

BEFORE THE ARBITRATOR

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In the Matter of a Dispute Between

AFSCME WISCONSIN COUNCIL 32, DANE COUNTY PROFESSIONAL  
EMPLOYEES, LOCAL 1871, AFL-CIO

and

DANE COUNTY

Case ID: 11.0000

Case Type: MA

(ADRC Position Placement Grievance)

AWARD NO. 7929

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**Appearances:**

Attorney Kathleen M. Lounsbury, Ehlke, Bero-Lehmann & Lounsbury, S.C., 350 Junction Road, Madison, Wisconsin, appearing on behalf of AFSCME Wisconsin Council 32, Dane County Professional Employees, Local 1871, AFL-CIO.

Attorney Kristi A. Gullen, Dane County, City-County Building, Room 419, 210 Martin Luther King Jr. Boulevard, Madison, Wisconsin, appearing on behalf of Dane County.

**ARBITRATION AWARD**

AFSCME Wisconsin Council 32, Dane County Professional Employees, Local 1871, AFL-CIO (hereinafter referred to as "Union"), and Dane County (hereinafter referred to as "County") are parties to a collective bargaining agreement that provides for final and binding arbitration of unresolved grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission provided a panel of arbitrators from which the undersigned was selected to decide the instant grievance. A hearing on that grievance was held in Madison, Wisconsin, on April 27 and 28, May 12, and June 23, 2015. The hearing was transcribed. The parties filed briefs and reply briefs whereupon the record was closed on November 30, 2015. Having considered the evidence, the arguments of the parties, and the record as a whole the undersigned issues the following Award.

**ISSUE**

The parties agreed there were no procedural issues in dispute and stipulated that the substantive issue is:

Did the County violate the collective bargaining agreement when it placed the Information and Assistance Specialist, the Disability Benefit Specialist, and/or the Elder Benefit Specialist at pay range 5, and the Information Assistant Specialist – Lead at pay range 7 of the Professional Employees wage scale? If so, what is the appropriate remedy?

The parties elected to bifurcate the hearing with the intent that the arbitrator would retain jurisdiction to address remedy, including damages.

**RELEVANT CONTRACT LANGUAGE**

**ARTICLE 2 – MANAGEMENT RIGHTS**

2.01 Management Rights: The Union recognizes the prerogatives of the Employer to operate and manage its affairs in all respects in accordance with its responsibility and powers or authority which the Employer has not officially abridged, delegated, or modified by this Agreement and such powers or authority are retained by the Employer. These management rights include, but are not limited to the following: The rights to plan, direct and control the operation of the work force, determine the size and composition of the work force, to hire, to lay-off, to discipline or discharge for just cause, to establish and enforce reasonable rules of conduct, to introduce new or improved methods of operation, to contract out work, to determine and uniformly enforce minimum standards of performance, all of which shall be in compliance with and subject to the provision of this Agreement.

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**ARTICLE 5 – GRIEVANCE AND ARBITRATION  
PROCEDURE**

5.01 Grievance. A grievance is defined to be a controversy between the Union and the Employer, or between any Employee or Employees and the Employer as to:

(a) A matter involving the interpretation or application of this Agreement.

(b) Any matter involving an alleged violation of this Agreement in which an Employee or group of Employees maintain that any of their rights or privileges have been impaired in violation of this Agreement.

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5.03 Arbitration.

(a) The grievance shall be considered settled in Step 3 above, unless within ten (10) days after the last response is received, or due, the dissatisfied party (either party) shall request in writing to the other that the dispute to [sic] be submitted to an impartial Arbitrator.

(b) The Arbitrator shall, if possible, be mutually agreed upon by the parties. If agreement on the Arbitrator is not reached within ten (10) days after the date of the notice requesting arbitration or if the parties do not agree upon a method of selecting an Arbitrator within ten (10) days, then the Wisconsin Employment Relations Commission shall be requested to submit a panel of five (5) arbitrators. The parties shall alternately strike names until one remains. Each party shall pay one-half (½) of the cost of the Arbitrator.

(c) The Arbitrator shall have the authority to determine issues concerning the interpretation and application of all Articles or Sections of this Agreement. He/she shall have no authority to change any part; however, he/she may make recommendations for changes when in his/her opinion such changes would add clarity or brevity which might avoid future disagreements.





Step	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9
Longevity Credits	Hire	13 Cr.	26 Cr.	39 Cr.	52 Cr.	117 Cr.	169 Cr.	208 Cr.

Pay Range	Positions							
	Officer							
	Tobacco Coalition Youth Coordinator							
	Volunteer Services Coordinator							
	Well Woman Program Specialist							

08	Administrative Analyst/Grants Coordinator							
	Acquisition & Planning Specialist							
	Assistant Zoning Administrator							
	Botanist/Naturalist							
	Chemical Analyst I							
	Clean Air Coalition Project Coordinator							
	Evidence Coordinator							
	Grants & Outreach Coordinator							
	Guardianship Administrator							
	Human Resources Specialist							
	Information Technology Specialist I							
	Land Records Review Analyst							
	Microbiologist I							
	Public Health Nutritionist							
	Purchasing Officer							
	State Incentive Grant							

Step	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9
Longevity Credits	Hire	13 Cr.	26 Cr.	39 Cr.	52 Cr.	117 Cr.	169 Cr.	208 Cr.

