

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

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

and

**DOOR COUNTY**

Case 147  
No. 64135  
MA-12820

(Betty Neuville Grievance)

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**Appearances:**

**Neil D. Rainford**, Staff Representative, Wisconsin Council 40, AFSCME, 1311 Michigan Avenue, Manitowoc, Wisconsin 54220, on behalf of the Union.

**Grant P. Thomas**, Door County Corporation Counsel, 421 Nebraska Street, Sturgeon Bay, Wisconsin 54235-0670, on behalf of the County.

**ARBITRATION AWARD**

At all times pertinent hereto, the Door County Courthouse Employees, Local 1658, AFSCME, AFL-CIO (herein the Union) and the Door County (herein the County) were parties to a collective bargaining agreement dated August 13, 2002 and covering the period December 23, 2001 to December 18, 2004, and providing for binding arbitration of certain disputes between the parties. On November 2, 2004, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over an alleged violation of the collective bargaining agreement as a result of the County's refusal to reclassify Betty Neuville to the title of Administrative Assistant/Account Clerk, and requested the appointment of a member of the WERC staff to arbitrate the issue. The undersigned was designated to hear the dispute and a hearing was conducted on June 2, 2005. The proceedings were not transcribed. The parties filed briefs by July 12, 2005 and reply briefs by August 31, 2005, whereupon the record was closed.

## ISSUES

The parties stipulated to the following framing of the issues:

Did the County violate the collective bargaining agreement by refusing to reclassify the Grievant's position?

If so, what is the appropriate remedy?

## PERTINENT CONTRACT PROVISIONS

### ARTICLE 6 - SENIORITY

- G. Reclassification: If a position is reclassified by more than an accumulation of two (2) pay grades in a twenty four (24) month period it shall be posted.

The employer shall notify a Union Steward, designated by the Union, of any requested change in position classification, and also any decision regarding position reclassification, within ten (10) working days after the decision. Employer will furnish effected [sic] employee a written response to any reclassification request, setting forth the Employer's decision and reason for a denial. This notice shall be considered notice of the Employer's action for purposes of the grievance procedure.

### 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

#### Classifications and Wages For Contract Year 2004

Hourly Rates 12/21/2003 through 12/18/2004 3.25%

<b>JOB TITLES 2004</b>	<b>Start STEP 1</b>	<b>6 Mths. STEP 2</b>	<b>1 Yr. STEP 3</b>	<b>2 Yrs. STEP 4</b>	<b>3 Yrs. STEP 5</b>	<b>4 Yrs. STEP 6</b>	<b>5 Yrs. STEP 7</b>
J. Assistant Cook (Senior Resource Center) Custodian I Nutrition Site Manager (Senior Res. Center) Community Health Aide (Public Health) Receptionist (Senior Resource Center)	10.56	10.71	10.87	11.20	11.54	11.88	12.24

<b>JOB TITLES 2004</b>	<b>Start STEP 1</b>	<b>6 Mths. STEP 2</b>	<b>1 Yr. STEP 3</b>	<b>2 Yrs. STEP 4</b>	<b>3 Yrs. STEP 5</b>	<b>4 Yrs. STEP 6</b>	<b>5 Yrs. STEP 7</b>
I. Bus Driver (Senior Resource Center) Clerk Typist I Deputy I (Register of Deeds)	10.87	11.03	11.20	11.53	11.88	12.24	12.60

<b>JOB TITLES 2004</b>	<b>Start STEP 1</b>	<b>6 Mths. STEP 2</b>	<b>1 Yr. STEP 3</b>	<b>2 Yrs. STEP 4</b>	<b>3 Yrs. STEP 5</b>	<b>4 Yrs. STEP 6</b>	<b>5 Yrs. STEP 7</b>
H. Clerk Typist II Switchboard Operator Cook (Senior Resource Center)	11.99	11.56	11.74	12.09	12.45	12.82	13.21

