

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

OCONTO COUNTY (COURTHOUSE)

and

WISCONSIN COUNCIL 40, AFSCME, AFL-CIO,  
AND ITS LOCAL 778-A

Case 135  
No. 53659  
MA-9415

Appearances:

Mr. David Campshure, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1566 Lynwood Avenue, Green Bay, Wisconsin 54311, on behalf of Wisconsin Council 40 and Local 778-A.

Godfrey & Kahn, S.C., Attorneys at Law, by Mr. Dennis W. Rader, 333 Main Street, Suite 600, P. O. Box 13067, Green Bay, Wisconsin 54307-3067, on behalf of the County.

ARBITRATION AWARD

According to the terms of the 1995-96 collective bargaining agreement between Oconto County (County) and Oconto County Courthouse Employees, Local 778-A, AFSCME, AFL-CIO (Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve a dispute between them regarding whether Wendy Ringersma should have received the position of Clerk-Typist I in the Circuit Court Office. The Commission designated Sharon A. Gallagher to hear and resolve the dispute. A hearing was held at Oconto, Wisconsin on May 7, 1996 and a stenographic transcript of the proceedings was made and received by May 23, 1996. The parties agreed to submit their initial briefs by June 28, 1996 directly to each other and the undersigned. The parties reserved the right to file reply briefs within ten working days after their receipt of the initial briefs.

Issue:

The parties stipulated that the following issue shall be determined in this case:

Did the County violate the collective bargaining agreement by denying Grievant Ringersma the position of Clerk-Typist I in the Circuit Court Office? If so, what is the appropriate remedy?

Relevant Contract Provision:

ARTICLE IV - SENIORITY 1/

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Section 2. All promotions of employees shall be in an orderly manner as provided herein. All vacancies due to retirement, quitting, new positions or for whatever reason, shall be posted on all bulletin boards for five (5) working days, giving a summary of the duties, qualifications and the rate of pay. Any employee interested in such promotion may sign the posting. New employees in their probationary period (housekeepers excepted) shall not be able to post for open positions. The employee having the greatest seniority and who can qualify shall be given the position. If after ten (10) working days s/he fails to qualify, or if s/he wishes to return, s/he shall be returned to h/er former job, and the next applicant shall be placed on the job until a qualified person is found. Present employees shall be given preference before any new employee is hired.

When seniority is not recognized in job preference, the case shall be subject to the grievance procedure.

Reclassification shall not be considered a vacancy and posting shall not be required.

Section 3. For purposes of layoff, there shall be four (4) departments as follows:

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1/ The County argued that the disputed position, Clerk-Typist I in the Circuit Court, could potentially be designated as Deputy Registrar or Register in Probate pursuant to Section 851.71, Wis. Stats., by the ultimate supervisor of that position, Judge Larry Jeske. The County speculated that if Judge Jeske appointed the incumbent of the disputed position as a Deputy Registrar in Probate, that the position and its incumbent would be exempt from the workings of the collective bargaining agreement pursuant to legal precedent, See, e.g. Iowa County v. Iowa County Courthouse, 166 Wis.2d 614 (1992) and Shawano County, Dec. No. 28250-A (Crowley, 7/95). The County's arguments in this regard are purely speculative and they have not been considered in this case.

- A. Human Services
- B. Paralegals, D.A., Assistant D.A., Clerk of Courts, Register and Probate office
- C. Parks, maintenance, land, zoning, tax listing
- D. Miscellaneous - all other offices

When the workforce is reduced, layoff shall be by seniority, taking the employees covered by this Agreement and laying off first the employees with the least seniority in the department, provided the senior remaining employees in the department are able to perform the work. The person laid off in the department shall be able to bump less senior persons in the unit whose job s/he can perform. A full-time employee who is bumped in a department shall not be required to take part-time work in that department, but has the right to bump into the unit. Part-time employees shall not use bumping as a means to obtain a full-time job. The last person laid off shall be the first person rehired and so on, in order of seniority.

Prior to any layoff of regular full-time employees, all temporary and LTE employees will be laid off first.

Section 4. Sections 2 and 3 of this Article shall apply to appointed County officers, with the exception of the Registrar/Register in Probate.

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Background:

Grievant Wendy Ringersma had been employed by Oconto County for sixteen years at the time of the instant hearing. Ringersma was originally hired into the Human Services Department of the County and spent one year there; Ringersma then posted for a Clerk-Typist I position working for the Corporation Counsel, District Attorney and Child Support Supervisor. Ringersma held the latter position for approximately ten years until she posted for and received her current position, that of Clerk-Typist II (Clerk of Courts). Ringersma, as of the date of the instant hearing, had held the latter position for approximately five years and her rate of pay was approximately \$10.96. The position description for Ringersma's Clerk Typist II position reads in relevant part as follows:

## GENERAL SUMMARY OF POSITION

Reports to the Clerk of Courts. Responsible for performing a variety of general typing, word processing, and clerical tasks. Schedules traffic court calendar, types judgements for judge's signature, receipts and deposits money received, and clerks in court. Answers phone. Able to use own judgement in choosing priority of routine assignments to be accomplished.

## PRIMARY DUTIES AND RESPONSIBILITIES:

1. Responsible for administration of all traffic court activity, to include, but not limited to, scheduling court appearances, contact necessary law enforcement officers to insure their availability for court appearance, prepare and send out court appearance notices, preparing court and judge's calendars, reporting dispositions to Wisconsin Department of Transportation, typing judgements for judge's signature, process alcohol assessment and occupational driver's license paperwork.
2. Enter warrant data, records of money owed, and dates money is due to be paid into computer and report daily to Wisconsin Courts Information System. Must keep current with law ruling this procedure.
3. Clerk in court. Duties are to: take minutes of court case, mark exhibits, swear in witnesses, and calculate court costs.
4. Receipt fine money received in the mail and cash bonds posted at the Sheriff's Department. Deposit all monies received on a daily basis (other than child support), and enter data into computer.
5. Capable of learning duties and responsibilities of other Clerk of Courts staff personnel and be able to complete their duties in their absence. Trained in month end procedure for closing court books.
6. Establish and maintain court dispositions and records. Duplicate, update, and record same with high regard for accuracy.
7. Maintain working area in neat and orderly fashion.

