a desk audit of the Grievant's position. That audit reads thus:

#### FINDINGS

The District Attorney's office clerical staff consists of an Administrative Assistant/Victim Witness Coordinator, two Legal Secretary II's, and one Legal Secretary I who provide clerical services for the District Attorney and three Assistant District Attorneys. In 1988, the third Legal Secretary (I) was created. In 1992, the two Legal Secretaries that were most senior in the department requested a reclassification to Legal Secretary II because their positions had grown because of State mandates and new programs which included Victim/Witness Services, Domestic Abuse, Justice Alternative and Juvenile Choice, Truancy cases, Immunization Compliance, Weatherization and preparation of traffic fact-finding sheets/complaints. The added responsibility required collecting and compiling data, drafting correspondence and legal pleadings and contact with the public, law enforcement and other governmental agencies. These responsibilities require independent judgement and knowledge of the programs as there is minimal supervision.

Based on the above information, the Personnel Committee approved creating the Legal Secretary II classification at a rate 50 cents higher than a Legal Secretary (I).

At this time, the District Attorney's Department states that

the two Legal Secretary II positions have "cross-trained" to do each others duties and have now also "cross-trained" the Legal Secretary I and now request that the Legal Secretary I be reclassified to a Legal Secretary II.

The primary functions of the Legal Secretary I position are to deal with worthless checks and reception duties. The incumbent estimates that upwards to 90% of the position's time is spent on worthless checks. The Legal Secretary I position covers for the Legal Secretary II's when they are both on break or vacation and processes payroll when the Administrative Assistant is on vacation. This position now also creates charts and visual aids for court an estimated four times a year. This was previously a purchased service.

The Legal Secretary I duties and responsibilities are not equal to the duties and responsibilities of the two Legal Secretary II's when their reclass requests were studied in 1992. Covering for breaks, vacations, etc., is necessary in all positions in the County, but does not warrant reclassification to the higher classification.

#### RECOMMENDATION

No change in classification.

Lynch did not agree with the conclusions of this audit. In a letter dated September 23, 1994, she detailed "several inaccuracies" in the audit, and concluded that "the Legal Secretary I position is doing the functional equivalent of the Legal Secretary II position." On September 26, 1994, the Personnel Committee voted to accept Lang's recommendation.

The remaining background is best set forth as a brief overview of witness testimony.

#### Susan Lynch

Lynch emphasized that she placed a priority on reorganizing the office she assumed in 1991. Her cross training of the three legal secretaries led her to request the creation of the Legal Secretary II classification. That request came in 1992 because Lynch missed the 1991 deadline for the entry of such a request.

When the Grievant moved into the office, Lynch asked her to assume primary responsibility for Lynch's work and to learn how to handle the work performed by the other two legal secretaries. Since Lynch handled the worthless check program, it became a prime area of the Grievant's responsibilities. The existence of the worthless check program turned on the support of the elected DA, but predated Lynch's assumption of the DA position. Because Lynch would handle high-profile prosecutions, the clerical aspect of those prosecutions became part of the Grievant's workload.

Lynch acknowledged she unsuccessfully sought, in 1991 and in 1992, County Board approval of a new Typist I position for her office. Her written requests for the creation of this position noted:

The purpose of this new position . . . would be primarily for telephone and walk-in receptionists function . . . This new position would most importantly provide that the individuals who now are classified as legal secretaries would be, in fact, able to concentrate and produce more effectively on the legal secretarial assignments they are given . . .

#### Thomas Eagon

Eagon served the County as an Assistant District Attorney from October of 1988 until January 1, 1995, when he became the District Attorney. He noted Lynch's reorganization of the office had changed the Legal Secretaries from personally assigned specialists to generalists with primary areas of specialization. He noted he did not distinguish between the secretaries with regard to the assignment of work. Each is capable of handling the work of the others.

The caseload handled by the District Attorney's office has, Eagon noted, continued to increase. As a result, the legal secretaries have more direct contact with police, witnesses and victims. Also as a result, each of the legal secretaries can no longer simply type documents supplied by an attorney. Rather, each is expected to draft certain documents independently, then submit them to the attorney for approval. In addition, each is expected to initially review files and to recommend how the file should be processed without prior review by an attorney.