<b>JOB TITLES 2004</b>	<b>Start STEP 1</b>	<b>6 Mths. STEP 2</b>	<b>1 Yr. STEP 3</b>	<b>2 Yrs. STEP 4</b>	<b>3 Yrs. STEP 5</b>	<b>4 Yrs. STEP 6</b>	<b>5 Yrs. STEP 7</b>
G. Administrative Assistant II Deputy I (Clerk of Courts) Assistant Veteran Service Officer Medical Assistant/Clerk (Public Health) Patient Account Specialist (Emer. Services) Community Health Aide/WIC (Public Health)	11.99	12.17	12.35	12.72	13.10	13.50	13.90

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<b>JOB TITLES 2004</b>	<b>Start STEP 1</b>	<b>6 Mths. STEP 2</b>	<b>1 Yr. STEP 3</b>	<b>2 Yrs. STEP 4</b>	<b>3 Yrs. STEP 5</b>	<b>4 Yrs. STEP 6</b>	<b>5 Yrs. STEP 7</b>
F. Deputy II (Register of Deeds) Administrative Assistant III Records Clerk (Sheriff's Dept.)	12.48	12.66	12.85	13.24	13.63	14.04	14.46

<b>JOB TITLES 2004</b>	<b>Start STEP 1</b>	<b>6 Mths. STEP 2</b>	<b>1 Yr. STEP 3</b>	<b>2 Yrs. STEP 4</b>	<b>3 Yrs. STEP 5</b>	<b>4 Yrs. STEP 6</b>	<b>5 Yrs. STEP 7</b>
E. Custodian II Child Support Specialist III Deputy I (Clerk of Courts) Deputy III (Clerk of Courts) Secretary III Victim Witness Coordinator Benefit Advisor (Senior Resource Center) Administrative Assist/Acct Clk (Public Health) Deputy IV (Treasurer & Reg. of Deeds) Deputy IV (County Clerk) Judicial Assistant Real Property Assistant Account Clerk (Child Support)	12.99	13.18	13.38	13.78	14.19	14.62	15.06

<b>JOB TITLES 2004</b>	<b>Start STEP 1</b>	<b>6 Mths. STEP 2</b>	<b>1 Yr. STEP 3</b>	<b>2 Yrs. STEP 4</b>	<b>3 Yrs. STEP 5</b>	<b>4 Yrs. STEP 6</b>	<b>5 Yrs. STEP 7</b>
D. Administrative Account Clerk (Highway) Custodian III Support Staff Coordinator (U.W. Extension)	13.21	13.40	13.60	14.01	14.43	14.86	15.31

JOB TITLES 2004	Start STEP 1	6 Mths. STEP 2	1 Yr. STEP 3	2 Yrs. STEP 4	3 Yrs. STEP 5	4 Yrs. STEP 6	5 Yrs. STEP 7
C. Maintenance Technician II Purchasing Agent/Printer (Finance)	13.46	13.66	13.87	14.28	14.71	15.15	15.61

JOB TITLES 2004	Start STEP 1	6 Mths. STEP 2	1 Yr. STEP 3	2 Yrs. STEP 4	3 Yrs. STEP 5	4 Yrs. STEP 6	5 Yrs. STEP 7
B. Admin. Assistant IV/Cost Accountant (Highway) Lead Worker (Child Support)	15.69	15.92	16.16	16.64	17.14	17.65	18.18

JOB TITLES 2004	Start STEP 1	6 Mths. STEP 2	1 Yr. STEP 3	2 Yrs. STEP 4	3 Yrs. STEP 5	4 Yrs. STEP 6	5 Yrs. STEP 7
A. Payroll/Accounts Payable Clerk (Finance)	16.18	16.42	16.66	17.16	17.68	18.21	18.76

Higher rate divided by 1.03 = lower rate

Exception: Step 2 equals midpoint between Step 1 and Step

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 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.

