

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 1312, AFSCME, AFL-CIO
(COURTHOUSE BARGAINING UNIT)

and

JUNEAU COUNTY (HUMAN SERVICES)

Case 113
No. 51341
MA-8575

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO,
8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903.

Ms. Angeline D. Miller, Juneau County Corporation Counsel, Courthouse Annex,
Room 16, 220 East LaCrosse Street, Mauston, Wisconsin 53948.

ARBITRATION AWARD

Local 1312, AFSCME, AFL-CIO (Courthouse Bargaining Unit), hereafter the Union, and Juneau County (Human Services), hereafter the County or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the County, requested the Wisconsin Employment Relations Commission to appoint a staff member as a single, impartial arbitrator to resolve the instant grievance. Hearing was held on October 7, 1994, in Mauston, Wisconsin. The hearing was not transcribed and the record was closed on December 9, 1994, upon receipt of written argument.

ISSUE:

The parties were unable to stipulate to a statement of the issue.

The Arbitrator frames the issues as follows:

1. Is the grievance arbitrable?
2. If so, did the County violate Article 20.02 of the collective bargaining agreement when it applied the meal reimbursement limits contained in Chapter 11.1 of the County Personnel Policy to the Union's bargaining unit members?

3. If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

ARTICLE 4 - MANAGEMENT RIGHTS

4.01 Subject to the provisions of this contract and applicable law, the Employer possesses the right to operate the county government and all management rights repose in it. These rights include, but are not necessarily limited to the following:

- A) To direct all operations of the County;
- B) To establish reasonable work rules and schedule work;

...

ARTICLE 5 - GRIEVANCE PROCEDURE

5.01 Definition of a Grievance: A grievance shall mean a dispute concerning the interpretation or application of this agreement.

5.02 Subject Matter: Only one subject matter shall be covered in any one grievance. A written grievance shall contain the name and position of the grievant, a clear and concise statement of the grievance, the issue involved, the relief sought, the date the incident or violation took place, the specific section of the agreement alleged to have been violated and the signatures of the grievant and the date.

5.02 (sic) Time Limitations: The failure of the party to file or appeal the grievance in a timely fashion as provided herein shall be deemed a settlement and waiver of the grievance. The party who fails to receive a reply in a timely fashion shall have the right to automatically proceed to the next step of the grievance procedure. However, if it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual consent in writing.

5.04 Settlement of Grievance: Any grievance shall be considered settled at the completion of any step in the procedure if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next.

5.05 Representation: Stewards and/or officers may confer with bargaining unit employees and/or county representatives, during work hours, with the prior approval of the personnel

coordinator.

5.06 Steps in Procedure:

Step 1: The employee, alone or with one union representative, shall submit a written grievance to his/her immediate supervisor within twenty (20) working days after he/she knew or should have known of the cause of such grievance. In the event of a grievance, the employee shall perform his/her assigned work task and grieve his/her complaint letter. The employee's immediate supervisor shall, within seven (7) working days, notify the employee of his/her decision.

. . .

ARTICLE 20 - TRAVEL

20.01 Employees who use their personnel vehicles on county business shall be reimbursed at a rate of 24¢ per mile, or the rate set by county policy, whichever is greater. Employees who use their own vehicles during the standard work day while conducting county business are responsible for showing proof of automobile liability insurance coverage consistent with the coverage outlined by Wisconsin Statutes.

20.02 Employees shall receive reimbursement for meals and lodging when on official business outside of Juneau County. Employees shall receive reimbursement for meal expenses for meetings held within Juneau County, if costs are reimbursed by the state or some other outside source, and/or if attendance at such meal is condition of employment. Receipts are required for all items to be reimbursed except automobile mileage and toll charges. Vouchers and receipts must have the approval of the respective supervisor and committee. The vouchers are then submitted to the County Clerk's office where they are approved by the audit committee before payment.

BACKGROUND:

The following personnel policy became effective January 1, 1994:

CHAPTER ELEVEN - MISCELLANEOUS

11.1 TRAVEL & EXPENSES

. . .

