

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 POLK COUNTY GOLDEN AGE MANOR EMPLOYEES :  
 LOCAL 774-D, AFSCME, AFL-CIO : Case 71  
 : No. 46643  
 and : MA-7030  
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 POLK COUNTY (GOLDEN AGE MANOR) :  
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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 POLK COUNTY GOLDEN AGE MANOR EMPLOYEES :  
 LOCAL 774-D, AFSCME, AFL-CIO : Case 72  
 : No. 46644  
 and : MA-7031  
 :  
 POLK COUNTY (GOLDEN AGE MANOR) :  
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Appearances:

Mr. Joseph Guidote, Corporation Counsel, Polk County, appearing on behalf of the County.  
Mr. Michael J. Wilson, Staff Representative at Large, Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

ARBITRATION AWARD

The above-captioned parties, hereinafter the County and Union respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to said agreement, the parties requested the Wisconsin Employment Relations Commission to appoint a member of its staff to hear the instant dispute. The undersigned was appointed by the Commission. Hearing was held in Amery, Wisconsin on March 12, 1992. No stenographic transcript was made. The parties at hearing agreed to the consolidation of the two cases. They concluded their briefing schedule on April 17, 1992. Based upon the record herein, and the arguments of the parties, the undersigned issues the following Award.

ISSUE:

The parties at hearing stipulated to the framing of the issue as follows:

Does the length of employment at Section 13.03 (limited part-time employes) apply toward the step progression found at Section D.03?

The parties further stipulated that if the answer was affirmative, the arbitrator should retain jurisdiction with respect to the remedy.

PERTINENT CONTRACT LANGUAGE

1990-1991 Agreement

WORKING AGREEMENT AND RECOGNITION

Section 3. The County recognizes the Union as the sole and exclusive bargaining agent for all full-time employees, regular part-time, and limited part-time employees of Polk County, for the purpose of engaging in conferences and negotiations and establishing wages, hours and conditions of employment. Expressly excluded from the bargaining unit include all elected and appointed officials, superintendents, heads of departments, the Register in Probate, registered nurses, licensed practical nurses, the Administrator, secretary-bookkeeper at the Golden Age Manor, dietitians, County Board secretary, Highway Department Road Superintendent, and the Assistant Road Superintendent.

#### ARTICLE V - SENIORITY

Section 5.01 Seniority shall consist of the total paid service of each employee of Polk County beginning with the starting date of employment. The employee's earned seniority shall not be diminished because of authorized absence due to illness (sick leave), authorized leaves of absence of less than thirty (30) days, or temporary layoff due to lack of work or shortage of funds or conditions beyond the control of either party to this Agreement.

Section 5.02 Seniority shall continue when an employee transfers continuous employment within the Unions set forth in this Agreement for the purposes of fringe benefits. Seniority for the purpose of promotional and layoff consideration shall begin as of the date of employment within the new department. In the event a layoff occurs within the new department which bumps the employee, he/she shall carry their seniority accrued in any previous department.

Section 5.03 When two (2) or more employees are employed by the County on the same date and time, their seniority shall be computed on the basis of reverse alphabetical order of their last names.

#### ARTICLE VI - PROBATION

Section 6.01 All new employees of Polk County shall serve an initial probationary period of six (6) months duration, except Home Health Aides who shall serve an initial probationary period of 1,020 hours duration. During this initial probationary period, employees may be discharged by the Employer without recourse to the grievance procedure or any other legal recourse. Probationary employees are eligible to belong to a Union during their initial probationary period of employment.

Section 6.02 During the initial period of probation, employees will not be allowed any fringe benefits granted by this Agreement; however, upon completion of probation, employees will be allowed all of this Agreement's fringe benefits retroactive to the date of

their employment.

ARTICLE XIII - EMPLOYEE DEFINITION

Section 13.02 Regular Full-Time Employees: (Class I)  
An employee who is scheduled to work the full hourly work day and work week in a permanent position.