The worthless check program was, Eagon noted, an area of practice which reflected the political priorities of the District Attorney. One District Attorney had abandoned the program, while others viewed it as a significant priority. He noted that the program demanded no less responsibility and independent judgment than the seven programs noted in Lynch's May 8, 1992 reclassification request. The worthless checks program was, Eagon noted, probably more complex and time consuming than most of those seven programs.

All three legal secretaries were, Eagon noted, lightly supervised and indistinguishable

regarding the quantity or complexity of their workloads.

The Grievant

The Grievant noted that each secretary has learned all of the programs implemented through the District Attorney's office. She noted the worthless check program requires roughly one-half of her work time, and that she handles roughly ninety percent of all worthless check matters. With the growth of the District Attorney's case load, the independent role of the legal secretaries has grown. Especially in the traffic and worthless check areas, the legal secretary will negotiate and draft plea agreements.

With Eagon's assumption of office, the Grievant no longer serves as the "personal secretary" to the District Attorney. The worthless check program has, however, continued as her primary area of responsibility. She noted that all of the secretaries share receptionist duties. She noted she took one of the desks closest to the entrance of the office, and consequently assumed prime responsibility for walk-in business. This desk was the same occupied by her predecessor, and she noted she kept it, in part, because many of the walk-ins are involved in worthless check matters.

The desk audit of her position was, in her opinion, flawed. She noted she misunderstood the percentage break-down of her duties sought by Lang. She stated that she informed Lang that she was responsible for ninety percent of the worthless check program. By that she meant other secretaries backed her up on roughly ten percent of the worthless check caseload. She did not mean to imply that the worthless check program required ninety percent of her time. She was, she stated, unsuccessful in attempting to clarify this prior to Lang's issuance of the desk audit.

Further facts will be set forth in the DISCUSSION section below.

#### THE UNION'S POSITION

After a review of the evidence, the Union stresses that the Grievant's past and present supervisors all support her reclassification. Lynch proposed the reclassification in September of 1992, then resubmitted the request in May of 1994.

The denial of the second reclassification request was, the Union argues, based upon a "flawed" internal audit of the position. More specifically, the Union asserts that the internal audit inaccurately determined that the Grievant devoted the bulk of her time to handling worthless check matters; that it was based on an outdated job description; and that it was incomplete.

The evidence demonstrates, according to the Union, that the Grievant is performing the duties of a Legal Secretary II. Lynch reorganized the District Attorney's office, specifically requiring cross-training of all the Legal Secretaries. This process is, the Union argues, complete and has produced "three legal secretaries (who) are fully interchangeable and cross-trained." Noting that the Personnel Committee approved the 1992 reclassifications based on a gradual increase in the duties and responsibilities of two of the three Legal Secretaries, the Union concludes, after a detailed review of the testimony, that "the three legal secretaries in the District Attorney's office have responsibilities and duties that are of a similar level." None of the supervising attorneys distinguish between the three secretaries.

Beyond this, the Union asserts that the duties and responsibilities of the Grievant's position are above that required of a Legal Secretary I. The duties of a Legal Secretary I position in the Child Support Department are similar to the Grievant's duties only as those duties existed prior to

Lynch's reorganization. The Union states this conclusion thus:

(T)he position has evolved over time from one whose duties were accurately described as being of a Legal Secretary I level to one whose duties are identical or comparable to the Legal Secretary II positions found in the same office. It is appropriate for the County to recognize this fact and reclassify the position and adopt a job description that is on point.

The Union concludes with a request for "the Arbitrator to sustain the grievance in its entirety."

### THE COUNTY'S POSITION

After a review of the evidentiary background, the County notes that the 1994 reclassification request was submitted with a letter including a current job description, a listing of expanded duties and the original letter seeking the 1992 reclassification of all three Legal Secretaries. This documentation, an on-site interview with the Grievant and Lynch's request for a Typist I position formed the basis for the County's internal audit of the 1994 reclassification request.