Employees may receive reimbursement for meals and lodging when on official business outside of Juneau County at the rate established by County Board Resolution. Rates current at establishment of this policy manual are \$4.50 for breakfast, \$6.00 for lunch and \$9.00 for dinner. These rates do not apply when the meals are part of a conference package. Reservations for hotel and motel rooms should be made in advance by purchase order whenever possible. Contact Accounting for guidance on using purchase orders.

Employees may receive reimbursement for meal expenses for meetings held within Juneau County, if costs are reimbursed by the State or some other outside source.

Receipts are required for all items to be reimbursed except automobile mileage and toll charges. Vouchers and receipts must have the approval of the respective supervisor and Committee. The vouchers are then submitted to the County Clerks (sic) office where they are approved by the Audit Committee before payment. After approval by the Audit Committee reimbursements in the category of Meals Not Overnight must be attached to timesheets and paid through payroll. Other reimbursements may be paid by separate check.

Elected officials and/or Department Heads are authorized to furnish meals, lodging or other facilities to persons not employed by Juneau County with the approval of the supervising Committee of the individual department.

Reimbursement or allowance by Juneau County to any official or employee shall be limited to a reasonable amount as determined by the supervising Committee of that department, considering all factors in the case.

. . .

On May 6, 1994, Union President William Blank incurred a luncheon expense of \$6.39 and, thereafter, submitted a request for reimbursement in the amount of \$6.39. On June 24, 1994, Union President Blank was notified that he would be reimbursed in the amount of \$6.00, rather than the \$6.39 which he had requested. The County denied full reimbursement because the luncheon expense of May 6, 1994 exceeded the meal reimbursement limits set forth in Chapter 11.1 of the Personnel Policy.

On June 29, 1994, Union President Blank filed a written grievance alleging that the County had violated Article 20.02 by limiting meal reimbursements. In remedy of the alleged contract violation, Union President Blank requested that the County fully reimburse all affected bargaining unit employees. The grievance was denied at all steps and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES:

Union

Article 20 does not identify any limits on the amount of meal reimbursements. Moreover, the unequivocal and longstanding practice of the parties is to fully reimburse meal expenses. If the prior Personnel Policy provided for full payment of meal expenses, then the stronger contract language must certainly do so.

The Union has bargained the meal reimbursement policy which affects its bargaining unit employees. As Union President Blank advised the former Personnel Coordinator, if the County wished to change the meal reimbursement policy, then the County had an obligation to bargain a change. The Union has not waived any right to rely upon the language of the contract.

The Union became aware of the fact that the County was applying limits to meal reimbursements when the County denied Union President Blank's request for full reimbursement of his May 6, 1994 meal. The grievance was filed within five days of this denial. Contrary to the argument of the County, the Union did not "sit on its rights."

By establishing a limit on meal reimbursements, the County has violated the collective bargaining agreement. The grievance should be sustained. The Arbitrator should order the County to make all employees whole for losses incurred as a result of the County's contract violation.

County

As early as May of 1993, Union President Blank knew that meal reimbursement limits were being considered by the Personnel Committee. Prior to the time that the Personnel Committee submitted the revised Personnel Policy to the County Board for approval, Union President Blank knew that the Committee would not change its position on this issue. The Union, however, did not bring the issue of meal reimbursement limits to the bargaining table at any time after contract negotiations began in July of 1993. Nor did the Union file a petition for declaratory ruling. The County could have imposed the "evaporation theory" on permissive subjects of bargaining if they were so inclined. The Union has waived its right to grieve the issue of meal reimbursements.

The first incident in which the County denied full reimbursement occurred on March 23, 1994, when Carol White exceeded the luncheon reimbursement amount by \$1.00. No grievance was filed at that time.

Union President Blank admitted that he received a copy of the Board approved Personnel Policy in January of 1994. Mr. Lunenschloss acknowledged that he knew that the revised Personnel Policy went into effect on January 1, 1994 and that it included limits for meal reimbursements. When Union President Blank and Mr. Lunenschloss submitted their request for reimbursement in May of 1994, they knew that they had exceeded the reimbursement limits. Neither individual filed a grievance until June 29, 1994. The grievance was not filed within the time limits set forth in Article 5.02 of the collective bargaining agreement.

The language of Article 4 and Article 20 provides the County with the discretion to establish a reasonable work rule limiting the amount of meal reimbursements to County employes. The record demonstrates that the cost savings may be as much as \$5,000 per year and that some employes were abusing the meal reimbursement system. The limitations contained in the Personnel Policy are reasonable and consistent with the County's management rights.