Section 13.02 Regular Part-Time Employees: (Class II)  
An employee who is scheduled to work 1,020 hours annually, or more, in a permanent position, and who is not a regular full-time employee. This employee, except for Golden Age Manor employees, is entitled to receive fringe benefits granted by this Agreement on a prorated basis. Regular part-time employees of the Golden Age Manor shall be entitled to receive the fringe benefits granted by this Agreement and prorated to actual number of hours worked.

Section 13.03 Limited Part-Time Employees: (Class III)  
An employee who is scheduled to work less than 1,020 annual hours in a permanent position. This employee is not entitled to any fringe benefits granted by this Agreement except participation in the Wisconsin Retirement Fund if they work a minimum of 600 annually scheduled hours. The Employer shall not employ limited part-time employees in positions that reasonably should require regular part-time or regular full-time employees.

Section 13.04 Temporary Part-Time Employees: (Class IV)  
An employee hired for the express purpose of filling a temporary vacancy in any particular job classification for a period not to exceed two (2) months unless otherwise mutually agreed to. At no time will temporary part-time employees be employed to avoid hiring regular full-time, regular part-time or limited part-time employees. This employee is not entitled to any fringe benefits.

Section 13.05 Casual Employees: (Class V & Class VI - High School)  
For purposes of the Golden Age Manor, casual employee is considered to be a student who works on Saturdays and Sundays only during the school year, except during an emergency. During the summer season a casual employee may work on any day, Monday through Sunday, to replace a regular full-time or regular part-time employee for vacation periods only. From September 1 through May 30 there will be no more than seven (7) casual employees on the payroll at any one time. From June 1 through August 31, there may be sufficient casual help to cover vacation periods. At no time will casual employees be employed to avoid hiring regular full-time, regular part-time, or limited part-time employees. This employee is not entitled to any fringe benefits. for the purpose of the Polk County Nursing Service, a casual employee is considered to be an individual who is employed for a limited period of time, for a special program, to provide relief for vacations, leave of absences or sick periods if necessary, or for very limited (under 600 hours per

year) patient care hours. At no time will casual employees be employed to avoid hiring regular full-time, regular part-time, or limited part-time employees. This employee is not entitled to any fringe benefits. For the purpose of the Courthouse, casual employee is considered to be an employee who works during peak work loads at the courthouse, or to replace a regular full-time or regular part-time employee for vacation periods only. There will be no more than six (6) casual employees on the payroll in any calendar year, and they shall not work more than an aggregate of six hundred hours. The wage rate for these employees shall be a rate equal to seventy percent (70%) of the Clerk-Secretary part-time rate in the Contract Wage Appendix. At no time will casual employees be employed to avoid hiring regular full-time, regular part-time, or limited part-time employees. This employee is not entitled to any fringe benefits.

Section 13.06 Seasonal Employee: This section of the Contract shall only apply to the Highway Department. Such employees are not entitled to any fringe benefits provided for in the Contract. Summer months are defined as those months that concur with school vacation. The employer shall not employ seasonal employees in positions that reasonably should require regular part-time or regular full-time employees.

Parks and Building Seasonal employees shall be employed during the summer months as defined above. Not more than two (2) employees may be hired for the summer. The wage rate for these employees shall be at a level one dollar (\$1.00) less than the rate for Courthouse Janitor.

Highway Department seasonal employees shall be employed during the summer months as defined above. Not more than six (6) employees may be hired for the summer at the Highway Department. The wage rate for these employees who shall only do common labor type work shall be a rate equal to seventy percent (70%) of the Common Labor rate in the contract wage appendix.

Section 13.07 Regular Seasonal Employees: An employee of the Highway Department who is annually scheduled to be employed more than the summer months of each year and shall be entitled to a proration of fringe benefits.

