BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

DOOR COUNTY COURTHOUSE EMPLOYEES LOCAL #1658, AFSCME, AFL-CIO

and

DOOR COUNTY

Case 142
No. 63885
MA-12738

(Bryan Grievance)

Appearances:

Mr. Michael J. Wilson, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin, appearing on behalf of Local 1658.

Mr. Grant P. Thomas, Corporation Counsel, Door County, 421 Nebraska Street, P.O. Box 670, Sturgeon Bay, Wisconsin, appearing on behalf of Door County.

ARBITRATION AWARD

Door County Courthouse Employees Local #1658, AFSCME, AFL-CIO, hereinafter "Union," and Door County, hereinafter "County," Wisconsin Council 40, hereinafter "Union," requested that the Wisconsin Employment Relations Commission provide a panel of arbitrators to the parties in order to select an arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was selected to arbitrate the dispute. The hearing was held before the undersigned on February 2, 2005, in Sturgeon Bay, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing briefs. The Union declined to file a reply brief. The County filed a reply brief which was received on April 18, 2005, whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there were no procedural issues in dispute and framed the substantive issue as follows:

> Did the Employer violate the collective bargaining agreement or the Memorandum of Understanding when it refused to place the Grievant, Sarah Bryan, at Level 7 of Pay Grade I? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE 6 – SENIORITY

A. Definition: It shall be the policy to recognize the seniority principle. Seniority time shall consist of the total calendar time elapsed since the date of original employment with the Employer to a position in the bargaining unit, provided, however, that no time prior to discharge for just cause or quit shall be included, and provided that seniority shall not be diminished by temporary layoffs or leaves of absence or contingencies beyond the control of the parties to this Agreement.

No seniority credit will accrue whole an employee is on leave of absence including time spent.

E. **Loss of Seniority**: Seniority shall be lost if an employee:

1. Is discharged for just cause;

2. Retires or voluntarily quits;

3. Is absent without notice for three (3) consecutive work days;

4. Upon recall, fails to notify the County within one (1) week of his or her intentions or fails to report for work at the end of one (1) week following receipt of notice of recall unless illness or other justifiable circumstances prevent him or her from doing so; or

5. Fails to return to work from a leave of absence within seven (7) days of expiration of said leave, unless physically unable to return to work.

F. Trial Period: An employee, upon being promoted or transferred to another classification, shall serve a trial period of then (10) work days in the new classification. An employee who cannot do the work of the new classification, within the ten (10) work days trial period, shall be returned his or her former position. The Employer may step the employee back to his or her former position at any time during the trial period provided that such action is not arbitrary, capricious, or unreasonable. The employee may return to his or her former position if he or she so elects during the initial ten (10) work days of the trial period upon written notice to his or her Department Head.

As provided herein, the employee shall be entitled to the pay rate for the position he or she is promoted or transferred to, effective the date the employee performs the function of the new position, unless the employee is stepped back or returns to his or her former position. The ten (10) work day trial period may be waived by mutual written agreement between the parties. Continued service beyond the ten (10) work day trial period shall be deemed evidence of satisfactory completion of the trial period.

ARTICLE 25 – SALARY SCHEDULE AND PAY PLAN

A. Step Increase: All new hires after January 1, 1991 will start at the normal start level and will progress through their steps on their anniversary date.

The position placement, pay ranges and Pay Plan are as follows in this Article.

B. Door County Courthouse Employees Union Salary Schedule

. . .

JOB TITLES 2004	Start STEP1	6 mths. STEP2	1 Yr. STEP3	2 Yrs. STEP4	3 Yrs. STEP5	4 Yrs. STEP6	5 Yrs. STEP7
I.Bus Driver (Senior Resource Center) Clerk Typist I Deputy I (Register of Deeds)	10.87	11.03	11.20	11.53	11.38	12.24	12.60

JOB TITLES 2004	Start STEP1	6mths. STEP2	1 Yr. STEP3	2Yrs. STEP4	3 Yrs. STEP5	4Ys. STEP6	5 Yrs. STEP7
E. Custodian II Child Support Specialist III Deputy II (Clerk of Courts) Deputy III (Clerk of Courts) Secretary III Victim Witness Coordinator Benefit Advisor (Senior Resource Ctr) Administrative Assist/Acct Clk (Public Health) Deputy IV (Treasurer&Reg.of Deeds) Deputy IV (County Clerk) Judicial Assistant SWCD Administrative Assistant Account Clerk (Child Support)	12.99	13.18	13.38	13.78	14.15	14.62	15.06

. . .