8. Receive, assist, and direct people at window/counter. Process passports, receipt money for traffic, small claims, child support, and file new civil, small claim, and family cases.

**KNOWLEDGE, SKILLS, ABILITIES, AND EXPERIENCE REQUIRED:**

1. Able to type, use word processor, and file at reasonable rate of speed and accuracy.

2. The ability to read, comprehend, follow oral and written instructions, and communicate at a level normally associated with completion of a high school degree or equivalent training. Courses in typing, filing, word processor/computer, organizational skills, calculator, or general business are necessary to performing the duties of this position.

3. Knowledge of office and legal terminology, policies, practices, and procedures as gained by 6 - 12 months of practical, progressive clerical work experience in an (sic) legal office or court room environment.

4. Able to work with limited daily supervision and make accurate, rapid, independent decisions regarding routine planning, scheduling, and in completing routine office work priorities and scheduling duties. Excellent organizational skills, high level of maturity, and strong degree of self direction and motivation is required.

5. Capable of using tact and diplomacy in dealing with the Circuit Judges, clients, Court Commissioner, Social Workers, Sheriff's Department, State Department of Transportation, State Patrol, Municipal Police Departments, Unified Health Services, the general public, District Attorney, Assistant District Attorney, Wisconsin Courts Information System, and other county and outside agencies.

6. Knowledge of business English, and the correct spelling of legal terminology. Able to make simple computations and calculations with reasonable skill and accuracy.

7. Able to use discretion and integrity to process office information and data in a confidential and professional manner. Information can be of a personal nature, and if disclosed, could cause serious adverse legal and community reaction and concern for this department, the county, or this position.

. . .

In her sixteen year tenure with the County, Ringersma has never been disciplined for not completing her work or for her treatment of the public in the various positions she has held. As a Clerk-Typist II performing mostly traffic court work, Ringersma stated that in 1995 she handled approximately 3,390 traffic citations and 150 criminal traffic citations and forfeiture cases; that when she is absent from work, no one is assigned to perform her traffic court duties; that there is no receptionist to handle inquiries from the public in the traffic court area; and that therefore there is regularly a backlog of traffic court work.

On August 22, 1995 the County posted the disputed opening for a Clerk-Typist I - District Attorney, Register in Probate and Family Court Commissioner. The job description for this position reads in relevant part as follows:

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#### GENERAL SUMMARY OF POSITION

This position reports to the District Attorney (1 day per week), the Register in Probate (2 days per week), and the Family Court Commissioner (2 days per week). Responsible for performing a variety of general typing, word processing, transcription, and clerical tasks. Sets up and maintains filing systems. May schedule court calendar for Judge, Probate and Family Court Commissioner. Answers phone and opens/sorts mail. Able to use own judgement in choosing priority of routine assignments to be accomplished, as long as established procedures and policies are adhered to and followed.

#### PRIMARY DUTIES AND RESPONSIBILITIES:

##### DISTRICT ATTORNEY AND ASSISTANT DISTRICT ATTORNEY

1. Type letters from copy or dictaphone, and other business related correspondence from District Attorney to other attorneys or legal parties.
2. Type vouchers for bills incurred by District Attorney.

3. Prepare and send out criminal complaints, traffic complaints, subpoenas and other paperwork as necessary. Establish and maintain filing system for same.

4. Work with Victim/Witness Program by sending to and receiving from victims, restitution and retaliation forms.

5. Process NSF checks.

#### REGISTER IN PROBATE

1. Type letters, establish and maintain probate filing system.

2. Records billing and receipting for fees received for starting files.

3. Performs duties as receptionist and directs walk-in and phone-in clients to proper person.

4. Assist Register in Probate in completing office duties as directed.

5. May schedule court cases or appointments for judge.

#### FAMILY COURT COMMISSIONER

1. Establish and maintain divorce and mediation filing system.

2. Schedule temporary order hearings and conferences.

3. Type letters, temporary orders, and other correspondence from dictaphone or rough draft.

4. Complete some bookkeeping duties as directed.

KNOWLEDGE, SKILLS, ABILITIES, AND EXPERIENCE REQUIRED:

1. Able to type, use word processor, and file at reasonable rate of speed and accuracy.



2. The ability to read, comprehend, follow oral and written instructions, and communicate at a level normally associated with completion of a high school degree or equivalent training. At least 2 years in any office setting. Courses in typing, filing, word processor/computer, organizational skills, calculator, or general business are necessary to performing the duties of this position.

3. Knowledge of various office policies, practices, procedures and terminology as gained by 6 - 12 months of practical, progressive clerical work experience in a legal office or court room environment. Working knowledge of Probate, Juvenile, Mental Commitments, adoption, and guardianship Laws is important.

4. Able to work with limited daily supervision and make accurate, rapid, independent decisions regarding routine planning and scheduling of work priorities. Excellent organizational skills, high level of maturity, and strong degree of self direction and motivation is required.

5. Capable of using tact and diplomacy in dealing with the Judges, clients, Court Commissioner, Social workers, Sheriff's Department, Unified Health Services, the general public, Assistant District Attorney, attorney's offices, Probate Clerk, and other county and outside agencies.

6. Knowledge of business English, and the correct spelling of legal terminology. Able to make computations and calculations with reasonable skill and accuracy.

7. Able to use discretion and integrity to process office information and data in a confidential and professional manner. Information can be of a personal nature, and if disclosed, could cause serious adverse legal and community reaction and concern for this department, the county, or this position.

The posting listed the position as having a 1995 base wage rate of \$9.96 per hour and a starting date of September 5, 1995. The position description was attached to the job posting. Four employees of the County signed the posting: The most senior employee was Sharon Payne, the next

senior employe was Grievant Ringersma, the third most senior employe to sign the posting was Patricia Pawlak and the least senior employe to sign the posting was Judy Hazelo. Ringersma stated that the reason that she signed the posting was that she had performed similar work for ten years working for the Corporation Counsel, District Attorney and Child Support supervisor, that she wanted to make a change, and that the work load in her traffic court job was extremely high. Had Ringersma received the dispute position, she would have lost approximately one dollar per hour in wages.