Pay Range	Positions							
	Project Coordinator							
	Urban Erosion Control Analyst							
	Watershed Resource Planner							
	Work Experience Coordinator							

### **BACKGROUND AND FACTS**

The grievance was filed on behalf of twenty-eight Information & Assistance Specialists (hereinafter referred to as “I&A Specialist”), six Information and Assistance Lead Specialists (hereinafter referred to as “I&A Lead”), three Elder Benefit Specialists, and four Disability Benefit Specialists.

The Aging and Disability Resource Center (hereinafter referred to as “ADRC”) is a part of the Dane County Adult Community Services which is a Division within the Department of Human Services. Jennifer Fischer is the ADRC Director, Francis Genter is the Administrator of the Division, and Lynn Green is the Director of the Department of Human Services. The mission of ADRC is to support seniors, adults with disabilities, and their families and caregivers by providing useful information, assistance and education on community services and long-term care options, and by serving as the single entry point for publicly-funded, long-term care services while at all times respecting the rights, dignity, and preference of the individual.

In 2006 and 2007, the County first investigated the feasibility of seeking funding from the State of Wisconsin to establish an ADRC but elected to forego applying. The County revisited establishing an ADRC in early 2011 and created planning committees to evaluate the feasibility and desirability of an ADRC in Dane County. By June of 2011, preparation had progressed to include the completion of a draft staffing comparison chart which included expenses. At that time, the County anticipated staffing the ADRC with Social Workers and Social Work Supervisors, in addition to Elder Benefit Specialists and Disability Benefit Specialists. The estimated cost for the social work positions ranged from \$66,630 to \$93,750 based on experience, and the Elder Benefit Specialists and Disability Benefit Specialists positions were budgeted at \$70,000 per position.

On October 31, 2011, the County communicated its intent to submit an application for an ADRC. The projected operational start date was October 2012. In the months that followed, the County continued to address the issue of how to staff the ADRC and obtained job descriptions from other ADRCs and the State of Wisconsin.

In April of 2012, the County submitted its application to contract an ADRC. The application set forth the County's anticipated staffing plan, but there was internal conflict. In one document, the County staffed the ADRC with a director, an assistant director, clerical and technical support personnel, I&A Specialists, I&A supervisors, and benefits specialists. The County utilized a different job title in the budget worksheet portion of the application, listing positions as Social Workers, Social Worker Supervisors, and Elder and Disability Benefit Specialists. The County projected that all funding for personnel costs, except the Elder Benefit Specialists, would be financed solely from the ADRC grant monies.

On May 17, 2012, the County authorized the creation of 19 I&A Specialists at pay range P05 and 13 I&A Leads at pay range P07; both positions were in the professional bargaining unit. Staffing was revised to 26 I&A Specialists and 6 I&A Leads on June 5, 2012. All ADRC positions were created as project positions, meaning they are funded by non-County monies and are subject to elimination should the grant monies evaporate.

On May 21, 2012, four days after approval by the full County Board, the Dane County Executive signed Resolution #6, 12-13 which authorized the County to provide services as required by an ADRC. That resolution explained to the County Board that "... state and federal funds are sufficient to operate the ADRC and offer quality services. No County GPR is needed or required." The resolution created 42.5 positions including I&A Specialists at pay range P05 and I&A Leads at pay range P07. The following day, May 22, 2012, the State of Wisconsin informed the County that its application to operate an ADRC was approved.

As a part of the 2013 budget process, the County created two Elder Benefit Specialists and four Disability Benefit Specialists positions. These positions were placed at pay range P05.

The Elder Benefit Specialist is employed by the Area Agency on Aging of Dane County (hereinafter referred to as "AAA"), an agency of the Adult Community Services Division, Dane County Human Services, and shares office space with the ADRC. The AAA is a legal services program. Elder Benefit Specialists are co-supervised by County ADRC management and an attorney employed through the Greater Wisconsin Agency on Aging Resources (hereinafter referred to as "GWAAR").

The Disability Benefit Specialist is a position required and funded with ADRC operational monies. They are County employees dually supervised by a Dane County supervisor and a program attorney supervisor from Disability Rights of Wisconsin (hereinafter referred to as "DRW").



The Union filed a grievance on July 17, 2012, challenging the pay range placement of the I&A Specialist and I&A Lead positions, asserting that the positions were due a higher wage rate commensurate to the educational requirements, knowledge base, and experience needed to qualify for and perform the positions.<sup>1</sup> That grievance was amended on August 13, 2012, to add the County Professional Employees Local 1871 to the dispute. On March 7, 2013, the grievance was amended a third time to add the Elder Benefit Specialist and Disability Benefit Specialist positions to the query.