5. **Wage Steps:** The rates and steps shall be prescribed in the pay schedule. Employees shall be granted step increases as indicated, based on the length of time in the position.
6. **Change in Classification:** Any change in classification shall be recommended by the Department Head and approved by the Administrative Committee. The provisions governing promotions and movement downward shall apply in determining the new pay level.

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### **BACKGROUND**

Door County and Local 1658 have a collective bargaining agreement which categorizes the various job classifications in the bargaining unit into pay grades. In 2004, the highest pay grade (A) received a top wage rate of \$18.76 per hour, whereas the lowest pay grade (J) received a top wage rate of \$12.24. Betty Neuville, the Grievant herein, has been employed by Door County for thirteen years as an Administrative Assistant II in the County's Senior Resource Center. The Administrative Assistant II position is in pay grade G and, in 2004, earned a top wage of 13.90. The job description for her position is as follows:

### **ADMINISTRATIVE ASSISTANT II DOOR COUNTY UNIT ON AGING**

#### **GENERAL SUMMARY OF POSITION:**

Perform numerous and varied bookkeeping and administrative support duties to insure the accurate and efficient operation of the agency's financial, statistical and clerical requirements. Reports to the Director of the Unit on Aging.

#### **ESSENTIAL DUTIES AND RESPONSIBILITIES:**

1. Maintains accurate financial records such as subsidiary ledgers, journals, registers and accounts.
2. Assists in and/or develops and maintains internal controls for bookkeeping system.

3. Prepares and distributes all payroll and purchase vouchers for payment. Matches invoices to vouchers and files accordingly, reconciles bank statements.
4. Prepares, assembles and coordinates necessary paperwork for agenda's, reports, bills, payroll and other documents in a timely manner.
5. Types, proofreads, makes copies, assembles, and mails required correspondence, and reports (financial and statistical).
6. Answers the telephone and provides information or refers to appropriate authority, provides information and assistance to walk-in clients.
7. Keeps office procedure manual current.

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

1. Good knowledge and understanding of bookkeeping (double entry accounting) terms, practices and procedures.
2. Knowledge of modern office practices and procedures.
3. Ability to type neatly and accurately at 40 words per minute.
4. Ability to develop and maintain accurate records systems.
5. Ability to maintain confidential information.
6. Ability to establish and maintain effective working relationships with other employees, the public and elderly individuals.

**EDUCATION AND EXPERIENCE:**

1. High school diploma or equivalent supplemented by additional courses in accounting and bookkeeping.
2. A minimum of one year of experience in keeping accounting records and subsidiary journals under a double entry accounting system.

**PHYSICAL REQUIREMENTS AND ENVIRONMENTAL DEMANDS:**

- ❖ Office environment with normal distractions such as walk-in inquiries

and from dining room during meal times.

- ❖ Nearly continuous sitting with intermittent standing or stooping.
- ❖ Very frequent use of equipment requiring a high degree of dexterity, adding machine/calculator, typewriter/keyboard.
- ❖ Very frequent oral communication with other employees and members of the public both face to face and over the telephone.

### **DISCLAIMER**

“The above statements are intended to describe the general nature and level of work being performed by people assigned to this job. They are not intended to be an exhaustive list of all responsibilities, duties, and skills required of personnel so classified.”

In July 2004, Neuville applied to the Door County Senior Resource Commission for a reclassification of her position to that of Administrative Assistant/Account Clerk, which is in pay grade E and, in 2004, earned a top wage of \$15.06. There is an Administrative Assistant/Account Clerk position in the Public Health Department, the job description for which is as follows:

### **ADMINISTRATIVE ASSISTANT/ACCOUNT CLERK PUBLIC HEALTH**

#### **GENERAL SUMMARY OF POSITION:**

Reports to Director of Public Health Department/Health Officer, assists in management of office practices and procedures, as well as coordination and completion of office clerical duties.