Pursuant to Article IV - Seniority, Section 2, Sharon Payne, the most senior employe who signed the posting, served a ten-day trial period in the disputed position beginning on September 5, 1995. Payne, whose position with the County was then as a file room clerk in the Human Services Department, had no knowledge of probate, juvenile cases, mental commitments, adoptions, guardian ad litem procedures, and no experience as a legal secretary prior to serving her trial period in the Clerk-Typist I position. During her two-week trial period, Payne performed almost all of her work for the Family Court Commissioner, almost no work for the Register in Probate, and no work at all for the District Attorney. During Payne's trial period the employe whose position Payne was trying out for, Cheryl Beakman, worked with Payne a couple of days in each week, helping Payne learn the position as well as performing work for the Register in Probate during this time. During the second week of Payne's trial period, the Judge's executive assistant went on vacation and she remained on vacation through the following week (the first week of Ringersma's trial period). During the second week of Payne's trial period, she performed scheduling duties for Judge Jeske in the absence of his assistant.

On or about the ninth day of Payne's trial period, she was offered the position on a permanent basis in a meeting with Judge Jeske and Probate Register Mona Kieliszewski. Kieliszewski stated that Payne had done very little work for her during Payne's trial period and that Kieliszewski, therefore, had not kept any notes on Payne's performance during her trial period. Although Payne initially accepted the offer of the position, on Friday, September 18, 1995, Payne indicated, later that day, that she had changed her mind and would decline the position to return to her former position at Human Services. Judge Jeske and Kieliszewski asked Payne to reconsider her decision over the weekend and Payne agreed. However, on Monday, September 21, 1995 before the start of the work day, Payne came to Kieliszewski and told her that she would not accept the position of Clerk-Typist I in that office. At this time, Payne hand delivered a letter dated September 18, 1995 to Kieliszewski in which she listed her reasons for declining to accept the offer of the position: Lack of background in the legal system, and a feared inability to keep up with the office's fast pace and the demands of an increasing case load.

#### Facts:

As Sharon Payne had declined to take the Clerk Typist I position before the start of the work day on Monday, September 21, 1995, Kieliszewski inquired of management what her next step should be. Kieliszewski stated that she was advised that the next most senior person on the

posting should begin their trial period immediately that day. Kieliszewski therefore contacted Grievant Ringersma's supervisor and arranged for Ringersma to be released from her duties in the Traffic Court area for the following two-week period. Kieliszewski then went to Ringersma's office and informed her that her trial period was to begin that day. 2/ Ringersma stated that she thought she would have a couple of weeks to prepare before her trial period began and that she had traffic matters that had to be taken care of. Kieliszewski agreed that Ringersma could bring her traffic case files with her and work on these in the morning, as Kieliszewski would have to organize the work that Ringersma would have to do. Ringersma stated that she felt responsible for performing her traffic court work, that she almost always had a backlog in this work, and that the traffic court had no one else to answer traffic information calls or to perform her work while she was gone on her trial period. Later that day, Kieliszewski informed Ringersma that she felt Ringersma should not continue to perform traffic work as she was then being paid out of the Family Court Commissioner and Register in Probate's budget. Ringersma stated that at this time she stopped doing traffic court work and that when calls were transferred to her from traffic court she referred them back to traffic court for an answer.

Both the Family Court Commissioner, Ric Delforge, and Register in Probate Kieliszewski needed assistance on Monday and Tuesday in performing their clerical functions. However, Ringersma was assigned to perform Family Court Commissioner (FCC) work that day. Kieliszewski and Delforge agreed that Ringersma should perform probate work on Mondays, Tuesday afternoons, Thursday afternoons and Fridays during her trial period unless the Family Court Commissioner had emergency work that had to get out, and that Ringersma would perform work for the FCC at all other times. As a result of this agreement, Ringersma, in a conversation with a secretary of an attorney in private practice, stated that she would not be able to process probate cases on certain days of the week due to her other duties. 3/ Kieliszewski became aware of this conversation when the attorney's secretary later spoke to her regarding her concerns that she and her boss would not be able to file emergency paperwork regarding probate matters if Ringersma was not performing probate tasks on certain days.

During her ten-day trial period, Ringersma worked relatively closely with the Probate Register Kieliszewski. Kieliszewski stated that she kept a daily diary of her evaluations of Ringersma's work during her trial period. Kieliszewski stated that Ringersma demonstrated a lack of ability to perform all of the tasks of the Clerk-Typist I position and that at the end of Ringersma's trial period, Kieliszewski recommended to Judge Jeske that Ringersma not be offered

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2/ Ringersma had no advance notice of the fact that her trial period would begin on Monday, September 18, 1995, other than the fact that she knew she was the second most senior person who had signed the posting and that the most senior person's trial period had been scheduled to commence on September 5, 1995.

3/ Ringersma denied making this statement.

the position based on her observations of Ringersma's work. Family Court Commissioner Delforge took a neutral position regarding Ringersma's work for him during Ringersma's trial period, telling Judge Jeske that the judge should feel free to make the decision on his own.

Kieliszewski's observations regarding Ringersma's work included the following:

1. Ringersma had not properly followed instructions during her trial period: Ringersma wanted to change the divorce calendar printing procedure. Ringersma had refused to follow Kieliszewski's instructions regarding the proper address for notification to be sent to the personal representative who lived in Mountain, Wisconsin. Ringersma took it upon herself to send unnecessary cover letters with communications for the Register in Probate which constituted a waste of time and money, in Kieliszewski's view. Ringersma also added the word "submitted" on a court order when this was not proper procedure and she had not been instructed to do this. Although Kieliszewski had asked Ringersma to write messages for her on a "message" sheet suitable for filing in a case file, Ringersma continued to write Kieliszewski's messages on small pieces of paper. On at least two occasions after receiving instructions to place a "face sheet" on top of file papers, Ringersma failed to do this. Although Kieliszewski had given Ringersma a note one morning, asking that Ringersma make copies of two juvenile files as soon as possible so that they could be forwarded to the District Attorney's office, Ringersma had waited until after her lunch break to complete this task. 4/

2. Ringersma's dealings with the public: On one occasion when a party called to speak to the FCC, Ringersma told the party to call their attorney and did not put the call through. Ringersma was abrupt at the counter with two people who were seeking information as Kieliszewski had observed Kieliszewski was informed by others that Ringersma had been abrupt on the telephone with members of the public.

