BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

VERNON COUNTY COURTHOUSE AND HUMAN SERVICES LOCAL 2918, AFSCME, AFL-CIO

and

VERNON COUNTY

Case 123
No. 59694
MA-11378

Appearances:

Mark Hazelbaker Law Office, by **Attorney Mark B. Hazelbaker**, 721 Lois Drive, Sun Prairie, Wisconsin 53590, appearing on behalf of the County.

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, Wisconsin 54656-3755, appearing on behalf of the Union.

ARBITRATION AWARD

The County and the Union are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear and decide a grievance. A hearing, which was not transcribed, was held on June 14, 2001. The record was closed on October 18, 2001, upon receipt of post-hearing written argument.

ISSUE

The parties stipulated to the following statement of the issue:

> Did the County violate the collective bargaining agreement, or a past practice, by approving reclassification requests pursuant to Section 21.02, and then placing the affected employees in a lower pay step of the new pay grade?

If so, what is the appropriate remedy?

Is the Clerk Typist grievance timely? If so, it shall be resolved on the merits.

RELEVANT CONTRACT LANGUAGE

ARTICLE II
ADMINISTRATION

2.01 Except as otherwise provided in this Agreement, the COUNTY retains all the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote or suspend or otherwise discharge or discipline employees for just cause; the right to decide the work to be done and allocation of work; to determine the services to be rendered, the materials and equipment to be used, the size of the work force, and the allocation and assignment of work and workers to schedule when work shall be performed; to contract for work services or materials; to schedule overtime work; to establish or abolish a job classification; to establish qualifications for the various job classifications; and to adopt and enforce reasonable rules and regulations.

. . .

ARTICLE V
GRIEVANCE PROCEDURE AND ARBITRATION

. . .

5.02 In the event of any disagreement concerning the meaning or application of any provisions of this Agreement, such disagreement shall be resolved in the manner hereinafter set forth; however, no matter not involving the interpretation or application of this Agreement shall be subject to these procedures. It is further provided that any grievance must be timely filed within fifteen (15) calendar days of occurrence in order to be deemed a valid grievance.

. . .

ARTICLE XXI
DEPUTIES AND RECLASSIFICATIONS

. . .

21.02 Reclassified Employees. Reclassifications will be considered once a year by the COUNTY, upon written application of the employee to their Department Head, who shall refer said requests to the County Personnel Committee. Such requests must be submitted no later than June 30th (effective for year 2001), and must contain therein the reasons for the requests.

. . .

ARTICLE XXIII
WAGES

23.01 The wage schedule adopted for this Contract shall be as set forth in Appendix A attached, and the classification schedule adopted for this Contract shall be as set forth in Appendix B attached.

. . .

23.07 Longevity

Effective 1/1/94 computed from the date of employee hire, a longevity allowance will annually be paid to employees qualifying, which lump sum payment shall be made on the first pay period in December with qualifications as follows:

5 years of service – 1 1/2% of gross wages
8 years of service – 1¾ % of gross wages
10 years of service – 2% of gross wages
12 years of service – 2 1/2% of gross wages
15 years of service – 3% of gross wages
18 years of service – 3 1/2% of gross wages
20 years of service – 4% of gross wages

. . .

BACKGROUND

On October 10, 2000, the County Personnel Committee passed two Resolutions. One of these Resolutions states as follows:

RESOLUTION #

Title: Reclassification of Case Manager to Social Worker

WHEREAS, The position of Case Manager currently requires a Social Worker License and is so stated in the current job description; and

WHEREAS, The position has the same educational and experience requirements as those required for the Social Worker classification; and

WHEREAS, The position has changed to that of Social Worker licensed through the State Department of Licensing and Regulation; and

WHEREAS, The responsibilities of the Case Manager position has grown comparable to the job description for the Social Worker position, and

THEREFORE, BE IT RESOLVED, The following Case Manager positions be reclassified to Grade L and re-titled to Social Worker reflecting their specific program area, and that the current employees holding these positions be placed at the following steps effective January 1, 2001, with a projected annual cost impact of $1089.26 (wages $916.50 + FICA $70.11 + WRS $102.65).

Mental Health – Social Worker; step 3
Community Options – Social Worker; step 4
CIP – Social Worker; step 4
Community Integration – Social Worker; step 3
CIP II/COP–W - Social Worker; step 4

. . .