#### **PRINCIPAL DUTIES AND RESPONSIBILITIES:**

1. Acts as lead clerical staff person and performs office management/coordination of status of office project assignments.
2. Types and files department correspondence.
3. Maintain department records and accounts, cash receipts, and department and project budgets.
4. Prepare monthly vouchers and program billings.



5. Compile statistical information and prepare reports to federal, state, district, and local agencies.

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6. Maintain inventory of office and nursing supplies.
7. Maintain personnel, inservice, communicable disease, and program records.
8. Screen and register clients for immunization program.
9. Assist Director of Public Health Department/Health Officer in evaluating performance of other clerical staff employees.
10. Screen citizen requests and provide information or referral to appropriate public health staff member or agency.

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

1. Possess the ability to read, comprehend, and communicate both verbally and in writing, at a level normally associated with completion of a high school degree or equivalent training.
2. Knowledge of office and public health practices, procedures, and policies.
3. Skill to operate office clerical equipment at reasonable rate of speed and accuracy, to include: typewriter, computer, calculator, and word processor.
4. Ability to work with many distractions due to noisy, stressful clinic conditions (WIC, immunization)
5. Specialized training in bookkeeping and basic accounting.
6. Knowledge of medical terminology is desired/required.
7. One year or more of progressively responsible clerical work experience in a public health environment is desired.
8. Ability to use tact and courtesy in dealings with employees, supervisors, officials, clients, or other county and outside agencies.
9. Capable of maintaining records of a confidential and personal nature with confidentiality.

10. Able to use independent judgement and discretion involving routine matters.

### **WORKING CONDITIONS:**

Office environment offers little or no discomfort due to extreme temperatures, dust, wetness or the like, but is often noisy due to presence of infants or young children. May come in contact with body fluids and must use preventive methods to evade contracting communicable diseases. Lack of office space may exist.

### **DISCLAIMER**

“The above statements are intended to describe the general nature and level of work being performed by people assigned to this job. They are not intended to be an exhaustive list of all responsibilities, duties, and skills required of personnel so classified.”

On July 14, 2004, the Commission approved her request and forwarded it to the County Administrative Committee with a recommendation for approval. As part of the reclassification process, Neuville and Russ Bowling, the Director of the Senior Resource Center, were interviewed by the County Human Resource Director, James Jetzke. On August 31, 2004, Neuville and Bowling, along with seven other employees and their supervisors, made a presentation to the Administrative Committee supporting the reclassification request, at which Neuville provided a Position Analysis Questionnaire she had completed (Jt. Ex. #2), along with attached exhibits. After receiving the presentations, the Committee took a ten minute break then reconvened, at which time the Committee denied the reclassification and also acted on the seven other requests. On September 10, 2004, Jetzke sent Neuville a letter explaining that the denial was because the changes in Neuville’s position were normal evolution of duties in the position and did not merit an increase in pay grade. Neuville grieved the reclassification denial, which was denied by the County. The matter proceeded through the contractual grievance procedure without resolution, resulting in this arbitration. Additional facts will be referenced, as necessary, in the discussion section of this award.

### **POSITIONS OF THE PARTIES**

#### **The Union**

The Union asserts that the Grievant’s job duties are best described by the Administrative Assistant/Account Clerk position. 85% of her working hours are spent performing the daily financial operations of the agency, including reconciling accounts and administering grants. The testimony of the Administrative Assistant/Account Clerk in the Public Health Department, Diane Christenson, indicated that she spends approximately 83% of her work time on account clerk functions. A comparison of the Grievant’s duties to Christenson’s indicate they are very similar. They are the main liaison between their

departments and the Finance Department. Account clerk duties merit classification in pay grade E.

The pay grid in the collective bargaining agreement indicates that positions with significant financial responsibility are ranked near the top of the scale. The Payable Clerk in the Finance Department is ranked in pay grade A. Other employees with significant financial duties are ranked in grades B-E. Very few non-financial positions are listed in these grades. Rather, they are ranked in grades F and G, as Administrative Assistants II and III. There is, therefore, no justification for the denial of the Grievant's request. The schedule is designed to reward employees with more responsible positions. The Grievant is the only such employee who has been excluded. The decision of the Administrative Committee made a mockery of the contract and should be overruled.