The County notes that, at the time of the 1992 reclassification request, only two of the three Legal Secretary positions were occupied. Because the position now occupied by the Grievant was open at the time of the original request, "that position was not audited." The County contends that the 1992 audit of the two Legal Secretary positions established "responsibilities requiring independent judgement and knowledge of the various programs" and that "the incumbents in the two positions received minimal supervision and direction from the professional staff."

The 1994 audit, the County argues, stands in marked contrast to this. The 1994 audit established, according to the County, that the Grievant devotes the bulk of her time to worthless check matters and to receptionist duties. Although there has been some expansion of duties within the worthless check program, the County asserts that "(w)ith the exception of the negotiations of plea agreements and repayment agreements, the added responsibilities are within the scope of Legal Secretary I duties."

Beyond this, the County asserts that the Grievant's cross-training and her back-up duties "do not nearly match the duties and responsibilities of the two Legal Secretary II's." Incidental backup for absent employees in a higher classification does not, the County concludes, establish the ongoing assumption of increased responsibility necessary to support a reclassification. That the Grievant possesses artistic skills which make it possible to prepare court exhibits does not, the

County argues, "utilize the skills or abilities of a Legal Secretary II."

Noting that the Grievant works in the receptionist area and that her position description notes her primary responsibility for receptionist duties, the County argues that its denial of Lynch's request for a Typist position underscores the weakness of the reclassification request. If the receptionist duties Lynch sought to allocate to the Typist position are now handled by the Grievant, then those clerical duties belie the Union's assertion of a gradual increase in the Grievant's assumption of higher rated work.

The County concludes that, on the basis of the information reported during its internal audit of the 1994 request, the denial of the Grievant's reclassification cannot be considered to violate the labor agreement. Any evidence, such as the testimony of the incumbent District Attorney and Position Descriptions prepared after the job audit, should not, according to the County, become a basis to overturn its decision. The County concludes that the Grievant's classification as a Legal Secretary I does not violate the labor agreement and that the grievance should accordingly be denied.

## DISCUSSION

The stipulated issue questions whether the Personnel Committee's September 26, 1994 rejection of the Grievant's reclassification violates Article 23. Sections A and B establish certain procedural requirements for a reclassification, but there is no dispute that those requirements have been met. The interpretive issue focuses on the final sentence of Section B, which makes the decision "subject to the grievance procedure."

That the Personnel Committee's decision is subject to the grievance procedure says nothing about the deference appropriate to that decision. This is a troublesome point, for classification decisions are difficult and divisive. Relationships between positions within a classification and between classifications must be rooted in objective, work-related criteria if a compensation system is to maintain its integrity. If those relationships are not so rooted, the compensation system itself becomes a source of daily friction. Thus, the judgment of the committee entrusted with maintaining those relationships must be afforded deference. To fail to do so invites litigation which will itself undermine the integrity of the classification system.

Arbitrary deference to management decisions is typically expressed in the standard of review applied to those decisions. The standard of review is not, however, a dispositive point in this case. Applying an "arbitrary and capricious" or "reasonableness" standard does not impact the facts posed here. The unique procedural history of this case has itself addressed the bulk of the difficult issues surrounding the reclassification request.

The relationship of the Legal Secretary positions within the District Attorney's Office to



other Legal Secretary positions was decided by the Personnel Committee in 1992. With the creation of the Legal Secretary II classification, the Personnel Committee established that the reclassification of at least two positions would not violate the relationship between the Legal Secretary positions within and outside of the District Attorney's Office. That the Personnel Committee did not reclassify the Grievant's position in 1992 sets the stage for the issue posed here. If there is a structural difference between the Grievant's duties and those of the two employees classified as Legal Secretary II, then the Personnel Committee's decision must be upheld. If, as Lynch asserted in the reclassification request, the three secretaries perform comparable duties, the denial of the reclassification is untenable.