Sharon Maybee held the first of the named positions; Barb Zeimet held the second; the third was held by Crystal Linse-Moilien; Alice Olson held the fourth; and Shirley Johnson held the fifth. Prior to their reclassifications, Maybee and Olson were at Step 4 and Zeimet, Linse-Moilien and Johnson were at Step 5. Prior to passing this Resolution, the Personnel Committee discussed maintaining each employee at their current Step, but concluded that if it maintained each employee at their current Step, the County Board would not approve the

reclassifications.

On or about December 6, 2000, the Union filed a grievance alleging that the County violated the past practice of placement on the wage scale and other applicable sections of the collective bargaining agreement when it reclassified the five Case Managers to Social Worker and placed each at a lower step than previously held by the Union employee. In remedy for the alleged violation, the Union requested that the employees be placed on Level L at the employee's current step and be made whole. The grievance was denied at all steps and submitted to arbitration.

The second Resolution approved on October 10, 2000 states as follows**:**

RESOLUTION #

Title: Reclassification of Part-time Clerk Typist

WHEREAS, In December, 1986 the position of Part-time Clerical Worker was advertised, and

WHEREAS, The selected applicant for the position started working in January 1987, and

WHEREAS, The position has grown since 1987 from one of basic clerical duties to one of more detail and more advanced clerical responsibilities, and

WHEREAS, The position requires an understanding of governmental regulations; and

WHEREAS, The position requires more technical and advanced computer skills; and

THEREFORE, BE IT RESOLVED, The position of Clerk Typist (part-time) be re-classified to Grade B and titled Clerk II and that the current employee holding that position be placed at step 4, effective January 1, 2001, with a projected annual cost impact of $23.17. (wages $19.50 + FICA $1.49 + WRS $2.18)

. . .

The Clerk-Typist affected by this Resolution is Jean Miller. Miller did not discuss this reclassification with the Union. As a result of the Resolution reclassifying Miller, Miller was moved from Step 5 to Step 4. When the Union became aware of the fact that Miller had been

moved from Step 5 to Step 4, it filed a grievance. This grievance was filed on May 1, 2001.

The grievance filed by the Union on May 1, 2001, alleges that the County violated the collective bargaining agreement and/or past practice when it reclassified Miller from Level A to Level B at a lower step than previously held by the employee. The Union requested that Miller be placed on Level B on the step held when the employee was on Level A and that the employee be made whole.

On May 3, 2001, County Personnel Coordinator Lisa Berg, issued the following response to Shirley Fauske, Union President:

> This letter is in response to you grievance filed May 1st in the Personnel Office regarding the reclassification of Clerk-Typist/Aging Unit position. As indicated on the previous grievance regarding the reclassification of the Case Managers:
>
> The Personnel Committee feels it made a fair decision to reclass specific positions and place the current employees on the "lowest step in the new grade that allows for an increase." And in a year with strong budget constraints, this reinforced their decision. The Personnel Committee feels that the process of reclassification was intended to: give recognition for greater potential and to allow for more growth potential in wages. This was the intention of the Committee and the approval of the reclassifications were based on this. If the process had been developed differently and there was a larger fiscal impact, the Committee's stand is that the reclassifications would not have been approved.
>
> Further, your grievance indicates a violation of past practice. The Personnel Committee feels it acted in its capacity of establishing County Personnel Policies and Procedures regarding the Reclassification Policy. Without a written policy, the committee made it known as early as July 2000, that it was the intention of the Committee to "place reclassed employees at the lowest step in the new grade that would allow for an increase."
>
> And finally, on October 2nd the Personnel Committee approved the reclassification of the Clerk/Typist Aging Unit at the new grade and new step. On October 10th the Board of Supervisors approved the reclassification. On January 22nd I requested support from the Union on how this employee would move to her next step within the new grade. This grievance was received in my office on May 5, 2001. Therefore, the Union did not meet the 15-day timeline for grievances that is established in article 5.02 of the Union Contract.

> For the above-mentioned reasons, I am denying the grievance. I will place the grievance on the May 9th Personnel Agenda and invite you and your representatives to be present. The meeting starts at 10:30 a.m. I am available to meet with you and your representatives prior to that date if you would like to discuss this further.

When the grievance involving Jean Miller was submitted to grievance arbitration, the County continued to assert that this grievance was not timely. At the arbitration hearing, the parties agreed to waive the Board of Arbitration and the contractual time limits for the issuance of the arbitration award.