Section 13.08 Limited Term Employees: Limited term employees shall be restricted to working 1950 hours. If the limited term position becomes a full time position, the County will grant the employee seniority retroactive to the original date of LTE hire. Sick leave, longevity, vacation benefits, and placement on the salary schedule will be determined retroactive to the original date of LTE hire. In the case of grants, the LTE position will run through the period of the grant. If the position then becomes a full time position, the above provisions will apply.

Section 13.09 Any employee employed through

December 31, 1974, who is receiving benefits for hours less than those set forth in this article shall continue to receive those benefits as set forth in their 1974 Agreement until their employment with Polk County terminates or unless they should otherwise mutually agree.

ARTICLE XVIII - LONGEVITY PAY

Section 18.01

II. Hourly Salaried Employees:

A. After five (5) years of service, each employee will receive three (3) cents per hour in longevity pay;

B. After ten (10) years of service, each employee will receive six (6) cents per hour in longevity pay;

C. After fifteen (15) years of service, each employee will receive nine (9) cents per hour in longevity pay;

D. After twenty (20) years of service, each employee will receive twelve (12) cents per hour in longevity pay.

\*Orderly pay is frozen at five (5) year level for present orderlies until such time as the Range I Nurses Aides reach this rate of pay at the five-year level.

1987 Agreement

ARTICLE V - SENIORITY

Section 5.01 Seniority shall consist of the total paid service of each employee of Polk County beginning with the starting date of employment. The employee's earned seniority shall not be diminished because of authorized absence due to illness (sick leave), authorized leaves of absence of less than thirty (30) days, or temporary layoff due to lack of work or shortage of funds or conditions beyond the control of either party to this Agreement.

Section 5.02 Seniority shall continue when an employee transfers continuous employment within the Unions set forth in this Agreement for the purposes of fringe benefits. Seniority for the purpose of promotional and layoff consideration shall begin as of the date of employment within the new department. In the event a layoff occurs within the new department which bumps the employee, he/she shall carry their seniority accrued in any previous department.

ARTICLE XIII - EMPLOYEE DEFINITION

Section 13.03 Limited Part-Time Employees: (Class III) An employee who is scheduled to work less than 1,020 annual hours in a permanent position. This employee is not entitled to any fringe benefits granted by this Agreement except participation in the Wisconsin Retirement Fund if they work a minimum of 600 annually scheduled hours. The Employer shall not employ limited part-time employees in positions that reasonably should require regular part-time or regular full-time employees.

APPENDIX D

SECTION D.03 - 1987 POLK COUNTY GOLDEN AGE MANOR SALARY SCHEDULE

<u>Classification</u>	<u>Prob.</u>	<u>6 Mo</u>	<u>Year</u>	<u>Year</u>	<u>Year</u>	<u>Year</u>	<u>Year</u>
	<u>6 Mo.</u>	<u>12 Mo</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
<u>RANGE I</u>							
Nurses Aides (7-3)	6.20	6.31	6.44	6.57	6.69	6.80	Longevity
Kitchen Aides							
Housekeepers							

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FACTS

Both grievants are aides at Golden Age Manor. During their tenure of employment they both served as limited part-time employees receiving limited base pay.

Lori Smith was hired as a limited part-time employee on July 5, 1988. At that time she received the probationary rate. After six months, on January 5, 1989, she earned the limited base pay rate. In July of 1990, she became a

regular part-time employe. In July of 1991, she became a regular full-time employe. The County argues that Smith is properly credited for only two years on the pay schedule while the Union maintains that she must receive credit for four years.

Marion Posey, a dietary aide was hired on August 9, 1988. After completing probation she became a regular part-time employe on February 4, 1989. She worked as a regular part-time employe until October 18, 1989, when she changed her status to that of a limited part-time employe receiving limited base pay. On August 9, 1990, she returned to regular part-time employe status. The County declines to give her credit for the period of time when she was a limited part-time employe, contending that she is entitled to credit for only three years while the Union would credit her with four years.

The Union points to a third employe, Juanita La Mere, hired as a dietary aide on July 16, 1990. La Mere was hired as a limited part-time employe and received after completion of her probationary period, the limited base pay rate. On January 16, 1992, she became a regular part-time employe; but she was credited with two years of service.