C. **PAY PLAN**

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

2. **Promotions**: When an employee moves to a position in a higher pay class, such move shall be deemed a promotion and the employee's pay shall be increased to the minimum rate for the higher class. If the employee's rate is equal to or exceeds this minimum, the rate shall be increased to the next higher step in the new class.
3. **Transfer**: An employee transferring to a position in the same salary grade shall maintain his/her hourly rate.

4. **Movement Downward**: An employee who is demoted or voluntarily moves to a position in a lower classification shall be paid the rate, which is within the range for that position. If the employee's rate is above the highest rate for the new position, his/her rate shall be reduced within the position range. If the employee's rate is within the range for the position the employee shall maintain his/her present rate. Movement to the next step shall be as described in #5.

. . .

BACKGROUND AND FACTS

The Grievant was hired by the County in 1999 to a Clerk/Typist position for the County Social Services Department. The Grievant held this position for two years until she was offered the Judicial Assistant position for the Honorable Todd Ehlers, Branch I, Door County Circuit County Judge. The Judicial Assistant position is at Pay Grade E, Step 3, which has an hourly rate of $12.96.

In May of 2003, Judge Ehlers exercised judicial appointment authority and removed the Grievant from the Judicial Assistant position. At the time of the Grievant's removal, there were no County employment vacancies and the Grievant accepted a position working for Kewanee County.

In October of 2003, the County offered the Grievant the position of Clerk Typist I in the District Attorney's office. The offer indicated that Grievant would be at Pay Grade Level I, Step 7, which is the hourly rate of $12.21 and that there would be a thirty (30) day trial period. The Grievant rejected the offer.

The Grievant was offered and accepted the position of Public Health Aide in the Public Health Department on January 30, 2004. The written offer indicated the Grievant would be paid at Pay Grade Level J, Step 1, and that the there would be a 10-day trial period. The Grievant accepted the position, but did not complete the trial period. The Grievant did not challenge the pay grade or step placement for this position.

On March 15, 2004, Jetke sent the Grievant the following letter:

Dear Ms. Bryan:

> This is to confirm the offer of the position of Clerk Typist I in the Corporation Counsel's office for which you posted for under the terms of the bargaining agreement between Door County and Courthouse Employees Union Local 1658, AFSCME. The Clerk Typist I is Pay Grade Level I and you will be placed at Step 1, which is $10.87 per hour when you start the ten-day trial period.
>
> The established start date of your 10-work day trial posting period is Monday, March 22, 2004. Please complete the bottom of this letter and return the original to the Human Resources Office, the copy is for your records.
>
> I wish you the best in your new position. Should you have any questions in this matter, please feel free to call me. Thank you.

. . .

CC: Grant Thomas, Corporation Counsel
Linda Viste, Steward, Courthouse Employees Union Local 1658, AFSCME Steward

I intend to start the Clerk Typist position in the Corporation counsel's Office on Monday, March 22, 2004.

Sarah J. Bryan /s/	3/19/04
Sarah J. Bryan	Date

. . .

The Grievant modified the letter by crossing out the reference to "Step 1" and the hourly wage rate by writing in "to be negotiated according to contract, page 26" and in the last sentence by crossing out "Monday, March 22" and writing in "a date to be determined by H.R. and myself." The Grievant signed the offer of employment.

The Union sent an email correspondence to Jetzke on May 21 alleging that the County had violated the labor agreement when it limited the Grievant's hourly wage to Step 1. Jetzke denied the grievance on May 26, 2004, with the following response:

. . .

Dear Mr. Rainford:

This is in reply to your May 21, 2004 e-mail. Please deem this to be the Department Head's and Human Resources Director's written answer to the grievance.

The current state of affairs accurately reflects any agreement between, and the intent of, the parties. Further, the status quo is amply supported by relevant past practice. An upward adjustment to Ms. Bryan's wage rate is simply neither warranted nor necessary.

. . .

Thereafter, the parties agreed to hold the grievance in abeyance pending possible settlement at the bargaining table. When an amicable resolution did not result, the parties proceeded to arbitration.

These two parties addressed the removal of a Judicial Assistant in 2002 by Judge Ehlers. The Union filed a grievance and in advance of hearing, the parties negotiated the following memorandum of understanding to address:

MEMORANDUM OF UNDERSTANDING CONCERNED THE REMOVAL OF BARGAINING UNIT MEMBERS AT THE DISCRETION OF AN ELECTED OFFICIAL

County of Door (County) and Door County Courthouse Employees (DCCE) hereby agree as follows:

A. This Memorandum of Understanding is driven by and responsive to an exercise of judicial authority in the removal or appointment of a judicial assistant.