3. Ringersma was inefficient: When Ringersma asked if she could work after hours to catch up, Kieliszewski feared that Ringersma would wish to earn comp time to perform work that should have been done during the normal work day. Ringersma had several stacks of files which she had not processed during her trial period. Ringersma had sent out a statement for an incorrect billing amount in a simple matter wherein had she checked the file folder she would have placed the proper amount on the statement. Ringersma was slow in recording filings on the computer. On the last day of her trial period, Ringersma left a stack of files with Kieliszewski and indicated that only one had been left undone when in fact at least four files had not been properly processed and documents had not been recorded therein; although Ringersma had indicated she

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4/ Although Ringersma stated that she was aware that this task was a priority item, she continued to work on Family Court Commissioner work all morning and waited until after her noon lunch break, when she was to begin working on probate matters, to perform the task involved.

had paralegal experience and felt she could do the Clerk Typist I job, Kieliszewski found that during Ringersma's trial period Kieliszewski had to instruct Ringersma repeatedly regarding probate matters. On Tuesday, September 26, 1995 and early in the morning on Wednesday, September 27th, Ringersma had wasted a great deal of time when she spoke first to Judge Jeske and then to Kieliszewski about a note she had found on the Judge's

assistant's desk regarding evaluations of Ringersma's work during her trial period. 5/ During her trial period, Ringersma wrongly collected one guardian ad litem fee. On two occasions, she made errors in scheduling divorce calendar entries.

On Thursday afternoon, September 28, 1995, Judge Jeske, Family Court Commissioner Delforge and Kieliszewski met regarding whether to retain Ringersma in the disputed position. Kieliszewski had to leave the meeting at 4:05 p.m. for another engagement. FCC Delforge deferred to the Judge's best judgement and remained neutral regarding whether or not to retain Ringersma. On Friday, September 29th at approximately 3:00 p.m., Judge Jeske called Kieliszewski into his office and asked her for her opinion regarding whether he should retain Ringersma in the Clerk Typist I position. Kieliszewski recommended against retaining Ringersma after her trial period. Shortly thereafter the Judge met with Kieliszewski and Ringersma in his office and explained his reasons for not retaining Ringersma in the position. On October 2, 1995, Judge Jeske sent Ringersma a letter regarding the reasons for his failure to retain her in the disputed position:

As I promised in our meeting on Friday afternoon, I am reciting some of the reasons you did not qualify for this position. These are the same items we reviewed in our meeting.

You were slow in processing work. For example, Mona gave you a memo in the morning telling you to photocopy two juvenile files so the first thing in the afternoon, the juveniles could be transferred home to Minnesota. She told you it was a priority item. It should have been a fifteen minute job but Mona didn't get

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5/ Both Judge Jeske and Kieliszewski stated that Ringersma had been extremely upset, on the verge of tears, and that she spent a good deal of time defending herself against the Judge's assistant's negative evaluation of her work. Kieliszewski stated that she had come in to work on September 27th at 7:30 a.m. in order to work on a project, and that she had been detained from her work for twenty minutes while Ringersma discussed the assistant's evaluation of Ringersma.

the copies until 2:30 p.m. You were also behind in recording filings on the computer. Other temporary help was able to do this recording at a much faster rate.

Your manner in meeting the public was abrupt. At least on one occasion you told a walk-in "Just wait," instead of something like "I'll be with you in a moment."

You didn't follow directions. You were told to write a letter to a person named as personal representative. Instead of following the instructions, you took it upon yourself to place a long-distance phone call to the attorney who drafted the will to try to get additional information. Also, you were told to notify the Child Support Agency when the Galbraith hearing was taking place but you didn't. Because of it, Mr. Mraz was late.

You didn't know enough about probate. The job description states "Working knowledge of Probate...is important."

You were doing work not related to the position. At least on one day, you were doing your old job (traffic work) instead of our department work.

At the instant hearing, Ringersma offered the following explanations for Kieliszewski's objections to her work during her trial period. In regard to Ringersma's failure to copy the two juvenile files immediately, Ringersma stated that on the day in question she was assigned to work for the FCC in the morning and to perform probate work in the afternoon and that she therefore assumed that she should copy the files first thing in the afternoon. 6/ Ringersma also stated that she was not trained properly by Kieliszewski and had not been shown how to perform work properly during her trial period. Ringersma therefore explained that she spent a good deal of time scrolling through the document list in the office computer to familiarize herself with the work of the office and to discover how to perform various tasks assigned to her by Kieliszewski.

In regard to the assertion that Ringersma had been abrupt with walk-ins or with people on the telephone, Ringersma stated that her attitude is professional and business-like, not abrupt or rude and that she had never before been accused of being abrupt or rude during her sixteen years with the County. In regard to Kieliszewski's assertion that Ringersma had failed to follow instructions regarding the address to be placed on a notification to a personal representative who lived in Mountain, Wisconsin, Ringersma stated that in her professional experience to assure delivery, addresses should be more specific than the one Kieliszewski had assured her would be sufficient. Ringersma admitted that Kieliszewski had told her that she knew the woman who was to be appointed the personal representative because the woman was a neighbor of hers at her cottage and that the address given would be specific enough, in such a small town, to assure delivery. In regard to Ringersma's failure to call Corporation Counsel Mraz regarding the starting time of a divorce hearing, which she stated she had volunteered to do, Ringersma stated that this was an error on her part, that she had simply become involved in other work and had forgotten to

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6/ Kieliszewski stated that she did not receive the completed files from Ringersma until approximately 2:30 in the afternoon.

call Mraz to tell him when the hearing was to start.