There is also a 1989 grievance settlement which exists between the parties regarding another Golden Age Manor employe, Diana Lindahl. It reads, in pertinent part, as follows:

LETTER OF AGREEMENT

This agreement is reached by and among Polk County ("County"), Diana Lindahl and Locals 774-A, 774-B, 774-C and 774-D, AFSCME, AFL-CIO.

it is understood by and among the parties that if an employe is employed as a regular full-time or regular part-time (or limited part-time employe at Golden Age Manor) by more than one department in the County, all such hours of work shall be applied to determine the employe's eligibility for vacation, leave and other fringe benefits, including longevity.

It is further agreed by and among the parties that in the event all of the County's limited part-time employes are subsequently added to the County's

bargaining units, the longevity payments for Diana Lindahl shall be based on all of her limited part-time and regular part-time hours retroactive to January 1, 1988.

Moreover, on May 14, 1991, the County's Chairmen of the Personnel Committee circulated a memorandum to all of the County's Department Heads, which read as follows:

In order to insure that all departments have employees covered by the AFSCME Contract handle seniority similarly, the Personnel Committee has adopted the following interpretation of the contract:

1. When the seniority list is compiled, no one who is not regular part-time or a regular employee shall be included on the seniority list, unless a person has previously established a place on the seniority list while being regular part-time or full-time. In that case, the person shall be frozen at the level achieved until such time as he or she returns to regular part-time or full-time employment.

2. Regular part-time employees will accumulate seniority on a pro-rated basis.

3. Seniority will be calculated from the date the employee first becomes eligible for fringe benefits. The only exception to this will be for limited term employees whose position later becomes a full-time position. In that case, those employees shall have seniority calculated from the date they began employment as a limited term employee.

4. There will be no seniority accumulation for over-time.

5. Any seniority list previously posted shall be removed immediately and a new list posted with a notation on it that indicates that the previous list was compiled in error and that the new list is the appropriate one for 1990.

#### POSITIONS OF THE PARTIES

##### Union

The Union argues that the plain reading of the salary schedule, Section D.03, provides for automatic progression according to length of time in service, not the number of hours paid or worked. If an individual employee was continuously classified as a limited part-time employee, he or she would not progress beyond Step 2 of the new schedule. However, upon achievement of regular part-time or full-time status, the entire period of service is to be credited regardless of whether it is regular full-time, regular part-time or limited part-time.

The Union explains the failure of the agreement to include wording similar to that covering LTE positions in Section 13.08 as being premised on the fact that LTEs are excluded from the bargaining unit so that credit earned in this capacity can be counted towards bargaining unit seniority once the person becomes a regular employee. The Union submits that the County's logic leads to an illogical conclusion because two employees who are hired on the same

day, working the same number of hours, one a limited part-time bargaining unit member and the other an LTE excluded from the unit, and who both became regular full-time employes on the same date will have strikingly different wage rates with the bargaining unit employe suffering from his/her previous employment not being credited.

The Union points to the Letter of Agreement in 1989 where the parties intended to credit limited part-time service when and if limited part-time employes were included in the various bargaining units. It stresses that since this has become an accomplished fact and, furthermore, in the case of Juanita La Mere, the County has credited limited part-time service, the County is obligated to treat the grievants in the same manner.

### County

According to the County, it pays limited part-time employes the "limited base pay" rate set forth in Section D.03 after successful completion of the six month probationary period. Limited part-time employes are then frozen at the limited base pay rate, unless or until a limited part-time employe accrues sufficient hours to qualify for regular part-time or full-time employment. At that time said employe moves up the salary progression to the first regular full-time or part-time rate, which is at the six-to-twelve month rate. Progression, in the County's view, commences using the qualification date for regular part-time or regular full-time status as the anniversary date for annual step increases. Progression, it suggests, continues unless the employe returns to limited part-time status at which point service credit for progressing in steps is discontinued until her or she requalifies for regular employment status.