Mr. Lunenschloss testified at hearing that he did not believe that the collective bargaining agreement set any limit on the amount of meal reimbursements. When a collective bargaining agreement is silent on an issue, then management may implement rules or policies without addressing the matter with the Union.

The change in policy did not impact upon the conditions of employment of bargaining unit members. What one eats for lunch and how much is spent is not a condition of employment. Employes still receive reimbursements for meals.

The grievance is not arbitrable. The grievance is without merit. The grievance should be dismissed.

DISCUSSION:

Arbitrability

Waiver by Conduct

The testimony of Union President Blank demonstrates that, in May of 1993, former County Personnel Coordinator Nancy Krueger advised Union President Blank that the County was considering meal reimbursement limits. Union President Blank's testimony further demonstrates that he responded by advising the Personnel Coordinator that, although he did not personally object to such a policy, the County had to bargain the issue with the Union.

By his conduct, Union President Blank placed the County on notice that the Union did not consider the County to have the right to unilaterally impose meal reimbursement limits upon members of its collective bargaining unit. Given this notice, it is evident that the Union did not "sit on its rights" during the time period in which the County considered and adopted Chapter 11.1 of the County Personnel Policy.

Following the May, 1993 conversation between Union President Blank and Personnel Coordinator Krueger, the Union and the County met to negotiate the terms of their 1994-95 collective bargaining agreement. Although neither party raised the issue of meal reimbursement limits during the negotiation of this agreement, each party agreed to include the language of Article 20.02 in their 1994-95 agreement.

Having agreed to include the language of Article 20.02 in the 1994-95 collective bargaining agreement, the parties are bound by this language during the term of the 1994-95 agreement. Neither the Union's failure to raise the issue of meal reimbursement limits during the negotiation of the 1994-95 agreement, nor the Union's failure to file a declaratory ruling on the issue of whether or not meal reimbursement limits are a mandatory subject of bargaining, serves to waive the Union's right (1) to rely upon the language of Article 20.02 or (2) to grieve an alleged violation of Article 20.02 during the term of the 1994-95 collective bargaining agreement.

Timeliness

Article 5, Grievance Procedure, provides that the written grievance is to be filed within twenty (20) working days after the employe knew or should have known of the cause of the grievance. Article 5 further provides that the failure to file a grievance in a timely manner "shall be deemed a settlement and waiver of the grievance."

Union President Blank filed his written grievance on June 29, 1994. The County, contrary to the Union, argues that the grievance was not filed within the timelines of Article 5.

According to the County, knowledge of "the cause of the grievance" was provided to the Union by a variety of events which occurred more than twenty working days prior to the filing of the written grievance. The events relied upon by the County include Personnel Coordinator Krueger's May, 1993 notification to Union President Blank of the County's intent to impose meal reimbursement limits; discussions by County Board members, during the Summer and Fall of 1993, regarding the adoption of a personnel policy incorporating meal reimbursement limits; the October 26, 1993 adoption of Chapter 11.1 of the Personnel Policy; the implementation of Chapter 11.1 of the Personnel Policy on January 1, 1994; and the dissemination of the new Personnel Policy to members of the Union's collective bargaining unit. The undersigned disagrees.

The County has the right to adopt policies affecting employees not represented by the County. Thus, the "cause of the grievance" is not the adoption and implementation of the personnel policy, per se, but rather, it is the application of the personnel policy to the Union's bargaining unit members.

The doctrine of continuing violation is well-accepted in labor arbitration. As Arbitrator Seward stated in Bethlehem Steel Co., 20 LA 87, 91-92 (1953):

. . . there is a clear distinction between claims which arise from single isolated events and those which are based upon a continuing course of Company action. It would be one thing to hold that when a transaction has been completed a failure to process a claim concerning that transaction within the contractual time limits properly bars its later consideration. It would be quite another thing to hold that when the Company has undertaken a permanent and continuing course of conduct alleged to be in violation of the Agreement a failure to process a grievance within 30 days would be a bar to all future efforts to have that course of conduct corrected.