### **The County**

The County asserts that requests for changes in classification are controlled by Article 25 of the collective bargaining agreement, which states, in pertinent part:

“Any change in classification shall be recommended by the Department Head and approved by the Administrative Committee. The provisions governing promotions and movement downward shall apply in determining the new pay level.”

Previously, this language was the subject of an arbitration in DOOR COUNTY, Case 189, No. 50594, MA-8312 (Honeyman, 1/31/95). In that case, on very similar facts, Arbitrator Honeyman found that:

- 1) the parties had not bargained for a mandatory reclassification standard;
- 2) the County has reserved the right to act in this area; and
- 3) reclassification requires approval from both the Department Head and the Administrative Committee.

The Arbitrator did not, however, pass on the limit to which the County's power extends.

The County has great latitude to act in this area and must be accorded substantial deference. The Arbitrator cannot substitute his judgment for that of the employer. Absent a clear showing that the County's action was arbitrary, capricious or unreasonable, it should not be disturbed. RUSK COUNTY, Case 95, No. 59246, MA-11231 (Emery, 8/2/01).

Arbitration cases have been held to be subject to issue preclusion and claim preclusion in order to bring an end to controversy. Thus, where an issue or claim is identical to one previously decided between the parties, the previous decision controls. Here the issue at hand is precluded by Arbitrator Honeyman's previous decision, which concluded the issue.

In the present case, the Administrative Committee declined the Grievant's reclassification request. The decision was the result of a rational and deliberative process. The Grievant's duties are consistent with her job description and have not changed sufficiently to merit a reclassification. The position is similar to an Administrative Assistant II position in the Airport & Parks Departments and the employer's actions are consistent with how it has acted in other situations. The Union has failed to meet its burden and the grievance should be denied.

### **The Union in Reply**

The Union denies that issue preclusion applies to this case. The County argues that the issue in this case was determined in DOOR COUNTY, Case 189, No. 50594, MA-8312 (Honeyman, 1/31/95). In fact, Arbitrator Honeyman declined to interpret the scope of the County's authority under the language in question. Thus, the issue remains for decision.

The County has also argued that Ms. Neuville's position is similar to that of the Administrative Assistant II in the Airport/Parks Departments. James Jetzke testified that the primary justification for reclassification is a substantial change in job duties. This view is not supported by the language contained in the contract and ignores the fact that reclassification is also appropriate to properly locate employees on the wage schedule based on the work they perform. RUSK COUNTY, Case 95, No. 59246, MA-11231 (Emery, 8/2/01)

The Administrative Assistant position in the Airport/Parks Departments is not comparable to Ms. Neuville's position. The incumbent in that position, Denise Denil, is not a long time employee, as Ms. Neuville is, and recently received a significant reclassification from Clerk Typist I to Administrative Assistant II. Yet, if she is doing essentially the same work as the Grievant, as testified to by Shirley Scalish, she, too, should be reclassified as an Administrative Assistant/Account Clerk. The County was precluded from reclassifying Denil more than two grades, however, because, if it had, under the contract the County would have had to post the position, causing Denil to run the risk of being bumped by a more senior employee and being laid off. Thus, Denil, was artificially placed in pay grade G because of the contract requirements and should not be used as a proper comparable for the Grievant's position. The Union requests that the grievance be sustained and Ms. Neuville's position be reclassified to pay grade E.

### **The County in Reply**

According to Article 25 of the contract, wage issues may be addressed either through collective bargaining/interest arbitration or via reclassification. The parties bargained for the reclassification language that is contained in Article 25, Section C, Paragraph 6 of the contract. This language has been the subject of previous grievance arbitration and was faithfully applied by the County in this case. The Union has failed to achieve its goals for wage rate increases in the current contract negotiations and is inappropriately trying to achieve its goals through

Assigning job titles is a prerogative of management. Further, this argument was first raised by the Union in its post-hearing brief, so should be deemed waived. The County's action in this case was consistent with the contract language and the grievance should be denied.