Put simply, the evidence will not support a conclusion that the Grievant's duties can be substantively distinguished from those of the secretaries classified as Legal Secretary II. Lynch, Eagon and the Grievant testified, without contradiction, that the three secretaries are indistinguishable with regard to the level of responsibility each assumes. The parties stipulated that if the Grievant's immediate supervisor would have testified, her testimony would corroborate the Grievant's. The Grievant's immediate supervisor and department head thus agree that the three secretaries perform duties which, whether viewed qualitatively or quantitatively, are indistinguishable. The evidence supports, then, Lynch's assertion that the reorganization of the department yielded three secretaries capable of performing, and required to perform, each other's duties. To deny the 1994 reclassification makes the 1992 reclassification a performance award for two of the three Legal Secretaries. This is indefensible under the final sentence of Section 23, C.

Before closing, this conclusion must be tied more closely to the County's arguments. There are, as the Union asserts, factual flaws on which the Personnel Committee based its conclusion. Those flaws do not, however, mean that the conclusions of the Committee or of the audit which preceded it can be lightly dismissed.

The 1994 audit structurally distinguished the Grievant's position from that of the positions classified as Legal Secretary II. The audit places the bulk of the Grievant's duties in the worthless check area, leaving the balance of her duties split between receptionist work and occasional back-up for the other secretaries' absences. That Lynch unsuccessfully sought the creation of a Typist position supports this view. The clerical duties Lynch sought to move into a Typist position had to be accounted for elsewhere when the Personnel Committee denied the request. If the Grievant assumed those duties, the persuasive force of the 1994 reclassification request is undermined. The audit's conclusion that a reclassification cannot be justified on the basis of occasional fill-in for higher rated employees is persuasive. No less persuasive is the audit's rejection of the significance of the Grievant's unique abilities as an artist. As Section 23, C points out, a reclassification turns on the duties of a position, not unique personal skills.

The evidence will not, however, afford a sound factual base for the audit's conclusions. None of the testifying witnesses would corroborate the assertion that the Grievant devotes up to ninety percent of her time on the worthless check program. The actual time she spends on this

program is less important here than the uncontradicted testimony that Lynch's reorganization of the office did more than provide reliable backup for vacation, sick leave, etc. Each level of supervision above the Grievant agrees that the three legal secretaries function as a unit. The Grievant's uncontradicted testimony bears this out. Receptionist duties were not relegated to her alone. Rather, those duties are spread among each employe, based on the employe's availability. The Grievant, due to her placement in the office, handles walk-in traffic. Little significance can, however, be ascribed to this, since much of that traffic concerns the worthless check program. That the September, 1992 audit highlighted increased "contact with the public" as a basis to support the earlier reclassifications undermines this as a basis to deny the 1994 reclassification.

More significantly here, the duties attributable to the worthless check program cannot qualitatively be distinguished from those programs noted in the September, 1992 audit as a basis for reclassification. That the worthless check program preceded the seven programs noted in that audit affords, in itself, no basis to distinguish between the secretarial positions. The Grievant's unrebutted testimony underscores this point. Roughly one hundred thirty charges are filed annually in the worthless check area. Weatherization results in roughly ten. The Grievant plays, then, an active role in negotiating and drafting plea agreements in a program which results in a significant number of charges. If, as the 1992 audit concluded, contact with law enforcement and other agencies and the drafting of correspondence and legal pleadings supported the reclassification of two of the three legal secretaries, those factors must also support the third. That each of the Grievant's supervisors ranks her position as no less responsible than the two positions already reclassified to Legal Secretary II underscores this conclusion.

In sum, the conclusions of the 1994 audit cannot be lightly dismissed. Those conclusions, however, lack the factual basis necessary to support the conclusion that the Grievant's position is something other than the functional equivalent of the two positions already reclassified to Legal Secretary II. The County's assertion that position descriptions drafted after the audit are irrelevant to this case can be granted. Uncontroverted testimony establishes, however, that the Grievant's duties in May or September of 1994, are indistinguishable from those the Personnel Committee determined warranted a reclassification for two equivalent positions in 1992.

#### AWARD

The Employer did violate Article 23 when it rejected the reclassification of the Grievant's position in the District Attorney's office from Legal Secretary I to Legal Secretary II.

Dated at Madison, Wisconsin, this 7th day of February, 1996.

By Richard B. McLaughlin /s/  
Richard B. McLaughlin, Arbitrator