POSITIONS OF THE PARTIES

Union

Timeliness

As Union President Shelley Fauske testified, the Union filed the grievance on the Clerk/Typist reclassification as soon as the Union became aware of the fact that Jean Miller had been placed in a lower pay Step. The County claims that the County Board committee made it known as early as July, 2000, that it intended to place reclassified employees at the lowest step in the new grade that would allow for an increase. As Union President Fauske testified, she is not routinely sent copies of the minutes of the Committee or County Board meetings. Nor is she routinely sent copies of resolutions passed by the Committee or the County Board.

It would be unreasonable for the County to expect the Union's Officers to examine all County Committee and Board minutes and resolutions to determine which issues may affect the Union. Additionally, each day that the Clerk/Typist is inappropriately placed on the wage schedule constitutes a new violation of the collective bargaining agreement. At the very least, the remedy should be retroactive to the date that the grievance was filed.

Merits

Previous to this grievance, the County continued the step placement of reclassified employees. The Chairman of the Personnel Committee acknowledged this practice when she testified that she was aware that placing reclassified employees in a lower pay step was a departure from what had been done previously. The practice is further substantiated by the evidence that, when the former Personnel Director calculated the cost of a 1999 reclassification request, she continued the employee at the employee's current step.

The County's reliance on the prior Award of Arbitrator McGilligan is misplaced. In that case, the issue involved the right of the County to approve, or not approve, reclassification requests. This case involves appropriate placement on the wage schedule.

Of relevance is the prior Award of Arbitrator Greco. In that case, an employee posted for, and was awarded, a position with a higher pay grade. As in this case, the County unilaterally placed the employee in a lower pay step. In sustaining the grievance, Arbitrator Greco wrote, in pertinent part: "The contractual wage schedule contains a unified wage progression schedules which pegs step increases to the amount of time employees work for the County, without any requirement that all of the time must be worked in a particular department."

As the e-mail from County Personnel Director Lisa Berg to Union President Fauske demonstrates, the failure of the County to adhere to the past practice has created problems. Specifically, because the reclassified employees were moved to the lower step, a date for movement to the next step was never established.

The County argues that, if the grievances are sustained, then the reclassification requests should be remanded back to the County for reconsideration. Such an argument is not reasonable. As the Chairman of the County Personnel Committee testified, the reclassifications were warranted and she knew that moving reclassified employees to a lower pay grade would be a departure from the previous practice. The County's unilateral change in the reclassification procedure was at its own peril.

If the reclassification requests were sent back for reconsideration, the requests would, in all likelihood, be denied. Thus, the effect of granting the County's request for reconsideration would be to punish employees for exercising their right to file a grievance.

The appropriate remedy is to restore the lost pay step. Additionally, the affected employees should be made whole.

County

The agreement contains no provision obligating the County to maintain the step the employee had attained in the previous classification. In the absence of such language, the reserved management rights and the discretionary nature of the power to reclassify must control.

The relevant contract provision, Section 21.02, has been construed in a prior Award, issued by Arbitrator Dennis McGilligan. Arbitrator McGilligan rejected the claim that employees are entitled to reclassifications; interpreted the Section 21.02 language as requiring

argument that the County could not reject a reclassification request on an arbitrary, capricious or unreasonable basis. To sustain the grievances would be to create a standard defining where the Personnel Committee must place reclassified employees. Thus, acceptance of the Union's position would change the agreement, which, as previously held by Arbitrator McGilligan, has no standards governing the reclassification process.

When the parties negotiated the current labor contract, the parties agreed to modify the reclassification procedure to change the deadline for filing reclassification requests. The Union, however, neither sought, nor obtained, language changes that would affect Arbitrator McGilligan's interpretation of the agreement. Thus, the Union has acquiesced in the 1992 conclusion that the Personnel Committee's power is discretionary.

To conclude that this case presents a materially different issue than that presented to Arbitrator McGilligan would be illogical. It makes no sense to interpret a purely discretionary power in a mandatory fashion. It would be like saying, you do not have to eat, but if you do, you must have steak.

Proof of past practice must be unequivocal. The evidence unequivocally supports the interpretation that the County has consistently regarded its power to reclassify as discretionary and has defended that position in arbitration and prevailed.

Not every previous action of an employer constitutes a binding past practice. The prior decision of the County to continue reclassified employees at the same Step involved the exercise of discretionary authority.