B. This Memorandum of Understanding shall apply only to positions affected by the statutory or common law authority of certain elected officials' powers of appointment and removal.

C. A position subject to appointment/removal by an elected official:

1. Continues to be included in the bargaining unit;
2. Is not subject to the bumping or posting provisions of the collective bargaining agreement;
3. Shall not be posted, but if the elected official requests applicants, a notice of such vacancies or new positions and a copy of this agreement shall be posted in the same locations as regular job postings for a minimum of five working days. Unsuccessful applicants for said positions may not grieve the selection process.

D. A bargaining unit member appointed to a position by an elected official are subject to the provisions of the collective bargaining agreement in all respects except for those that conflict with an elected official's powers to appoint and remove.

E. A bargaining unit member appointed to a position by an elected official and subsequently removed by an elected official:

1. May post and will be given preference according to Article 6 Seniority D Job Posting of the Agreement for vacancies in the bargaining unit for a period of twenty-four months;
2. Has no right to bump;
3. Shall be in "removed" status in lieu of "lay off" while exercising his or her posting rights and the requirements of Article 6, Seniority B, shall not apply.

F. Bargaining unit members who posted (versus appointed) to a position and are subsequently removed from that position by an elected official, may exercise their rights according to Article 6 Seniority of the Agreement. Temporary employees need not be laid off first and the two week layoff notice requirement is waived for any layoffs directly resulting from such removals.

G. Karin Heldmann will fill, commencing January 6, 2003, the Clerk Typist position (pay grade I, step 1) in the office of the Corporation Counsel. If such position is not approved by the door County Board of Supervisors, or Ms. Heldmann declines to accept the position, then Ms. Heldmann may post for vacancies and will be given preference according to Article 6 Seniority D. Job Posting of the Agreement for vacancies in the bargaining unit for a period of twenty-four months. Ms. Heldmann will be required to serve a trial period of twenty working days during which she or the Employer may step her ask to removed status with posting rights for the remainder of her posting period.

H. DCCE shall dismiss all pending grievance(s) concerning this issue as soon as practical after the signing of this memorandum of Understanding. Such dismissals shall be without costs or prejudice to either party.

I. This Memorandum of Understanding may be changed or amended by mutual written agreement of the parties at any time.

J. No change to or amendment of this Memorandum of Understanding will be effective until such is set forth in writing and signed y the parties.

K. This memorandum of Understanding shall be in effect from October 31, 2002 through December 18, 2004.

. . .

As part of the settlement, Karin Heldmann was offered and declined the position of Clerk Typist I in the Office of Corporation Counsel. That offer for employment indicated that Heldmann would have been placed at Step 1 of the Clerk Typist I pay grade and would serve a trial period of 20 days.

Further facts, as relevant, are contained in the **DISCUSSION** section below.

ARGUMENTS OF THE PARTIES

The Union

The County violated the simple language of the collective bargaining agreement, specifically, the trial period and pay step assignment terms, when it offered the Grievant the Judicial Assistant position at Pay Grade I, Step 1.

Starting with the Memorandum of Understanding, the Grievant is covered by Sections D and E; she was appointed to the Judicial Assistant position by Judge Ehlers. Section D provides in crystal clear language that she is subject to the collective bargaining agreement in all respects except those in conflict with an elected official's power. Judge Ehlers does not have the authority to determine the Grievant's pay rate, therefore the collective bargaining agreement, specifically Article 25, applies.

The Grievant is entitled to the same treatment as any other employee who posts into a position. Section E of the Memorandum reaffirms her posting rights and it follows that the pay regulations of the labor agreement will apply to the Grievant just as they apply to other employees.

The clear language of Article 25 cannot be countermanded by previous offers to the Grievant or the County's erroneous prior offers. The Memorandum was never intended to serve as an amendment to the trial period or pay regulations of the labor agreement. Neither the testimony of the union spokesperson nor the exhibits from the negotiations support the County's position.

As to the County's reliance on Section G, it specifically names Heldmann and applies exclusively to Heldmann. Throughout Section G, there are multiple references to Heldmann personally; both in terms of her name and identifying her as "she" or "her." This Section was drafted to settle Heldmann's grievance.