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

### DISCUSSION

The issue in this case is whether the County properly placed four newly created ADRC positions. Three positions, the I&A Specialist, the Elder Benefit Specialist, and the Disability Benefit Specialist were placed at pay range P05; and the fourth, the I&A Lead, was placed at pay range P07. The Union maintains the placements were incorrect asserting that all positions belong two pay ranges higher.

The parties' 2013-2014 collective bargaining agreement does not direct how pay ranges are to be determined. There is no question that the management rights clause affords the County broad management authority "to operate and manage its affairs." This authority may only be infringed through specific language in the labor agreement. In looking therein, Section 8.01(b) specifically addresses classification and compensation and provides:

This Section shall not be construed to prevent the Employer from creating new classified positions within the salary structure shown. The Employer shall notify the Union of the creation of any new bargaining unit classification and provide the Union with the job description. The Union shall have the right to grieve the placement of the classification in the pay structure within ten (10) days after receipt of notice.

The language of the agreement therefore grants the County autonomous authority to create positions and establish job descriptions while affording the Union the limited right to grieve the placement and accompanying compensation as determined by the County.

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<sup>1</sup> The Union also filed a petition with the WERC requesting a determination as to the appropriate unit for the I&A Specialist position. The Union believed the position belonged in the same bargaining unit as the social workers. The petition was dismissed on or about September 8, 2014, after the Union voluntarily withdrew.

## I. STANDARD OF REVIEW.

The parties disagree as to the standard of review. The County maintains that in the absence of any limitations on the County's discretion as to where to place the new positions in the pay structure, the County's decision may only be overturned if the arbitrator determines the County's decision was "arbitrary, capricious or unreasonable." The County cites *Eggers Industries, Inc.*, Dec. No. 44827 (Crowley, 3/91), in support of its position. In contrast, the Union argues that the standard is a *de novo* review of the placement, without deference to the recommendation of the Employee Relations Division and points the arbitrator to two decisions, *Portage County*, Dec. No. 68540 (Carne, 2010), and *Kenosha County*, Dec. No. 52559 (Gratz, 1996).

I accept the view articulated by Arbitrator Martin Lubow in *West Penn Power Co.*, 86 LA 1217, 1224 (Lubow 1986):

My view, as appears to be the consensus view, is that the subject of burden of proof, if it is a factor at all, depends on the contract language and the facts of the case. In this case the contract assigns the company the right to set the rate in the first instance and gives the union the right to grieve. This apportionment of roles is in my view both typical and proper. However, the contract provides no standard to which the company should adhere in setting the rates. In my view there then arises an implied standard, i.e. to be fair and consistent and not to be arbitrary, capricious, or discriminatory. In this kind of situation it seems to me that the burden of persuasion is shared. The Company should be able to demonstrate care, reasonable consideration of all relevant factors and freedom from arbitrariness, capriciousness or discrimination. The Union has the burden of demonstrating the unfairness of the rates in view of all the circumstances or the presence of company arbitrariness or discrimination.

I reject the *de novo* review as the appropriate standard for two reasons. First, *Portage County* and *Kenosha County* are sufficiently dissimilar so as to serve as precedence. Both are reclassification cases wherein the analysis included not only a comparison of current job duties to higher level position duties, but also a comparison of the "old" job description duties with the "new" job description duties. As a result, the parties had already agreed to a fair wage for the positions and the analysis was limited to making a critical comparison to determine whether the duties had substantially changed.

Second, the language of the collective bargaining agreement in *Portage County* set forth the specific criteria under which the reclassification request was to be evaluated. In contrast,

the language in Section 8.01 does not stipulate to any criteria which the County was expected to consider when it established the pay scale for the new positions. Lacking written measures, establishing the criteria is a residual right held by the County.

## **II. MERITS.**

County Ordinance Section 18.23 vests the Employee Relations Division with the responsibility to allocate new positions to the appropriate classification in a manner which establishes “equality of pay for positions with substantially similar duties, responsibilities or work difficulty, and fair salary differentials between positions of substantially different duties, responsibilities or work difficulty.”

Employee Relations’ internal processing of classifications and reclassifications includes a comparison of the essential functions of the position based on the following:

- a. Preliminary review of the changes that warrant reclassification.
- b. Comparison of the essential functions outlined in the updated position description against the previous position description.
- c. Comparison of the updated position description with the class specification series concepts. Common factors described in the class spec include:
  - i. Analytical the analytical skill required
  - ii. Authority, Independence to Act – the authority, independence or freedom to act vested in the position.
  - iii. Complexity – the complexity of the program or unit, the problems solved and the difficulty and originality involved in performing the work.
  - iv. Consequence of error – the severity and scope of the impact of errors made in the course of work.
  - v. Decision-making – the decision making skill required.
  - vi. Impact – the impact an employee has on others within and outside the organization. This factor considers the importance and frequency of interaction with various individuals or groups, as well as the effect of these interactions on the department and the institution.
  - vii. Knowledge – the depth and importance of knowledge necessary to perform the work. The

application of concepts, principles, and practices from professional disciplines is considered, as is the amount of work experience normally required to perform the duties of the position. The extent to which the knowledge of organizational policies and procedures is required may also be taken into account.