The evidence of "so-called" past practice is insufficient to establish that the County has agreed to relinquish any of its discretion to grant, or deny, reclassification requests. Nor is it sufficient to establish that the County has agreed to continue reclassified employees at the same step.

The Union has not established the long-standing, mutually agreed-upon condition of employment that constitutes a past practice. Thus, the evidence of past practice does not dictate the terms of the parties' collective bargaining agreement.

The contractual provisions on wages, found in Article XXIII, do not state that advancement along steps is determined by length of service with the County. Rather, the steps are designed to compensate employees for experience in a particular position and classification grade. To accept the Union's contention that, once an employee has worked for 42 months in the County they are entitled to the fourth step in any classification the employee assumes, would read into the contract language that does not exist.

Section 23.07 ties compensation to tenure. The inclusion of such specific language is probative that the parties did not have any such understanding with respect to step placement.

A reclassification is not a surrogate for a pay raise. It is meant to adjust the classification of a position when substantial changes in the duties of the position have essentially created a new position.

The result requested by the Union, which would limit the County's ability to reclassify in a fiscally prudent manner, could result in the rejection of reclassifications that would otherwise be granted. Thus, the acceptance of the Union's position could harm, rather than help, the interests of the unit members.

If there is to be a change in the *status quo*, deference must be given to the right of the County, acting as a legislative body, to evaluate the many competing demands on public resources which are presented at any given time. In deciding whether or not to grant the reclasses, the Personnel Committee had to take into consideration the cost of the other needs of the County. This decision, made by elected officials, is part of the democratic process, and is entitled to special consideration in the process of collective bargaining.

In CITY OF BROOKFIELD V. WERC, 87 WIS. 819, 275 N.W.2D 723 (1979), the Wisconsin Supreme Court found that the determination of the level of services to be provided and the amount of tax revenue to be provided was one in which the public ought to be involved through the political process. Because the decision to reclass was committed to the discretion of the County, it is inappropriate and unlawful for the arbitrator to take away that discretion by ordering a remedy which effectively compels the County to raise taxes. There is substantial authority in Wisconsin law to establish that a legislative body that is induced to enact a policy by an invalid element of a proposal may not be bound to the remainder of that proposal (cites omitted).

The language of the agreement, as well as logic, dictates that the grievance be rejected on its merits. Assuming arguendo, that the Union prevails on the merits, the Union's proposed remedy is inappropriate.

It is undisputed that the County Personnel Committee acted on the assumption that it had the discretion to grant part of the reclassification requests of the employees. The County's decision to grant the reclassification requests by increasing the class grade (and thereby the maximum potential pay rate) of an employee, but decreasing the step, was made for legitimate fiscal reasons. If the County's assumption that it had the authority to make this reclassification decision is found to be incorrect, then deference to the rights of the County as a unit of government requires that the matter be remanded for reconsideration of the reclassifications

under the rule established by the arbitrator.

DISCUSSION

The Grievance on the Reclassification of the Five Case Managers

On October 10, 2000, the County Personnel Committee passed a Resolution that approved the reclassifications of five Case Managers. These five are Sharon Maybee, Barb Zeimet, Crystal Linse-Moilien, Alice Olson, and Shirley Johnson. As a result of the reclassifications, each of these five employees, hereafter Grievants, were placed at Level L and at one Step below the Step that they had occupied as Case Managers.

The Union does not challenge the decision of the County to place the Grievants at Level L. Rather, the Union challenges the County's failure to maintain the Step placement of each of these Grievants.

The Grievants requested and received their reclassifications pursuant to Section 21.02 of the parties' collective bargaining agreement. Section 21.02 is silent with respect to the issue of the reclassified employee's placement on the contractual salary schedule. Relying upon this silence, the reserved management rights and a prior Award of Arbitrator Dennis McGilligan, the County argues that the reclassified employee's placement on the contractual salary schedule is solely within the discretion of the County.

In his Award, Arbitrator McGilligan noted that the Union had argued that the County acted in an arbitrary, capricious and unreasonable manner by its method of considering the Grievants' requests for reclassification and concluded that, "in effect, the Union is requesting that the Arbitrator hold the County to a minimum standard of review regarding reclassification requests." Arbitrator McGilligan responded to this "request" of the Union by stating "The Arbitrator is unconvinced by the Union's contention and will not read something into the agreement which the parties did not bargain nor which is not there. If the parties had intended that the County should be held to a minimum standard of reasonableness in its treatment of reclassification requests, the parties could have so stated in the agreement."