In regard to Kieliszewski's assertion that Ringersma did not know enough about probate, Ringersma stated that it had been a long time since she had had a probate class, that the Clerk Typist I position in that office had previously been offered to someone who had no particular legal background,(Brazeau) that the prior incumbent (Beakman) had prepared a manual of instructions on how to accomplish the various tasks assigned, and that Ringersma had offered to come in early and to stay late in order to familiarize herself with the position and its duties. In regard to Kieliszewski's concern about Ringersma's offer to work extra hours, Ringersma stated that she had not made this offer so that she could have extra time to learn the job, but that she had been told that the prior incumbent had refused to work overtime, so she (Ringersma) told Kieliszewski that she was willing to do so.

In regard to the assertion that Ringersma had sent unnecessary cover letters, Ringersma stated that in her professional experience, she was used to doing cover letters as they made the enclosures look more professional and they did not take very long once a form had been placed on the computer to allow for easy printing of a cover letter. Ringersma denied that she continued to type cover letters after Kieliszewski told her to stop doing so. In regard to Kieliszewski's assertion that Ringersma had failed to properly place "face sheets" on her files, Ringersma admitted that she had made mistakes in this regard. In regard to having placed the word "submitted" on court orders, Ringersma stated that it had been her prior practice to do this and that she had been unaware that this was inappropriate in Judge Jeske's office. In regard to the Judge's assistant's objections to Ringersma, Ringersma denied that she went through any papers on the assistant's desk stating that the list of objections were in plain view. Ringersma also stated she did not understand why the assistant did not like her, that in her experience if everyone in an office is professional and courteous, even if some employees dislike each other, there should be no problem.

In regard to Ringersma's having collected a guardian ad litem fee in a divorce case, Ringersma admitted that she had committed this error. Regarding her errors in billing statements and her error in scheduling a divorce case when no court reporter was available, Ringersma asserted she had not been instructed properly in these areas by Kieliszewski. Regarding Ringersma's suggestion to place the FCC's hearing calendar on the computer, Ringersma stated that she thought it would be less time consuming and easier to put the calendar on the computer and that she had simply meant this as a suggestion for the future. 7/

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7/ Ringersma did not specifically respond to the accusations that she was slow in performing her duties during her trial period. Ringersma did respond in detail regarding the probate files that Kieliszewski asserted she (Ringersma) left uncompleted at the end of her trial period and regarding the FCC work that Kieliszewski discovered Ringersma had left undone after the end of Ringersma's trial period ended. Ringersma also stated that Sharon Payne had left work undone at the end of her trial period and Payne had corroborated that



## POSITIONS OF THE PARTIES:

### Union:

The Union argued that the decision to deny the Grievant the disputed position was effectively made not by management, but by bargaining unit employees Kieliszewski and Judge Jeske's assistant. In this regard, the Union noted that Judge Jeske lacked first-hand knowledge of the Grievant's work performance during her trial period and that FCC Delforge had made (at worst) a neutral recommendation regarding retaining Ringersma. The Union speculated that because the employee who was third highest in seniority (Pawlak) on the job posting was the person who Kieliszewski and Judge Jeske's assistant preferred to have the job, they conspired to deny the position to Ringersma.

The Union asserted that the reasons the County gave for denying the Grievant the position were "trivial, groundless, fabricated, or a combination thereof." In this regard, the Union noted that many of the reasons for denying the Grievant the position were based upon different ways of conducting business and could have been straightened out or corrected with ease. In regard to the allegation that the Grievant was rude or abrupt with the public, the Union noted that no specific evidence was presented on this point. The fact that the Grievant performed some traffic work while she was in the Circuit Court office was, in the Union's view, a non-issue because Ringersma had received permission from Kieliszewski to perform this work and when Kieliszewski indicated that she wished Ringersma to perform only Circuit Court work, Ringersma complied immediately. In regard to the photographs that the County submitted allegedly showing the work the Grievant left unfinished at the end of her trial period, the Union urged that these photographs were "questionable" as there was no evidence to show what the Grievant's work area looked like before she began her trial period and whether the previous employee on her trial period (Payne) had left any unfinished work behind.

Thus, the Union urged that the County's decision that Ringersma was not qualified to perform the position was "arbitrary, capricious and discriminatory". The Union contended that Payne, the most senior employee who signed the posting, lacked any experience in several of the major areas of responsibility of the position. Nonetheless, the Union noted, the County offered Payne the position after the completion of her trial period. In addition, the prior incumbent of the job, Beakman, helped train Payne during her trial period, yet no such training was provided to the Grievant. The Union pointed out that Beakman's predecessor had had no experience in probate or family court matters before her hire. Thus, the Union argued that Ringersma was held to a different standard than Payne and others who had previously held the position. On this point, the

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statement.

Union observed that Kieliszewski kept no notes of Payne's performance yet kept detailed notes regarding Ringersma's performance during her trial period; and that no test was given to either Payne or Ringersma in order for them to qualify for the position.

Finally, the Union asserted that the County's arguments regarding the powers of Judge Jeske to appoint a deputy in Register in Probate are not relevant to this case and should be disregarded. On this point, the Union contended that there was no evidence that Judge Jeske actually intended to deputize the incumbent of the position or that there would be any need to do so and, in any event, the position in question would perform Register in Probate work on only a half-time basis so that only that portion of the position would be subject to appointment by the Judge. The Union interpreted the County's submission of this evidence as a "veiled threat" that if the County should lose this case, it would simply retitle the position "Deputy Register in Probate" and remove it from the bargaining unit so that Judge Jeske could appoint the person of his choice. This, the Union found offensive, constituting "scare tactics".