### DISCUSSION

At the outset, I note that this issue was the subject of a previous arbitration, referenced by both parties, DOOR COUNTY, WERC CASE 189, No. 50594, MA-8312 (Honeyman, 1/31/95). In that case, a County employee grieved the denial of her request for reclassification from the position of Administrative Assistant III to the position of Support Staff Coordinator. The rationale for the grievance was that the denial was arbitrary and capricious. Arbitrator Honeyman denied the grievance on the basis that there was sufficient evidence in the record to find that the County's decision was not arbitrary, capricious, or made in bad faith.

The County argues that Arbitrator Honeyman's decision resolves this case on a theory of issue preclusion, maintaining that the previous award establishes the County's authority to act in this area without restriction. The Union, however, quotes Arbitrator Honeyman for the proposition that the previous case was decided upon its facts, thus obviating the need for the arbitrator to define the extent of the County's authority. Thus, the extent to which the County has autonomy to determine reclassification requests remains an open question. On the issue of issue preclusion, I concur with the Union. Arbitrator Honeyman stated,

“Many arbitrators have postulated that when an employer reserves rights to act in a certain area, that reservation is not and cannot be a blanket reservation of authority to act arbitrarily, capriciously, or in bad faith. I do not, however, reach the issue of whether the Employer here is to be allowed such extraordinary latitude.” Id at 8.

Clearly, the issue of whether the County may act arbitrarily or capriciously in handling reclassification requests remains open for decision and is not precluded by the Honeyman award. In fact the County's brief, citing this arbitrator's award in RUSK COUNTY, Case 95, No. 59246, MA-11231 (Emery, 8/2/01), concedes that the County's decision may not be arbitrary, capricious, or unreasonable. County Brief at 3.

The Grievant presented considerable evidence to the effect that her position most closely approximates that of the Administrative Assistant/Account Clerk in the Public Health Department, Diane Christenson. Ms. Neuville testified that she performs essentially all the functions of the Administrative Assistant/Account Clerk job description, with the exception of those items that are unique to the Department. She also testified that her duties are at least 85% financial, which is comparable to Christenson's workload. Testimony was elicited from Administrative Assistant II's Lisa Mraz and Sandy Hall that their duties are only 6%-12% financial in nature. Chloe Scharf, an Administrative Assistant III for the Sanitarian, testified that she spends less than 5% of her time on financial responsibilities. Likewise, Jeanne Kasten,

an Administrative Assistant III for the Planning Department, testified she spends approximately 3 hours per month on financial duties. Neuville's testimony regarding the breakdown and nature of her duties was supported by that of her supervisor, Russ Bowling. It appears, therefore, that Neuville's request for reclassification was, at least, worthy of consideration based on the evidence presented.

As has been noted, however, in cases such as this it is not the arbitrator's place to substitute his judgment for that of the Employer based on his evaluation of the merits of the Grievant's arguments for reclassification. Rather, because the County does have broad discretionary power in this area, the arbitrator's inquiry is limited to whether the County's decision was arbitrary, capricious, or otherwise unreasonable, as noted above. Thus, if the County's decision was made as part of a rational process based on legitimate considerations and was not motivated by bad faith or other illegitimate factors, it must stand regardless of whether I would have made the same determination.

What is troublesome to me is the lack of evidence concerning the basis for the Administrative Committee's decision. The minutes of the August 31, 2004 meeting (Jt. Ex. #4), wherein the request was considered, indicate that Neuville's request was one of eight which were addressed that night. The Committee heard presentations on all eight requests, took a ten minute break, and then immediately began ruling on the requests. The minutes do not indicate that there were any deliberations on the requests or consideration of the evidence offered in support of them. The minutes, likewise, do not indicate the basis upon which the requests were either approved or denied. The only evidence indicating a basis for the Committee's decision is a letter to the Grievant from Human resources Director James Jetzke on September 10, 2004 (Jt. Ex. #5), wherein he states the denial "...was primarily based on the reason that the changes in your position are the normal evolution duties [sic] that occur in a position."