Following the issuance of the McGilligan Award, the parties modified the language of Section 21.02. This modification, which changed the date by which reclassification requests must be submitted, is not material to the instant dispute.

Arbitrator McGilligan interpreted Section 21.02 for the purpose of determining the County's right to approve, or disapprove, reclassification requests. Inasmuch as this right is not at issue in the present case, Arbitrator McGilligan's construction of Section 21.02, while instructive, does not control the resolution of this grievance.

Having made the decision to reclassify the Grievants to Level L, the County must pay the Grievants in a manner that is consistent with the wage schedule that has been bargained by the parties. As set forth in Section 23.01, the wage schedule that has been bargained by the parties is set forth in Appendix A.

Appendix A provides Level A through Level M. Each Level contains various positions and each position within a Level has the same wage progression. This wage progression consists of six pay "Steps", i.e., "Prob/Start;" "Step 1/6 Mo."; "Step 2/18 Mo."; "Step 3/30 Mo."; "Step 4/42 Mo." and "Step 5/54 Mo." With respect to the "L Level", the 2000 pay "Steps", from "Prob/Start" to "Step 5/54 Mo.," are $2017.66; 2086.78; 2158.67; 2233.42; 2311.18, and 2392.04, respectively.

Appendix A does not express a requirement that reclassified employees be placed on the Step that they previously enjoyed. Moreover, the language of Appendix A is ambiguous with respect to entitlement to a wage Step. This ambiguity springs from the fact that the initial Step, i.e., "Prob./Start" may be reasonably construed to apply to both new hires and current employees that are "starting" a new position.

As the County argues, Section 23.07, which provides for a longevity payment, expressly states that entitlement to longevity is "… computed from the date of employee hire." Standing alone, the fact that the parties chose to expressly state the manner in which longevity was computed and were ambiguous with respect to the manner in which employees were placed on the Steps of the wage schedule could reasonably support the conclusion that the parties did not mutually intend step placement to be a function of longevity within the County.

Section 23.07, however, does not stand alone. The reason being that the issue of the appropriate placement on the Steps of the wage schedule was specifically addressed and decided in a prior Award of Arbitrator Amedeo Greco.

In this Award, Arbitrator Greco reviewed the contract language and the practices of the parties, and concluded that "…. the contractual wage schedule contains a unified wage progression schedule which pegs step increases to the amount of time employes work for the County, without any requirement that all of the time must be worked in a particular department."

Arbitrator Greco's conclusion that "the contractual wage schedule contains a unified wage progression schedule which pegs step increases to the amount of time employes work for the County…," is an express rejection of the County's argument that "Steps are designed to compensate employees for experience in a particular position and classification grade" and resolves the ambiguity of Step placement that is reflected in the language of Appendix A.

parties, through a subsequent material modification of the contract language or other conduct, demonstrate that the parties have mutually agreed otherwise.

The record fails to demonstrate that the parties have made any material change to the contract language that was interpreted by Arbitrator Greco. There is evidence, however, that following the issuance of Arbitrator Greco's Award in 1992, employees were placed on Steps in a manner that is inconsistent with their length of service with the County. (See "2000" Appendix A and Joint Exhibit #13).

Specifically, the evidence indicates that, when "non-union" employees were brought into the bargaining unit in 1998, they were initially placed on a Step that is higher than that which would be required by their length of service. The record fails to establish the reason for this conduct. Nor does the record demonstrate whether this conduct was, or was not, the result of the mutual agreement of the parties.

The evidence of the placement of these "non-union" employees demonstrates that, once the initial placement was made, these employees moved to higher Steps on the basis of additional service with the County. (See "2000 Appendix A, Next Step for Olson and Linse-Moilien) Neither the evidence of these "non-union" employees, nor any other record evidence, demonstrates that employees, other than those whose reclassifications are in dispute herein, moved to a lower Step.

In summary, the evidence of the subsequent conduct of the parties does not demonstrate that the parties have mutually agreed not to be bound by the Award of Arbitrator Greco. Giving effect to this Award, the undersigned is persuaded that Step movement is a function of service with the County and that the County does not have authority to alter the Step placement of any employee, except when that employee's additional service with the County entitles the employee to move to the next Step. Accordingly, the County violated the collective bargaining agreement when it placed Sharon Maybee at Step 3; when it placed Barb Zeimet at Step 4; when it placed Crystal Linse-Moilien at Step 4; when it placed Alice Olson at Step 3; and when it placed Shirley Johnson at Step 4.