#### County's Position:

The County argued that Ringersma was unqualified for the position in the Circuit Court office because she had made many errors during her ten-day trial period which she could not explain away and which she should not have made as an experienced County employe. In addition, the County argued that the facts showed that Ringersma failed to follow simple instructions and that she created additional work which wasted both time and money. Furthermore, the County asserted that Ringersma worked only one-fourth as fast as other temporary employes who had held the position. Although the Grievant claimed that her previous experience in County positions (working for the child support agency and District Attorney) should have proven that she was qualified for the position in question, the County noted that the Grievant did not support her claims by any evidence. The fact that other employes may or may not have been qualified when they were hired into the same position, the County urged, was not relevant to this case.

The County also argued that the Grievant was unprofessional and that she could not handle the expectations of the positions; that she was abrupt with members of the public; that she became overly emotional under pressure; and that her actions indicated that she might pry into other office employes' business. Also, the County argued that Ringersma's attempt to change office procedures was unreasonable and, along with her lack of other qualifications, should demonstrate that Ringersma was properly denied the position by the County.

The County contended that Register in Probate Kieliszewski's evaluation of Ringersma's performance during her trial period was factual and unbiased. The County noted that Kieliszewski and Ringersma had been friends prior to Ringersma's trial period and that Ringersma admitted that she did not believe Kieliszewski held any animosity towards her. In the County's view, whether Ringersma had sufficient advance notice as to when her trial period would commence was not

relevant in this case because the contract does not provide for such prior notice to a person who follows the most senior person on a job posting in a trial period. In this case under the language of the labor agreement, the County asserted, it was not required to grant Ringersma any additional time to learn the position but that Ringersma was required to prove that she was qualified for the position before the County should be required to give it to her.

The County observed that even if a personality conflict existed between Ringersma and the Judge's assistant, it is clear that the Judge placed no emphasis on his assistant's opinion. Kieliszewski's objective personal observations of Ringersma's work indicated that during the week that the Judge's assistant was absent from the office on vacation, Ringersma had prepared unnecessary cover letters when she had previously been asked not to do so by Kieliszewski; that although Ringersma had been told to place face sheets on top of all papers, she failed to do so; and that Ringersma had attempted to change the Family Court Commissioner's procedure regarding printing divorce calendars, which the Child Support Worker found objectionable. The County asserted that the Union had failed to present any evidence to indicate that prior incumbents of the position (Beakman and Brazeau), as well as trial period employe Payne had failed to properly perform the duties of the position or had been otherwise unqualified for the position at the time they worked in it. In addition, the County noted that the performances of these three employes were not proven to be identical to Ringersma's during her trial period, making a comparison of little value in this case.

The County asserted that it is required to provide only a trial period to qualified applicants under the language of Article IV and that no provision of the parties' agreement requires the County to provide a training period for the position to employes who must then demonstrate that their skills and abilities are sufficient to be found to be qualified for the job. The County noted that arbitrators have consistently determined that employers are not required to train unqualified individuals under language such as appears in Article IV. In the instant case, Ringersma demonstrated that she was unqualified for the position and therefore the County was privileged in not awarding her the position. The County also observed that its decision to find Ringersma unqualified was not disciplinary and therefore that decision is not subject to the just cause standard of the contract.

Thus, the issue here is whether the County's actions were arbitrary, capricious, discriminatory or unreasonable, as no documentary or testimonial evidence was provided to prove that Ringersma was qualified for the position. The County urged that its decision to find Ringersma unqualified was reasonable. In the County's view, the fact that Sharon Payne might have been judged qualified for the job is immaterial to this case. Rather, the pivotal issue in this case is whether Ringersma was given the opportunity to qualify for the job and whether she in fact proved herself to be unqualified therefor. In all of the circumstances of this case, the County argued, it had not violated the contract by its decision not to retain Ringersma in the position and the instant grievance should therefore be denied and dismissed in its entirety.

Reply Briefs:

### Union Reply:

The Union asserted, contrary to the County's assertions, that the County offered Sharon Payne the position in question with no strings attached. Yet, the County denied the same position to Ringersma, a more qualified and experienced candidate. The Union asserted that the opinions which formed the basis for the Grievant's being deemed unqualified for the disputed position were subjective and partisan; and that the Judge had had little if any first-hand knowledge of Ringersma's work performance during her trial period, and he relied upon the input of FCC Delforge and Register in Probate Kieliszewski. The Union noted that Delforge's opinion on Ringersma's qualifications was at worst non-committal. Thus, the decision to deny Ringersma the position was based upon a fellow bargaining unit member's (Kielzewski) opinion.

The Union opined that the record evidence demonstrated that popularity played a key role in the determination that Ringersma was unqualified for the position. In this regard, the Union asserted that the record failed to demonstrate that the Grievant was any less qualified than Payne or the employe who ultimately received the position, Pawlak. The Union asserted that the County did not act in good faith in determining the Grievant's qualifications and it speculated that Payne was actually offered the position in an "attempt to keep the Grievant out of the position". The Union also contended that the County's assertion that Ringersma worked only one-quarter as fast as other occupants of the position was unsupported by any facts.

The Union pointed out that although the labor agreement does not call for a training period, arbitrators have consistently held that employes are entitled to instruction, assistance and feedback during their trial periods in order to make those trial periods meaningful. The Union urged that on the basis of this record, the Grievant was left to "find her own way through the forest known as the Circuit Court Office". In addition, the Union asserted that a comparison of the standards to which Ringersma was subjected and the standards that were applied to others who had had a trial period in the position is relevant and significant in this case. On this point, the Union noted that the County essentially admitted that it held the Grievant to a higher standard than other employes because of her prior experience. This, the Union asserted, constituted arbitrary, capricious and discriminatory conduct. The Union queried why Payne was offered the position even though she had done no probate work during her trial period for Kieliszewski and why Judge Jeske had not been bothered by the fact that Payne lacked any experience in many of the significant areas of responsibility involved in the position. Based upon its reply arguments as well as the arguments in its initial brief, the Union urged that the grievance should be sustained and that the Grievant should be placed in the position in question.