At the hearing, no testimony was offered from any member of the Administrative Committee to explain the process or considerations upon which it based its decision. There was testimony from Jetzke to the effect that he met with Neuville and Bowling before the August 31 meeting and reviewed their documentary information in order to advise the Committee, but he could not recall if the Committee had sought his opinion prior to considering the request, or whether he had offered one. Shirley Scalish, the County Finance Director, testified that she works with Neuville and other employees in similar positions and that, in her opinion, Neuville's job duties more closely resemble those of an Administrative Assistant II than of an Administrative Assistant/Account Clerk. Nevertheless, Scalish was not at the August 31 meeting and was not interviewed by the Administrative Committee, so its decision could not have been based in any degree on her opinion. Likewise, Don Budzean, the County's Internal Auditor/Accountant, testified that the County's new computerized bookkeeping system did not significantly change Neuville's work and should actually have made her job easier, but he, too, was not called to offer his advice or opinion to the Committee.

What remains is a skeletal record of a meeting wherein a request for reclassification was made and supporting arguments and documentation were offered, evidence which, at the least, plausibly buttressed the request. Thereafter, without apparent time for significant consideration or deliberation, and with no evidence having been offered in contravention of the request, the request was summarily denied. The only evidence for the basis of the Committee's decision is in Jetzke's September 10 letter, wherein he states the basis for the denial was that the changes in her duties were just the normal evolution of the position. This is consistent with the requirements of Article 6, Section G. of the contract which state, in pertinent part:

“Employer will furnish effected [sic] employee a written response to any reclassification request, setting forth the Employer's decision and reason for a denial. This notice shall be considered notice of the Employer action for purposes of the grievance procedure.”

In short, there is no evidence of any process, rational or otherwise, behind the Committee's decision to deny Neuville's reclassification request. In a similar case, LINCOLN COUNTY, Case 190, No. 58088, MA-10839 (Bohrer, 5/30/00), the arbitrator noted that where the Grievant has made a prima facie case in support of reclassification the Employer must at least provide evidence that its decision was the result of a reasonable process and had a rational basis. The only rationale offered here does not support the decision. Whether the changes in the Grievant's job duties were evolutionary or added by administrative fiat is irrelevant. The relevant consideration is whether the Grievant's job duties more closely comport with those of an Administrative Assistant II or those of an Administrative Assistant/Account Clerk. There is no evidence in this record of such an analysis by the Administrative Committee. The only evidence in this record which was also considered by the Committee is to the effect that Neuville's position is substantially the same as that of the Administrative Assistant/Account Clerk in the Public Health Department and the rationale for the denial provided by the Committee neither addresses that point nor justifies the denial. On that basis, I cannot find otherwise than that the denial was arbitrary.

For the foregoing reasons, and based upon the record as a whole, I hereby issue the following:

### **AWARD**

1. The County violated the collective bargaining agreement by arbitrarily refusing to reclassify the Grievant's position.
2. The County shall make the Grievant whole by reclassifying her position to that of Administrative Assistant/Account Clerk retroactive to August 312004. Pursuant to Article 25, Section C., paragraph 2, of the contract, her wage rate shall be increased to \$14.19 as of that date, representing the first step in pay grade E higher than her current rate, and she shall be paid backpay for the difference from that date to present, along with any additional step increases to which she would have become entitled in the interim.

3. The Arbitrator will retain jurisdiction of this award for 30 days in order to address any issues arising in its implementation.

Dated at Fond du Lac, Wisconsin, this 17th day of January, 2006.

John R. Emery /s/

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John R. Emery, Arbitrator