The County proposes that Section G is applicable, but it has failed to consistently follow its own proposed interpretation of the section. Heldmann was to serve a 20-day trial period, thus if Section G was controlling, all employees who are in the same situation should

serve a 20-day trial period. The Grievant was not expected to complete a 20-day trial period for either the Public Health position or the Clerk Typist position she currently holds.

The clear language of the collective bargaining agreement proscribe that the Grievant was entitled to pay assignment at Grade I, Step 7. The grievance should be sustained.

The County

The County first asserts that the grievance is procedurally defective in as much as it was untimely and therefore should be dismissed. The Grievant became aware of the underlying facts and circumstances on or about March 15, 2004, but waited until May 20, 2004, to take any action. Her action at that time was nothing more than an email correspondence which fails to comply with the negotiated first step in the grievance process. The grievance is procedurally untimely and filed in an insufficient manner and therefore should be dismissed.

As to the substantive issue, the County maintains that the Memorandum of Understanding, drafted within the legal context of elected official authority, is clear and unambiguous, consistent with the labor agreement, and is supported by past practice.

Following the Wisconsin Supreme Court's lead in BARLAND V. EAU CLAIRE COUNTY, 216 WIS.2D 560, 575 N.W.2D 691 (1998), circuit court judges have the constitutional authority to remove judicial assistants and a collective bargaining agreement shall not infringe upon that right. In response to BARLAND and following the removal of Karin Heldmann by Judge Ehlers in 2002, the County negotiated a Memorandum of Understanding to address what the County would do when a judicial officer exercises the BARLAND right. That Memorandum of Understand would appropriately be called "gap filling" and is applicable in this situation since it is a more specific provision as compared to the general provisions of the collective bargaining agreement. See GOLDMANN TRUST V. GOLDMAN 148 WIS.2D 141, 131 N.W.2D 902 (1965).

The Memorandum of Understanding is clear and unambiguous and it must be enforced. The language provides that sets forth and limits the Grievant status and entitlement following her removal as judicial assistant. Accepting the legal maxim, "expression *unios est* exclusion *alterius*." The Memorandum establishes how the parties intended to address this situation. Paragraph F of the Memorandum does not apply because the Grievant did not post into the position. Paragraph G places the Grievant at step 1 of pay grade 1.

The parties past practice supports this reading of the Memorandum. The Grievant accepted the position of Public Health Aide at Step 1 of Pay Grade 1. This offer and acceptance is evidence of the mutuality of understanding between the Union and the County as to the step and grade for the Grievant. There was no mutual assent when the County offered

the Grievant the Clerk Typist 1 position in the District Attorney's office at Step 7 since she did not accept this position. Moreover, that offer was an error and would have been caught by the County prior to the Grievant accepting the position.

As to the labor agreement, Article 6 governs postings and preferences. There is no bargained language that addresses the salary schedule placement of a person in "removed" status who posts for a position. Ultimately the Grievant's status will need to be determined and a person in "removed" status is more akin to a "new" employee than a current employee.

The Union Reply

The Union declined to file a reply brief.

The County Reply

Recognizing that the County and Union have different views of the spirit and purpose of the 2002 Memorandum of Understanding, the County maintains that the Memorandum should be interpreted according to its literal terms. It is unnecessary to resort to extrinsic evidence, specifically the testimony of Staff Representative Rainford's regarding his recollection of the negotiation discussion for the Memorandum because the language is clear.

The distinctions contained in the Memorandum are relevant. The parties distinguished between bargaining unit members appointed and presently holding a position and those in removed status. The Grievant was in removed status and therefore, Section D does not apply. Section E is applicable and the Grievant is entitled to its' protection and benefits. These benefits include preferential treatment to post for a position within a definite period of time.

The collective bargaining agreement does not address the circumstances presented in this grievance, which is why the Memorandum was created. The existence of the Memorandum is clear proof that of Union's and County's intent to distinguish "current" employees from persons in "removed" status.

There is no question that the Grievant was in removed status. She was separated from employment with the County, did not have a current rate of pay and returned from the outside to fill the vacant position. Her re-employment was not a promotion, transfer or movement downward; all of which are addressed in the parties' labor agreement and are the only instances in which the employee does not start at the minimum rate of pay. The only proper place to start the Grievant was at the minimum for the position and in doing so, the County was acting in accordance to the Memorandum of Understanding and the collective bargaining agreement.

For all of the above reasons, the County requests that the Arbitrator dismiss the grievance.