Clerk-Typist Grievance

On October 10, 2000, the County also approved the reclassification of Clerk-Typist, Jean Miller, from a Level A to Level B. Prior to the reclassification, Miller was at Step 5. After the reclassification, Miller was at Step 4. The County argues that the grievance regarding Miller's reclassification, which was received by the County on May 1, 2001, was not timely filed.

The "Grievance Procedure and Arbitration" provision includes the following:

> 5.02 In the event of any disagreement concerning the meaning or application of any provisions of this Agreement, such disagreement shall be resolved in the manner hereinafter set forth; however, no matter not involving the interpretation or application of this Agreement shall be subject to these procedures. It is further provided that any grievance must be timely filed within fifteen (15) calendar days of occurrence in order to be deemed a valid grievance.

Inasmuch as Miller's reclassification occurred in October of 2000, the grievance on this reclassification was not filed within fifteen calendar days of occurrence. However, in his Award, Arbitrator Greco concluded that inappropriate placement on the wage schedule "constitutes a new violation of the collective bargaining agreement." Arbitrator Greco went on to state "It is a well-recognized principle of arbitral law that such continuing grievances are not time-barred by contractual deadlines, absent express contract language to that effect which is not present here."

Arbitrator Greco's interpretation of the parties' contract is binding upon the parties unless the parties, through a subsequent material modification of the contract language or other conduct, demonstrate that the parties have mutually agreed otherwise. The record does not so demonstrate.

Giving effect to Arbitrator Greco's decision that inappropriate placement on the wage schedule gives rise to a continuing contract violation and that such continuing contract violations are not time-barred by the parties' collective bargaining agreement, the undersigned concludes that the grievance filed by the Union on behalf of Jean Miller is timely. For the reasons discussed above, the County violated the parties' collective bargaining agreement when it placed the reclassified Jean Miller at Step 4.

Remedy

Notwithstanding the County's argument to the contrary, the fact that the County misunderstood its contractual obligations with respect to Step placement does not provide a reasonable basis to either rescind the reclassification decisions, or to remand the reclassification decisions back to the County for further consideration. Rather, the appropriate remedy for the County's violation of the collective bargaining agreement is to require the County to comply with its contractual obligations by placing Jean Miller, Sharon Maybee, Barb Zeimet, Crystal Linse-Moilien, Alice Olson, and Shirley Johnson on the Step to which they are contractually entitled

and to make these employees whole for all wages and benefits lost as a result of the County's violation of the collective bargaining.

However, consistent with Arbitrator Greco's Award, the undersigned concludes that, with respect to Jean Miller only, the make whole remedy should be from May 1, 2001 onward. The reason being that it would not be appropriate to make the County pay back wages prior to the time that the Union brought its grievance regarding Miller's inappropriate Step placement to the attention of the County.

Contrary to the argument of the County, the remedy awarded by the Arbitrator does not alter the status quo on a mandatory subject of bargaining. Neither CITY OF BROOKFIELD, nor any other case cited by the County, requires the conclusion that it is unlawful, or inappropriate, for the Arbitrator to require the County to comply with its contractual obligations.

Based upon the above and foregoing and the record as a whole, the undersigned issues the following:

AWARD

1. The Clerk-Typist grievance is not barred by the time limitations set forth in the parties' collective bargaining agreement.

2. The County violated the collective bargaining agreement by approving reclassification requests pursuant to Section 21.02 and then placing affected employees on a lower pay step of the new pay grade.

3. The appropriate remedy for the County's violation of the collective bargaining agreement is to immediately:

a) place Sharon Maybee, Barb Zeimet, Crystal Linse-Moilien, Alice Olson, and Shirley Johnson on the Step of the wage schedule that each would now be but for the County's placement of these employees on a lower pay step at the time of their reclassification and make these employees whole for all wages and benefits lost as a result of the County's

placement of these employees on a lower pay step at the time of their reclassification.

b) place Jean Miller on the Step of the wage schedule that she would now be but for the County's placement of Jean Miller on a lower pay step at the time of her reclassification and make Jean Miller whole for all wages and benefits lost as a result of the County's placement of Jean Miller on a lower pay step at the time of her reclassification from May 1, 2001 onward.

Dated at Madison, Wisconsin, this 11th day of July, 2002.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator

CAB/gjc

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