- viii. Resource management – responsibility for human, financial, space, facilities, information, and material resources.
- ix. Scope and Impact – the scope, or impact that an individual exercises at varying levels within and across the organization. Impact relates to how influential the position is within the organization based on the decision and recommendations rendered.

Factors that are not considered in classifying a position include: performance of the incumbent, longevity of the incumbent, change in volume of work, personality, or financial need.

- d. If 51% of job falls into the classification that is where the job is. Class specs are on the web.

#### County Ex.29.

Human Resources Director Amy Utzig testified that the process used by the Employee Relations Division to determine the classification for a new position is to compare the new position job description to other positions in the County based on:

... knowledge, abilities, skills needed for the job for a person to be successful in that position, what's the educational level, the number of years of experience needed for someone to come into that position, and then analyzing the job duties for the position, deciding what is the level of independence or authority that that person has in that job, what is their decision-making ability, their analytical skills, their authority to act or independent, what their scope of impact has either internally or externally on the departmental community, what is their consequence of errors, if errors are made in the position what is the level of consequence of those. Those are some factors that we would review when we would analyze positions.

Utzig further explained that the County's decisions are based on fifty-one percent of the job duties explaining:

When we're evaluating a position, I think I mentioned this already, we look at where the majority of the work of that job falls.

So if it's 51 percent or more of their duties fall in one range they might do some other duties that may reach a higher level, but we're looking for where is the best fit for the majority of the work that that position is doing.

Tr.III.580.

**A. Information and Assistance Specialist.**

Employee Relations Division staff member Sylvia Thornton was responsible for position classifications and reclassifications at the time the positions were created to staff the ADRC. Thornton was involved with the ADRC by at least November 2011 when she was included in an email from Green:

**From:** Green, Lynn  
**Sent:** Monday, November 21, 2011 1:18 PM  
**To:** Myren, Travis; Utzig, Amy; Thornton, Sylvia  
**Cc:** Genter, Francis; Foster, G. Paul; Kuehn, Jean  
**Subject:** ADRC Staffing

I'm not sure which one of you to contact, so I am copying all of you. As you may or may not know, we are planning to open an Aging Disability Resource Center (ADRC) around October of 2012. The State will be fully funding this initiative. The staffing will involve the addition of over 40 County employees; these will mostly be Information & Referral Workers, but they will also include an ADRC Manager, two Supervisors, support staff.

Of course, you will need to play a major role in identifying the staff titles, ranges, position descriptions, recruitment, etc. We view this as a critical and huge component of the ADRC planning. When do you want to start getting involved in this process and who will be our contact person? Our application is due to the State early next year.

Lynn :)

Genter and Thornton continued to communicate regarding ADRC staffing in November and December of 2011. Thornton solicited position descriptions and wage rates for I&A Specialist positions from other ADCRs in the state. On January 3, 2012, Genter provided Thornton draft specifications for the ADRC Manager and I&A Specialist positions. Thornton replied on that same date explaining that she would review the ADRC positions after she returned from vacation on February 13, 2012. Genter sent Thornton three position descriptions, I&A Specialist, I&A Supervisor and ADRC Manager, on February 6, 2012.

By March 29, 2012, Thornton had communicated to Genter that she was “leaning toward” I&A Specialists and I&A Leads. This conflicted with Genter’s desire for social worker positions, which Genter viewed as beneficial to the ADRC since current social workers could laterally transfer to the new positions.

Three days later, Green sent an email to Thornton. In her email, Green reviewed Genter’s understanding that Thornton would be classifying the positions as I&A Specialists and none as social workers, but wanted clarification as to whether ADRC supervisory personnel would be I&A Supervisors or social workers.

At some point between April 1, 2012 and April 11, 2012, Human Services Department Director Green and Human Services Department Deputy Director G. Paul Foster met and discussed the ADRC and the salary range placement of the I&A Specialists and I&A Leads. Based on that conversation, Green sent Thornton an email to which Thornton responded on April 11, 2012, with copies provided to Foster, Francis and Director of Administration Travis Myren, as follows:

Lynn, thanks for the email. I just met with G.P. and he discussed more in detail what you have conveyed here and the rationale behind range placement. I am satisfied with the recommended placement of the I&A Specialist in range P05 and I&A Lead Specialist (and title vs. Coordinator) in range P07. Based on the SW classification/essential functions, range alignment and rates of pay vs. the role and responsibilities of these new classifications.

G.P. shared the complete position charting with me that you guys developed for Specialists, Supervisor and Manager positions, therefore it appears we are all set with classification of these ADRC positions. Since you guys know these positions, and your goals and intent better than me, I am glad a discussion took place regarding this issue. Thank you all.