The County maintains that Section D.03 does not make any sense unless limited part-time employes are frozen until qualification for regular employment status because limited part-time employes would have to jump over a pay classification to get to the "year 2" pay level.

The County stresses that limited part-time employes are a special class of employes and that the contract treats them differently than it does LTE's. Because no similar language exists, it argues that there is no express language which mandates or even allows the County to unilaterally progress a limited part-time employe through the relevant salary schedule.

The County further notes that if the Union objects to the method of pay, it must negotiate such a change rather than attempt to procure it through grievance arbitration.

It maintains that neither grievant is improperly paid and requests that the grievances be denied.

### DISCUSSION

Although the agreement does not expressly so state, both parties agree that any employe who works in limited part-time employe status is frozen at that pay rate as provided in Appendix D, Section D.03 for the entire period in which he or she serves in this capacity. The real argument is whether or not time spent as a limited part-time employe should be counted as service for placement on the salary schedule if and when an employe changes to regular full-time or regular part-time status.

Section 3, Working Agreement and Recognition, makes it clear that limited part-time employes are included in the bargaining unit. Section 13.03 defines exactly who is a limited part-time employe. Pay is provided for these

bargaining unit employes as well as regular full-time and regular part-time bargaining unit employes in Appendix D, Section D.03.

Section D.03 is a progressive wage schedule. The only exception to progressive advancement in said schedule is that of orderly pay which is expressly frozen at a certain rate.

The County argues that the Union is seeking to advance limited part-time employes through the salary progression. This is erroneous. The Union, rather, is seeking to have regular full-time and/or regular part-time employes be credited with time spent as a limited part-time employe for salary progression purposes.

The County points to Section 13.08 which defines limited term employes (LTE's). Section 13.08 contains a provision which mandates that sick leave, longevity, vacation benefits, and placement on the salary schedule for LTE's will be determined retroactive to the original date of LTE hire. It stresses that the existence of such a provision along with the fact that no such corresponding provision exists in Section 13.03 is evidence of the intent of the parties to exclude regular full-time and part-time employes who were once limited term employes from receiving credit with respect to placement on the salary schedule. While it is true that Section 13.08 does contain such a provision, because LTE's are excluded from the bargaining unit, this provision merely grants to LTE's credit for previous service to which they may or may not have been entitled upon entering the bargaining unit as regular employes. Limited part-time employes, already being included in the bargaining unit and subject to the provisions of the agreement, have no need for such a clause. Because limited part-time employes, along with regular part-time and regular full-time employes are covered by the agreement and by Section D.03 along with the other benefits clauses, such language as Section 13.08 would be redundant.

The undersigned also believes, as the Union argues, that the parties certainly could not and did not intend to grant LTE nonbargaining unit employes greater rights under the contract than the limited part-time bargaining unit employes who are included in the unit once said limited part-time employes attain regular employe status.

The County's argument that Section D.03 does not mandate credit for limited part-time service because said employes would have to jump over a pay classification to get to "year 2" level is also rejected. In the event that a limited part-time employe works for seven months in that capacity and then converts to a regular full or part-time employe, there would be no need to jump said employe over a pay classification. The Employe would be placed at the regular full-time and regular part-time 6-12 month rate in Section D.03. Should the limited part-time employe have worked for two years and then converted, appropriate placement would be at the "year 2" step.

The Union's argument that Section D.03 provides for placement based upon limited part-time service is strongly buttressed by the 1989 grievance settlement. While it may be argued that such settlement involves an inter-departmental transfer, it is difficult to see why the County would draw a distinction in treating employes who transferred differently from those who had stayed in one department with respect to the crediting of limited part-time service. The memo of May 14, 1991, is a unilateral document not shared with the Union which merely serves as the County's position on the disputed language. It does not have the evidentiary value of the above referred-to letter of understanding.