DISCUSSION

The first matter to address is the County's challenge to the procedural arbitrability of the grievance in its brief. The County asserts that the grievance is untimely given that the Grievant knew or should have known on or about March 15, 2004, that she would be paid at Pay Grade I, Step 1, and that since the grievance was not filed until May 20, 2004, then she has clearly exceeded the 30-day contractual time limit for filing a grievance. The parties agreed to the issues in this case and the County did not raise timeliness concerns. Moreover, the County did not present any timeliness issued during the processing of the grievance. As such, the County waived its right to any procedural objections.

Moving to the merits, the issue to be determined in this case is whether the Memorandum of Understanding, entered into by the parties in 2002, is applicable to the Grievant. More specifically, is what is the appropriate Step placement for the Grievant? The County maintains that the Memorandum is controlling while the Union believes that the collective bargaining agreement is controlling.

Looking to the Memorandum, Sections A, B and C explain why the parties entered into the Memorandum, which positions are covered by the Memorandum and how the collective bargaining agreement impacts on the covered positions. These are general clauses that relate to all positions and employees. The Grievant held the Judicial Assistant position for the Circuit Court Judge. The Judge has statutory rights to appoint individuals to this position and appointed the Grievant. There is no question that the Judicial Assistant position is a position intended to be covered by the Memorandum both in terms of the language contained in Section A, B and C and the fact that the very same position and was the impetus for the creation of the Memorandum.

In Section D, the Memorandum moves away from positions and begins to address individual bargaining unit members that are affected by the exercise of elected official authority and clarifies that they are subject to all provisions of the parties' labor agreement except those that are in conflict with the elected official's power and authority. The Grievant was appointed to the Judicial Assistant position and therefore this section applies to her.

Section E states that a bargaining unit member removed from a covered positions:

1. May post and will be given preference according to Article 6, Seniority D Job Posting of the Agreement for vacancies in the bargaining unit for a period of twenty-four months;
2. Has no right to bump;

> 3. Shall be in "removed" status in lieu of "lay off" while exercising his or her posting rights and the requirements of Article 6, Seniority B, shall not apply.

Thus, covered employees that are relieved of their duties by an elected official are not in lay off status, but rather are in the newly created "removed" status. Accompanying this status is preferential posting rights for 24 months. In addition, Article 6, Sections B and D are not applicable to these employees. The Grievant therefore, upon her removal, moved into "removed" status with preferential posting rights, albeit no bumping rights.

The County argues that Section D does not apply to the Grievant because she is not a bargaining unit member appointed to a position because she has been removed from that position. The County is in error. The purpose of the Memorandum of Understanding was to address the rights of a County employee who is relieved of their duties by an elected official with removal authority. In this instance, but for the exercise of statutory rights by the Judge, the Grievant would have been a bargaining unit member appointed by the elected official. The Grievant is clearly an individual "removed" from an appointed position and remains so for 24 months.

As to Section F it addresses "removed" employees that posted, rather than were appointed, to their position. The Grievant was appointed to her position, thus Section F is inapplicable.

Moving next to Section G, it states:

> Karin Heldmann will fill, commencing January 6, 2003, the Clerk Typist position (pay grade I, step 1) in the office of the Corporation Counsel. If such position is not approved by the Door County Board of Supervisors, or Ms. Heldmann declines to accept the position, then Ms. Heldmann may post for vacancies and will be given preference according to Article 6 Seniority D, Job Posting of the Agreement for vacancies in the bargaining unit for a period of twenty-four months. Ms. Heldmann will be required to serve a trial period of twenty working days during which she or the Employer may step her back to removed status with posting rights for the remainder of her posting period.

The Union argues that this Section was negotiated specific to Heldmann and is not applicable to the Grievant. The County disagrees and asserts that the terms of Heldmann's return to work, specifically, her pay grade, step, and trial period are applicable. Based on the language of the Memorandum, the organizational structure of the Memorandum which transitions from the general to specific and the evidence, I conclude that Section G was drafted for Heldmann and was not intended to address future individuals in the same position as Heldmann.

As previously addressed, the Memorandum initially addresses a large audience and broadly identifies the rationale for the Memorandum. The language narrows in the next section to identify what positions are covered by the Memorandum, further narrows in the subsequent section focusing to only those individuals who post into covered positions and then on those individuals appointed to covered positions in Section D. Herein the language also directs that the content of the collective bargaining agreement is applicable to all items not within the statutory purview of elected officials. Against this backdrop, I conclude that the intent of this section was to address all future individuals, like the Grievant, caught in the same predicament. As to Heldmann, it is unclear to me why the parties drafted Section E with more restrictive terms than the labor agreement. The parties' labor agreement provides employees with a ten-day trial period. The Memorandum provides Heldmann a 20-day trial period. It must be concluded that the parties were aware that the 20-day period was inconsistent with the labor agreement and further, that it was intended.