Thornton's April 11, 2012 email was contained in Thornton's files for the I&A Specialists and I&A Leads positions. Green's email, that Thornton was responding to, was not a part of the file presented at hearing. Also included in the file was the following document:

4-11-12

Analysis and Placement of I&A Specialist positions.

(See HS position charting)

The positions do not fit in the Joint Council Union. I compared them to ESS, yes there is some eligibility determination in Function B but the other percentages work at a higher level in making judgments.

The position is not at the level of a SW who has a caseload and the consequence of error and the types of clients dealt with makes it a more challenging job and the I&A Specialist should be paid at a lower rate than the SW class.

The I&A Specialists require a Bachelor's degree thus, we placed it in the lower level professional range (P05). Usually lead workers are 2 or 3 ranges higher than the regular positions (more so 2 ranges). Therefore, P07 is the range for this position.

Neither Thornton, Green nor Foster testified at hearing.<sup>2</sup> Had any of them done so, the meaning of Thornton's email and the author of the April 11, 2012 document could have been verified.

Utzig presumed the April 11, 2012 document was created by Thornton and that it was Thornton's recommendation that the positions belonged at pay ranges P05 and P07. I do not reach this conclusion. Rather, based on the content of Thornton's email and the April 11, 2012 document, the evidence establishes that Green and Foster made the recommendation as to the placement in the pay scale for the I&A Specialist and I&A Lead and, further, strongly suggests that Green or Foster authored the April 11, 2012 document.

Thornton's email was responding to Green's email, which is unfortunately absent from this record. It is clear that Thornton was provided a recommendation as to the pay range for the I&A Specialist and the I&A Lead and, further, that the recommendation was not only communicated to her verbally by Foster, but that it was written and originated from Green and Foster. It is also apparent that Thornton either knew or believed that Green and Foster had an

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<sup>2</sup> Thornton retired from the County on July 6, 2012, and is living out of state. There was no evidence offered to indicate that she was unable to testify.

overall plan which included “goals and intent” and that the placement of the I&A Specialist and I&A Supervisor positions was integral to meeting that plan. Ultimately, Thornton’s final sentence communicated to Green that she (Thornton) did not intend to challenge the placement of the two positions.

Moving to the April 11, 2012 document, first it referenced the Human Services’ position charting which Thornton’s email confirmed was developed by Green and Foster. Next, it addressed the duties of the I&A Specialist as compared to the ESS (Economic Support Specialist) and Social Worker and concluded the I&A Specialist should be paid less. There is no evidence to suggest that Thornton was comparing the I&A Specialist with the ESS position; rather, it was Green that made reference to ESS in her March 29, 2012 email. By April 2012, Thornton had already concluded that the I&A Specialist was not comparable to a Social Worker and therefore she had no reason to revisit that assessment. Moreover, given Thornton’s cite to “what you [Green] have conveyed here,” it is clear Thornton did not draft the April 11, 2012 document and that either Green and/or Foster was its author.

The fact that Thornton was “satisfied” with Green and Foster’s conclusion does not validate the classification and pay range placement. The Employee Relations Division has a written internal process that it follows when addressing classifications and reclassifications. After a comparison of essential functions against the enumerated factors, the process provides that the staff member prepare a “write-up” that includes a recommendation. That recommendation is submitted to Myren.<sup>3</sup> Absent from the record in this case is a recommendation from Thornton for the I&A Specialist or the I&A Lead positions and thus there is no rationale which sets forth the justification for the placement of the I&A Specialists and the I&A Leads at pay ranges of P05 and P07 which further supports the conclusion that Thornton did not draft the April 11, 2012 document.

In *Pleasant Prairie v. Johnson*, 34 Wis.2d 8, 12, 148 N.W.2d 27 (1967), the Wisconsin Supreme Court explained, “an arbitrary or capricious decision is one which is either so unreasonable as to be without a rational basis or the result of an unconsidered, willful and irrational choice of conduct.” There is no question that the County deviated from its process when the I&A Specialist was placed at P05 and, while it is possible to interpret the content of the April 11, 2012 document as arbitrary and/or capricious, the analysis therein could be considered and thoughtful even though this record did not authenticate the document, and therefore the appropriate review, given these facts, is a *de novo* review.

I start with the Union’s position that the I&A Specialist position is comparable to a social worker position. Thornton independently concluded that the I&A Specialist was not comparable, but there is no evidence as to what factors she used to reach her conclusion. The

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<sup>3</sup> Director of Administration Travis Myren was involved in the formation and personnel classifications for the ADRC and testified that not only was it Thornton’s responsibility to place positions within the salary scale, but that she made those placements. Inasmuch as I found Myren to be credible, his reliance on the recommendation was not tainted.



April 11, 2012 document similarly finds that the I&A Specialist is not comparable to a social worker on the basis that a social worker carries a caseload, deals with more challenging types of clients, and the consequence in the event of error is high.