### County's Reply:

The County took exception to the Union's argument that Kieliszewski's status as a member of the bargaining unit requires a conclusion that her recommendations were unfair or not based on

fact. Also, the County argued, the Union's claim that because Delforge's recommendation was neutral, Ringersma must be found qualified was illogical. Furthermore, the County pointed out that Kieliszewski's testimony proved that at the time Delforge made his neutral recommendation regarding Ringersma's qualifications, Delforge was unaware of the work which Ringersma had left uncompleted.

The County also took exception to the Union's arguments that the Judge's assistant and Kieliszewski somehow conspired to deny Ringersma the position, calling these arguments "sheer vicious speculation". The County asserted that the record fully supported Judge Jeske's determination that Ringersma was unqualified for the position. Upon close examination, the County argued, the supposed "plot" between Kieliszewski and the Judge's assistant to deny the Grievant the position, amounted only to the fact that the Judge's assistant had been on vacation for one week during the Grievant's ten-day trial period, and that the assistant stated to the Judge that she did not believe Ringersma would be able to do her share of the work in the office.

Thus, contrary to the Union, the County contended that its reasons for denying the position to Ringersma were clearly not "trivial, groundless or fabricated", as the Union claimed. The County noted that the Grievant admitted making many of the mistakes the County proved she had made. In addition, the County urged that it had proven that the Grievant could not perform "trivial" tasks as well as some of the more responsible tasks of the position in question. The fact that the Grievant had not been informed of any complaints from the public regarding the manner in which she treated them during her prior sixteen years of employment with the County, in the County's view, proved nothing in this case. Although the Union termed the pictures taken of Ringersma's work area "questionable", the County noted that the various inquiries the Union made in its initial brief regarding those pictures should have been questions asked at the hearing, and speculation on the answers to these questions would be improper at this time. The County asserted that the Union is "grabbing at straws" in asserting that no matter what action the Grievant would have chosen to take, such would have been interpreted as being incorrect by Kieliszewski.

The County asserted that its actions were neither arbitrary, capricious nor discriminatory. The Union's assertions that Beakman was called back to train Sharon Payne yet performed no training duties for Ringersma was inaccurate. Rather, Beakman had worked during Payne's trial period because she had given a two-week notice prior to resignation from County employment. Beakman was required to work during this two week period, which had nothing to do with whether or not she happened to be available to train Sharon Payne during the first week of Payne's trial period. In addition, the County noted, Beakman had drafted a comprehensive book of instructions for her job prior to leaving it and that both Payne and Ringersma had had full access to this book. Thus, Ringersma's assertion that she did not have as good information regarding her job as Payne did was simply untrue.

In regard to the type of experience that Brazeau and Payne had had prior to serving in the job of Clerk Typist I, the County asserted that the real issue is whether in fact after their trial

periods they were found qualified to do the job. As the Union had presented no evidence to show that either Brazeau or Payne was incompetent and the record clearly demonstrated that Ringersma was unqualified for the Clerk Typist I position, the Arbitrator should not find that the County acted in an arbitrary, capricious or discriminatory manner in denying Ringersma the position. The County asserted that the record is clear and that the Grievant simply was not qualified to perform the duties associated with the position and that therefore the grievance should be denied and dismissed in its entirety.

#### Discussion:

Article IV of the labor agreement clearly provides that employes who have signed a posting for an open position will be offered ten-day trial periods seriatim, based upon their seniority and that the most senior employe "who can qualify shall be given the position". There is no provision in Article IV which requires that after the most senior employe has completed his/her trial period and has either declined or been denied the position, the next senior employe must receive advance notice of the start of their ten-day trial period. There is also no provision in Article IV or in any other provision of the effective labor agreement, which requires the County to train employes while they are on a ten-day trial period pursuant to an Article IV posting.

However, the fact that a training period is not written into the contract does not mean that employes on ten-day trial periods can be left to "sink or swim" on their own. Rather, as a general rule, employers in these circumstances must provide instruction, assistance and feedback so that the employe who is on a trial period can familiarize him/herself with the responsibilities and requirements of the job and make an informed decision whether to remain in the posted position or return to his/her former job. In addition, it is also generally accepted in arbitration cases like the instant one, that employers are entitled to make an assumption that the employe on a trial period will bring with him or her a certain level of knowledge, prior experience and/or education as well as considerable skills and background which the employe can use in order to perform the duties of the new position. Thus, in similar cases, a trial period gives an experienced employe the opportunity to demonstrate his/her ability to perform the job tasks involved in a new position and to show, that with a reasonable period of familiarization, the employe can achieve the necessary skills to perform all of the job duties in an acceptable manner. Also, in these cases, the employer is generally entitled to rely upon the direct supervisor's opinion regarding the employe's performance on their trial period so long as that opinion is supported by subjective facts and evidence.

Therefore, the central question in the instant case is whether Ringersma was qualified for the Clerk Typist I position in the Circuit Court Office. Put another way, did the County have sufficient objective evidence that Ringersma was unqualified for the position so as to deny it to her with impunity. The Union argued that the treatment of various other individuals (including Brazeau and Payne), demonstrated that the County discriminated against Ringersma in finding her unqualified for the position. On this point, I agree with the County that the County's treatment of employes who have served previous trial periods in the same position cannot and does not prove that Ringersma was qualified for the position. Whether Payne or Beakman or Brazeau was capable of performing all aspects of the Clerk Typist I position as the job duties of that job existed

at the time each of them was offered the position, has no bearing on the outcome of this case. Indeed, even the fact that Judge Jeske offered Sharon Payne the position in question does not, without more, require a conclusion that therefore, the County arbitrarily, discriminatorily or capriciously denied Ringersma the same position. The fact that Payne had little or no experience in most of the areas of responsibility of the position does not require a conclusion that Judge Jeske could not have reasonably found Payne's performance during her trial period showed that she could quickly master the duties of the position. 8/

But even if Judge Jeske had been wrong in his assessment of Payne's abilities, this does not mean that therefore, Ringersma is entitled to the Clerk Typist I position. Rather, the inquiry herein must be whether the reasons Judge Jeske gave for finding Ringersma unqualified for the position were based upon objective facts available to him at the time he made his decision. In his letter denying Ringersma the Clerk Typist I position, Judge Jeske listed five reasons: That Ringersma did not follow instructions; that she was abrupt in dealing with the public; that she did not know enough about probate; that she was slow in processing work; and that she did work unrelated to the position on at least one day of her trial period.