Finally, the evidence establishes that the Union sought during bargaining for the Memorandum for Heldmann to be placed at Grade I, Step 7 and that she serve a 10-day trial period. The Union was not successful. It is therefore reasonable to conclude that the parties have discussed the placement of a removed employee on the salary schedule. Unfortunately, there was little evidence offered to explain how the Union's offer of Step 7 and 10-day trial period became Step 1 and 20-day trial period. Suffice it to say that the County was more successful than the Union, but of relevance is the fact that Heldmann had no intention to return to work for the County. As such, it would seem more likely that the Union, with this knowledge, would focus more on the language that would be applicable in the future rather than focus on the terms for Heldmann's return to work when she had no intention to return. Given this and the nature of bargaining, it is not unreasonable to conclude that the Union gained something of import when it accepted the County's offer for Heldmann's pay and trial period. Finally, I find Staff Representative Rainford's memorandum of October 28, 2002 persuasive evidence that the parties negotiated more favorable treatment for future employees who find themselves in the same situation as Heldmann. The Memorandum reads in pertinent part

> . . . I remain frustrated that more could not be done for Karin [Heldmann]. However, I do believe that we have reached an agreement which grants all employees who may find themselves in Karin's position in the future the full rights of the Agreement. In addition, I think we have arrived at much needed clarification of the rights of employees appointed to such positions in the future . . .
>
> Ex. 24.

. . .

The District argues that the labor agreement does not address the rights of "removed" employees and therefore Section G is guiding. I disagree. The Memorandum defines a "removed" employee in Section E and specifically enumerates which sections of the labor agreement are not applicable to "removed" employees. This section follows Section D which indicates that covered employees are subject to the collective bargaining agreement unless the agreement is in conflict with the elected official's authority. Accepting the maxim, *expression unius est exclusion alterius*, the parties' meant to enumerate the sections of the bargaining agreement that are not applicable to "removed" employees and those contractual sections not listed are applicable to "removed" employees.

The Union argues that Article 25 of the labor agreement is therefore controlling and that the Grievant is entitled to placement at Grade I, Step 7. Looking to Article 25, it states in Section A that initial wage for new hires will be at the start level. The Grievant is not a new hire, therefore this section does not apply. Moving to Section B, it is the salary schedule by position and step. Section C provides a variety of employment actions; promotion, transfer, movement downward and change in classification. There is no question that the Grievant was not promoted or transferred to the Clerk Typist position. The Movement Downward subsection is applicable and reads as follows:

> . . . An employee who is demoted or voluntarily moves to a position in a lower classification shall be paid the rate, which is within the range for that position. If the employee's rate is above the highest rate for the new position, his/her rate shall be reduced to the highest rate within the position range. If the employee's rate is within the range for the position the employee shall maintain his/her present rate. Movement to the next step shall be as described in #5.
>
> . . .

The Grievant was a Grade E, Step 7, Judicial Assistant earning an hourly rate of $15.06 until she was removed. When she returned, she voluntarily posted for and accepted the Clerk Typist position at Grade I, Step 1, with an hourly rate of $10.87. Since the Grievant was paid at a higher classification and rate while performing as a Judicial Assistant, she is entitled to carry that rate with her to the Grade I Clerk Typist. Therefore, the Grievant is entitled to placement on the Grade I schedule at the Step 7 hourly rate of $12.60.

As to the remedy, I am unwilling to reward the Grievant for undue delay in filing of this grievance. The County is correct that the Grievant knew or should have known on March 15, 2004, that she would be paid at Step 1 rather than Step 7. It is also true that this is a continuing violation in as much as the erroneous placement on the salary schedule repeated itself with every pay check. As such, the remedy is limited.

AWARD

1. Yes, the Employer violated the collective bargaining agreement or the Memorandum of Understanding when it refused to place the Grievant, Sarah Bryan, at Level 7 of Pay Grade I.

2. The appropriate remedy is to pay the Grievant at the appropriate step consistent with this Award and to make her whole for all lost wages and benefits effective May 20, 2004, the date on which the grievance was filed.

Dated at Rhinelander, Wisconsin, this 14th day of November, 2005.

Lauri A. Millot, Arbitrator

Dag
6917