Although I&A Specialists engage in telephone resource support and long-term care screening which are duties emulated by some social workers, I do not find the positions comparable. The social workers' duties extend beyond resource identification and benefit determination to include program enrollment, monitoring treatment and prevention, and expending resources. Moreover, there is no evidence to indicate that I&A Specialists appear in court, prepare court documents, or engage in legal proceedings. This does not diminish the need for or the performance of I&A Specialists, but only reinforces that the service the ADRC provides is unique.

This conclusion is supported by Genter's testimony at hearing. Genter, who strongly advocated for classifying the I&A Specialist positions as social workers, was asked if he believed the positions were now properly classified by differentiating the duties. He responded:

I believe they have been accurately described. They are helping to link voluntary consumers with services. They're helping those consumers problem solve. They're giving ideas, assisting consumers when consumers ask for that assistance. It is a short-term service.

You know, in my view of a continuum from less intense to the most intense, it continues to be in the less intense halves. With all due respect for the wonderful work they do, it is short-term.

You aren't personally responsible for the health and safety of folks. It is voluntary clients. You aren't trying to require for - you don't have court orders to maintain health and safety or to achieve change in situations, so it's somewhat less intense than what some of the other social workers' positions are in the Department, but they accurately describe what they do.

April 28, 2015 Hearing Transcript, Volume II (hereinafter "Tr.II"), at page 410.

Ultimately, although the educational requirements are similar, I do not find that the duties, responsibilities, difficulties, and consequences of error of the social worker to be sufficiently similar to the I&A Specialist so as to be comparable positions.

The Union also compares the I&A Specialists to the Well Woman Program Specialist which is part of the professional bargaining unit placed at pay range P07. Generally, I find these to be relatively similar positions in terms of client contact. Both work independently.

Both educate, recommend, and assist clients so that the clients receive needed and desired services. Both respond to client-initiated contact, screen, and maintain contact with the client to assist the client in maneuvering within the benefit resource system. The educational requirements are not comparable in as much as the I&A Specialist requires a bachelors' degree and the Well Woman Program Specialist does not. Where the positions deviate is the additional responsibilities performed by the Well Woman Program Specialist, including billing, data management, program management, training, and grant work. Data, fiscal, and program management amount to forty-five percent (45%) of the Well Woman Program Specialist duties, but accepting the County's "51 percent" rule, meaning if fifty-one percent (51%) of a position is similar to another position then it is the proper classification, then the I&A Specialist is comparable to the Well Woman Program Specialist at pay range P07.

I move to those positions contained in Thornton's file. Thornton's I&A Specialist file included the State Incentive Grant Project Coordinator (P08), Work Experience Coordinator (P08), non-professional bargaining unit positions Community Services Manager (Aging and Physical Disabilities), Long-Term Support Supervisor, and Lead Social Worker. It may well be that Thornton performed a sorting process where she collated those positions which she expected were similar to the I&A Specialist in the same manner as Utzig described and then performed a review but, as previously addressed, Thornton never finished her review. The two positions in the professional bargaining unit are in pay range P08, and I am confident that the three non-represented positions are compensated at a higher rate than the P05 pay range. Thus, assuming Thornton identified these positions as potentially comparable to the I&A Specialist or the I&A Lead, and if she had completed her analysis and if she reached the conclusion that even one of the five positions was comparable, then either the I&A Specialist or the I&A Lead would have been recommended at a higher pay grade. The problem with this conclusion is that it is based on conjecture. Additionally, since Thornton did not testify, it is impossible to know why these particular class specifications were contained in her file other than, at some point during the creation of the I&A Specialist position, Thornton put a copy in the file.

*A de novo* review requires a review of the four positions at the ADRC against the entire spectrum of jobs existing in the County. Looking at just the positions in the professional bargaining unit, there are at least 6 positions in pay range P05, 3 in pay range P06, 13 in pay range P07, 13 in pay range P08, and 8 in pay range P09. While the record contains the class specification and / or job description for each of these positions, the record does not include any testimony as to the duties, responsibilities, and challenges of the positions.

The Union argued that the correct pay range for the I&A Specialist is P07 and offered the Well Woman Program Specialist position in support. There is certainly similarity between the Well Woman Program Specialist position and the I&A Specialist position, but that is one of eighty positions in the professional employees bargaining unit which is one of seven bargaining units in the County.

The record establishes that the County did not follow its internal practice of allowing Employee Relations Division staff to make the classification recommendation for the I&A Specialist. Thornton did not prepare a document which memorialized her conclusions and offered a recommendation as to the pay grade for the I&A Specialist. This deviation, coupled with the April 11, 2012 document, tainted the process.

**B. Information and Assistance Lead Specialist.**

The record establishes that the I&A Lead positions were placed at P07 pay range because the County has a practice of placing leads two grades above the general position. The job description of the I&A Lead position is essentially the same as the I&A Specialist except for five percent (5%) of the duties which are designated as I&A Lead functions. Those five percent (5%) duties are described as:

**FUNCTION E (5%):** Provides lead work over staff in the division.

E1: Conducts training with new staff when necessary.