Judge Jeske based these reasons for denying Ringersma the position, upon his conversations with Kieliszewski and he acted upon Kieliszewski's recommendation. In this regard, I note that Kieliszewski maintained extensive notes regarding Ringersma's performance and that Kieliszewski testified at length regarding her personal observations of Ringersma's performance during her trial period. 9/ In addition, the record showed that Kieliszewski spent a good deal of time during Ringersma's trial period, assigning Ringersma duties, showing Ringersma office procedures and checking Ringersma's work. Furthermore, there was no evidence on this record that Kieliszewski was biased against Ringersma or that Kieliszewski held any animosity against Ringersma.

The record in this case also showed that Ringersma made errors and failed to follow Kieliszewski's instructions on several occasions, regarding contacting a personal representative in Mountain, Wisconsin, placing face sheets on top of her work, taking telephone messages for Kieliszewski and not typing cover letters for Kieliszewski. On these points, Ringersma basically admitted that Kieliszewski was correct, but Ringersma explained that Kieliszewski had not properly trained her to begin with, and that after she made initial errors regarding face sheets,

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8/ The evidence on this record showed that it was coincidental that Kieliszewski had little contact with Payne during her trial period and that Beakman was present for part of Payne's trial period.

9/ The fact that Kieliszewski took no notes regarding Payne's performance during her trial period is neither surprising nor suspect, as Kieliszewski stated that she gave no work to Payne to perform during Payne's trial period.

cover letters and phone messages she did not repeat those errors. Kieliszewski stated that Ringersma continued to make some of these errors despite Kieliszewski's repeated instructions to the contrary. I note that Ringersma also admitted that she placed the word, "submitted" on a court order, that she failed to notify Corporation Counsel Mraz of the start of a divorce hearing on one occasion, and that she waited until the afternoon to perform a priority duplication job for Kieliszewski on one occasion. Ringersma further admitted that she erred in collecting a guardian ad litem fee and in scheduling at least one divorce hearing. Based upon the evidence as a whole, Ringersma's various admissions as well as the demeanor of both Kieliszewski and Ringersma, I find that the evidence showed that Ringersma made errors and failed to follow Kieliszewski's instructions during Ringersma's trial period.

Regarding Ringersma's being abrupt with the public, I note that Kieliszewski personally observed Ringersma's manner on at least one occasion. It is significant that Ringersma did not deny this allegation. Rather, Ringersma explained that she believed she acted in a professional

manner at all times and that in sixteen years with the County, no one had previously complained about her manner with the public. The fact that no one ever previously complained regarding Ringersma's manner with the public does not detract from the fact that Kieliszewski observed Ringersma being abrupt on one occasion. Based upon Kieliszewski's uncontradicted testimony regarding her personal observation of Ringersma's abrupt manner, I find that the record evidence supported the Judge's conclusion that Ringersma was abrupt with members of the public during her trial period.

Regarding the allegation that Ringersma did not know enough about probate, I note again, that Ringersma did not deny this. The sole issue on this point is whether the County was privileged to expect Ringersma to be familiar enough with probate, to work on probate matters without needing repeated instruction. I believe the answer must be yes. On this point, it is clear that arbitrators have consistently held that employers need not actively train employees while they serve their trial periods and that employers have the right to expect employees, during their trial periods, to demonstrate that they possess the knowledge, experience, skills and/or education necessary to perform the duties of the position. Therefore, as the labor agreement does not provide for a training period and because Kieliszewski's credibility was not successfully attacked in this area, it was reasonable for the Judge to conclude, based upon Kieliszewski's personal observations, that Ringersma did not know enough about probate to qualify her for the position.

Regarding the allegation that Ringersma was inefficient and processed work too slowly, I note that Ringersma admitted that she spent a good deal of her work time scrolling through document lists on the office computer in an attempt to familiarize herself with office procedures. In addition, Kieliszewski was aware of the relative speed with which prior incumbents of the position had completed the work of the position in question, as she had worked with these prior



incumbents. 10/ The Union also failed to contradict the pictorial evidence gathered by Kieliszewski showing the work Ringersma failed to complete during her trial period. 11/ Thus, the evidence as a whole supported the County's conclusion that Ringersma was slow in processing work.

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10/ Whether or not Payne left any files incomplete at the end of her trial period does not detract from Kieliszewski's observations regarding Ringersma's inability to complete the work assigned to her as quickly as other employees who had occupied the position.

11/ It is also undisputed that Ringersma brought Traffic Court work with her, albeit with Kieliszewski's knowledge and permission, to perform on the first day of her trial period. Ringersma admitted taking Traffic Court calls until shortly after Kieliszewski withdrew her permission therefor. In my view, the fact that Ringersma performed Traffic Court work during her trial period should not be held against her, as Ringersma received Kieliszewski's permission before she performed this work. I note that Judge Jeske did not substantially rely on this minor problem with Ringersma's work in making his decision to deny her the position in question. Ringersma's failure to follow instructions and her insistence upon performing work her own way were substantial deficiencies which the County could reasonably take into consideration, where, as here, the contractual trial period is of such short duration, to find Ringersma unqualified and deny her the position.

Based upon the relevant evidence and argument in this case, I find that Judge Jeske's reasons for refusing to give Ringersma the Clerk Typist I position were based upon objective facts, many of which were not contested by Ringersma. Therefore, I do not find that the County's decision to deny Ringersma the position in question was arbitrary, capricious, discriminatory or based upon bad faith. 12/

Dated at Oshkosh, Wisconsin this 8th day of November, 1996.

By \_\_\_\_\_  
Sharon A. Gallagher, Arbitrator

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12/ Contrary to the Union's assertions, there was nothing improper in Kieliszewski making a recommendation not to retain her fellow unit member, Ringersma, in the position in question.