The parties certainly knew how to freeze a given class of employes at a certain pay level and successfully drafted language to this effect for orderlies.

They did not draft language which mandated deviation from the progressive

schedule for regular employes who were converting from limited part-time status. The County cannot point to any contract provision requiring service credit to be calculated from the date an employe begins to serve in a regular full-time or regular part-time capacity. Rather, there is a clear inference to the contrary, inasmuch as Section D.03 suggests that anniversary date is the service date as does Section 18.01, because the inference involves "years of service" in both instances.

Finally, when the strong inference of progressivity in Section D.03 is considered along with the absence of any express language suggesting an alternate placement on the salary schedule for those regular full-time and/or part-time employes coming off of limited part-time status, the undersigned must conclude that the length of service spent as a limited part-time employe does apply toward the step progression found at Section D.03.

Having answered in the affirmative, the undersigned, pursuant to the stipulation of the parties, retains jurisdiction with respect to the remedy.

Accordingly, it is my decision and

AWARD

1. That the County must apply length of employment at Section 13.03 (as a limited part-time employe) toward the step progression found at Section D.03.
2. That jurisdiction with respect to remedy is retained.

Dated at Madison, Wisconsin this 12th day of June, 1992.

By \_\_\_\_\_  
Mary Jo Schiavoni, Arbitrator

Appendix D - Golden Age Manor Employees

Section D.03 - 1990 and 1991 POLK COUNTY GOLDEN AGE MANOR SALARY SCHEDULE

Classification

		<u>Prob. 6 Mo.</u>	<u>Regular Limited Base Pay</u>	<u>FT &amp; PT 6-12 Mo.</u>	<u>Year 2</u>	<u>Year 3</u>
<u>Range I</u>						
Nurses Aides (7-3)	1990	5.69	6.72	6.84	6.97	7.11
	1991	5.89	6.96	7.08	7.21	7.36
Kitchen Aides Housekeepers	1990	5.59	6.62	6.73	6.87	7.01
	1991	5.79	6.85	6.97	7.11	7.26
<u>Range II</u>						
Nurses Aides (3-11)	1990	5.74	6.77	6.91	7.03	7.17
	1991	5.94	7.01	7.15	7.28	7.42
Treatment Aides (7-13) Laundry Helper	1990	5.64	6.67	6.80	6.93	7.06
	1991	5.84	6.90	7.04	7.17	7.31
<u>Range III</u>						
Nurses Aides (11-7)	1990	5.80	6.84	6.97	7.11	7.24
	1991	6.00	7.08	7.21	7.36	7.49
Treatment Aides (3-11)	1990	5.70	6.73	6.87	7.01	7.14
	1991	5.90	6.97	7.11	7.26	7.39
<u>RANGE III-A</u>						
Orderly*						
<u>RANGE IV</u>						
Second Cook	1990	5.83	6.87	7.01	7.13	7.26
Activity Aide Transportation Aide	1991	6.03	7.11	7.26	7.38	7.51
<u>RANGE V</u>						
Special Aide	1990	5.90	6.93	7.06	7.19	7.31
	1991	6.11	7.17	7.31	7.44	7.57
<u>RANGE VI</u>						
Janitor	1990	6.03	7.06	7.19	7.31	7.46
Head Cook	1991	6.24	7.31	7.44	7.57	7.72

Year            Year            Year

<u>4</u>	<u>5</u>	<u>6</u>
7.23	7.36	Longevity
7.48	7.62	Longevity
7.13	7.26	Longevity
7.38	7.51	Longevity
7.29	7.41	Longevity
7.55	7.67	Longevity
7.19	7.31	Longevity
7.44	7.57	Longevity
7.36	7.50	Longevity
7.62	7.75	Longevity
7.26	7.39	Longevity
7.51	7.65	Longevity
7.39	7.54	Longevity
7.65	7.80	Longevity
7.46	7.59	Longevity
7.72	7.86	Longevity
7.59	7.71	Longevity
7.86	7.98	Longevity