E2: May assign and/or monitor the work of other staff. May observe other staff during phone and face to face interviews for training and quality assurance.

E3: Acting in a non-supervisory role, provides feedback to the supervisor on the performance of other staff.

E4: May be co-assigned to assist other staff on challenging cases.

The Union did not offer any evidence comparing the I&A Leads to any other positions in P09 nor did the County offer evidence to support the placement of the I&A Leads in P07. Rather, both the Union and the County accepted the “two grades higher” than the I&A Specialists. Although this may be an agreed upon manner in which to differentiate the compensation between and leads, it is arbitrary and not based on an objective comparison to positions in the P07 or P09 pay range.

**C. Disability Benefit Specialist.**

The County created the Disability Benefit Specialist position in a different manner than how the I&A Specialist positions were created. As a result, when the positions were proposed as a part of the budget process, the County followed a different process in determining what pay grade was appropriate. Consistent with the Employee Relations Division’s internal classification procedures, Utzig reviewed potentially comparable positions.

The Disability Benefit Specialist job description summarizes the position:

Under the day-to-day supervision of the ADRC Manager or DRC Program Specialist and the legal-assistance provider's supervising attorney in relation to DBS client-related legal/advocacy work and case supervision, offers information, advice and assistance to person 18 to 60 years of age related to individual eligibility for, and problems with, public benefits and services and regarding health care financing, insurance, housing, and other financial and consumer concerns. Coordinates with other county, community and governmental agencies.

There is no evidence to suggest that Utzig was aware of how I&A Specialist positions were placed at P05 and her analysis was consistent with the Employee Relations Division's standard practices. Utzig testified that in addition to the I&A Specialist position, she reviewed the Chronic Disease Specialist and the Mobility Program Specialist positions and compared the level of education, years of experience required, complexity of the programs, and consequences for error; thus, that is where I will start.

Utzig compared the Disability Benefit Specialist position with Mobility Program Specialist, a P05 position, and concluded that, although it manages a different type of program, it is providing similar services to the community and the interactions with clients was similar. Utzig found that both positions performed "call line resource and referral type of work." Tr.III.550. Utzig's conclusion that there is comparability between the Disability Benefit Specialist and the Mobility Program Specialist is concerning inasmuch as there is a significant difference between the consequence of error for an individual denied disability benefits to address major life functions and an individual who does not have transportation on one given day.

The Mobility Program Specialist does not require a degree. Although both positions work with a clientele with similar challenges, the Mobility Program Specialist's responsibilities are limited to transit and transportation while the Disability Benefit Specialist purview extends to all approved public and private service areas, including state and federal public benefit programs, and requires knowledge of community resources, service delivery systems, eligibility requirements, and state and federal laws.

The Chronic Disease Specialist position is pay range P05. The record only contains the class specification which outlines the educational requirement as solely one year of "related experience in public information, outreach, or similar community relations program." This is not remotely comparable to the bachelor's degree plus two years' experience required by the Disability Benefit Specialist position. Moreover, this position is specifically identified as "paraprofessional work" in the definition. In reviewing the duties, they are administrative in

nature, supportive to committees, do not include independent programmatic responsibilities, and there does not appear to be any risk of error. This limited record does not support a finding that the Chronic Disease Specialist is comparable to either the Disability Benefit Specialist or the I&A Specialist.

Based on her analysis, Utzig submitted a classification recommendation for the position of Disability Benefit Specialist to Travis Myren on July 13, 2012 that read as follows:

**BACKGROUND, ANALYSIS AND RECOMMENDATION:**

On behalf of Lynn Green, Edjuana Odgen has requested the classification of four new Disability Benefit Specialist positions to be hired for the ADRC program in budget year 2013.

The Position Description and class specification was submitted with the request. The disability benefit specialist positions will offer information, advice and assistance to persons 18 to 60 years of age related to individual eligibility for and problems with, public benefits and services and regarding health care [sic] financing, insurance, housing and other financial and consumer concerns. These positions will require a bachelors degree and two years of work experience. These positions will be required in order to be in compliance with the state contract for ADRC services and funding.

In analyzing these positions, they are comparable to the Information & Assistance Specialists also assigned to the ADRC program. Both positions perform similar job duties, require the same education and experience levels and will experience the same effort and challenges in their positions.

**FISCAL AND UNION NOTES:**

These four Disability Benefit Specialist positions should be placed [sic] in range P05 effective in the 2013 budget.

Utzig testified that the Disability Benefit Specialist and the Elder Benefit Specialist positions were properly at range P05 because “their complexity of their program is the same as the I and A Specialist because they work all in the same unit, and they’re specialized with aging and disability resources.” Tr.III.551. While there are similarities between the Disability Benefit Specialist and the I&A Specialist, there are also differences. Disability Benefit Specialists prepare legal documents, appear in person on behalf of clients, and are mentored by and receive direction from attorneys.

It is clear that Utzig's pay grade recommendation for the Disability Benefit Specialist was premised on the need to match the I&A Specialist. As previously addressed, the process the County followed to place the I&A Specialist contravened its policy and practice. The validity of the placement of the I&A Specialist was compromised, and given that the County relied heavily on the I&A Specialist placement to determine the Disability Benefit Specialist placement, it is similarly unsound.

**D. Elder Benefit Specialist.**

Utzig performed the same analysis with the Elder Benefit Specialist position as she had with the Disability Benefit Specialist and reached the same conclusion with the same justification. Her July 13, 2012 memorandum to Myren recommended as follows:

**BACKGROUND, ANALYSIS AND RECOMMENDATION:**

On behalf of Lynn Green, Edjuana Odgen has requested the classification of two new Elderly Disability Benefit Specialist positions to be hired for the ADRC program in budget year 2013.

The Position Description and class specification was submitted with the request. The Elderly disability benefit specialist positions will offer information, advice and assistance to persons 60 years of age or older related to individual eligibility for and problems with, public benefits and services and regarding health car [sic] financing, insurance, housing and other financial and consumer concerns. These positions will require a bachelors degree and two years of experience. These positions will be required in order to be in compliance with the state contract for ADRC services and funding.

In analyzing these positions, they are comparable to the Information & Assistance Specialists also assigned to the ADRC program. Both positions perform similar job duties, require the same education and experience levels and will experience the same effort and challenges in their positions.

**FISCAL AND UNION NOTES:**

These two Elderly Disability Benefit Specialist positions should be place [sic] in range P05 effective in the 2013 budget.

A bachelor's degree is required of the Elder Benefit Specialist. Upon hire, Elder Benefit Specialist staff received three days training presented by GWAAR. Thereafter, they attend quarterly training also presented by GWAAR. Elder Benefit Specialists receive cases

primarily upon referral from ADRC, but sometimes from the senior centers. Under the supervision and direction of an attorney, the Elder Benefit Specialist drafts correspondence for attorney approval and, in those cases where a court appearance was necessary, the attorney would assist with preparation and attend on the client's behalf.

Utzig found significant similarity between the Elder Benefit Specialist position and the I&A Specialist position. While I find the level of responsibility greater in the Elder Benefit Specialist, I believe that it has greater supervision and therefore less independent decision-making than the I&A Specialist. Regardless, since Utzig relied on the flawed I&A Specialist position pay grade classification, the Elder Benefit Specialist pay grade is similarly flawed.

#### **E. Conclusion.**

The County placed the newly created I&A Specialist, Disability Benefit Specialist, and Elder Benefit Specialist at P05 and the I&A Lead positions in pay range P07. That decision was not based on Employee Relations Division review; the County did not follow its internal practice of allowing Employee Relations Division staff to make the classification recommendation for the I&A Specialist; nor was a document prepared which memorialized the conclusions and offered a recommendation as to the pay grade for the I&A Specialist. As a result, there is no justification for the placements and therefore no means by which to evaluate whether the County's classification was reasonable. These deviations tainted the classification process.

The Union argued that the correct pay range for the I&A Specialist is P07 and offered the Well Woman Program Specialist position in support. There is certainly similarity between the Well Woman Program Specialist and the I&A Specialist positions, but that is one of 80 positions in the professional employees bargaining unit. Given that the three other positions' classifications were based on the I&A Specialist determination, I am unwilling to indiscriminately set the pay range for all of these bargaining unit ADRC positions based on solely the similarities between the job duties and responsibilities of these two positions. Further exacerbating my ability to evaluate other County positions was the lack of any evidence which supported parallel duties, responsibilities, difficulties, consequence of error, and independent decision-making as to any P05, P06, or P07 positions. As such, I am ill equipped to reach a conclusion as to the proper placement on the pay grade for the positions in dispute.

### **AWARD**

Yes, the County violated the collective bargaining agreement when it placed the Information & Assistance Specialist, the Elder Benefit Specialist, and / or the Disability Benefit Specialist at pay range 05, and the Information & Assistance Lead Specialist at pay range 07. As a remedy:

1. The parties are to meet and confer in an effort to agree as to the proper placement of the I&A Specialist, the I&A Lead, the Disability Benefit Specialist, and the Elder Benefit Specialist positions on the salary range.

2. In the event that the parties are unable to reach a voluntary agreement as to the proper placement of the four positions within ninety (90) days, the County is directed to perform a credible, valid analysis of the four positions consistent with its internal procedures.

3. The Arbitrator will retain jurisdiction over this grievance for a period of time necessary to resolve any disputes over the remedy, should the parties be unable to reach agreement. If neither party invokes the retained jurisdiction of the Arbitrator or requests an extension of jurisdiction within one hundred twenty (120) days of the date of this Award, the Arbitrator will relinquish jurisdiction.

Dated at the City of Rhinelander, Wisconsin, this 13th day of July 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Lauri A. Millot, Arbitrator