By applying the meal reimbursement limits contained in Chapter 11.1 of the County Personnel Policy to the Union's collective bargaining unit members, the County has undertaken a permanent and continuing course of conduct alleged to be in violation of the contract.

Under the doctrine of continuing violation, each application of the Chapter 11.1 meal reimbursement limits gives rise to a new "cause of the grievance." Thus, Carol White's failure to grieve the application of the meal reimbursement limits to her meal expense of March 23, 1994 does not bar another employee, such as Union President Blank, from grieving a subsequent application of the meal reimbursement limits policy.

"The cause" of the instant grievance is the application of the Chapter 11.1 meal reimbursement limits to a meal expense incurred on May 6, 1994. Union President Blank did not learn of this application of the meal reimbursement limits until June 24, 1994. 1/ Union President Blank filed his written grievance on June 29, 1994, which was within the twenty working days time limit of Article 5.

Summary

The right to file the grievance has not been waived by the prior conduct of the Union or its bargaining unit members. The grievance is timely with respect to meal expenses incurred in May of 1994 and thereafter. The grievance is arbitrable.

Merits

The County, contrary to the Union, argues that it has the right to apply the meal reimbursement limits set forth in Chapter 11.1 of the Personnel Policy to the Union's bargaining unit members. In making this argument, the County relies upon the Management Rights clause contained in Article 4. More specifically, the County relies on the right to "establish reasonable work rules."

Article 4 recognizes that the County's right to exercise its management rights is subject to the provisions of the parties' labor agreement. Neither Article 4, nor any other contract provision, provides the County with the right to establish a work rule which conflicts with Article 20.02, the provision relied upon by the Union.

Article 20.02. states in relevant part:

Employees shall receive reimbursement for meals and lodging when on official business outside of Juneau County. Employees shall receive reimbursement for meal expenses for meetings held within Juneau County, if costs are reimbursed by the state or some other outside source, and/or if attendance at such meal is condition of employment. Receipts are required for all items to be reimbursed except automobile mileage and toll charges. Vouchers and receipts must have the approval of the respective supervisor and committee.

1/ Meal expenses incurred in one month are vouchered at the end of the month and reimbursed by the County during the subsequent month.

The vouchers are then submitted to the County Clerk's office where they are approved by the audit committee before payment.

The use of the phrase "shall receive reimbursement" persuades the undersigned that the Article 20.02 duty to reimburse meal expenses is mandatory, not discretionary. 2/ The absence of language limiting the amount of the meal reimbursement, persuades the undersigned that there is no limitation on the amount of the meal reimbursement.

Prior to January 1, 1994, there were times when County representatives had discussions concerning the reasonableness of a particular meal expense. However, for at least nineteen years prior to January 1, 1994, meal expenses were always fully reimbursed.

Upon consideration of the plain language of Article 20.02, as well as the evidence of the parties' past practices, the undersigned is satisfied that Article 20.02 provides for full reimbursement of meal expenses. By applying the meal reimbursement limits contained in Chapter 11.1 of the Personnel Policy to Article 20.02 meal expenses, the County has violated Article 20.02. 3/

As the County argues, Article 4 does provide the County with the right to establish reasonable work rules. However, a work rule which violates a provision of the collective bargaining agreement is not a reasonable work rule.

2/ To be sure, meal expenses for meetings held within Juneau County are subject to the conditions expressed in the contract, i.e., if costs are reimbursed by the state or some other outside source, and/or if attendance at such meal is condition of employment. These conditions are not at issue.

3/ Despite the County's arguments to the contrary, the record does not establish that the Union's bargaining unit members have abused the meal expense reimbursement provision of Article 20.02.

Summary

For the reasons discussed above, the undersigned is persuaded that Article 20.02 provides for full reimbursement of meal expenses. Thus, the County violated Article 20.02 when it applied the Chapter 11.1 meal reimbursement limits to Article 20.02 meal expenses.

In remedy of this contract violation, the County is ordered (1) to cease and desist from applying the meal reimbursement limits contained in Chapter 11.1 of the County Personnel Policy to Article 20.02 meal expenses and (2) to reimburse employes for monies lost as a result of the County's application of the meal reimbursement limits to Article 20.02 meal expenses, effective with meal expenses incurred in May of 1994. 4/

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

AWARD

1. The grievance is arbitrable.
2. The County violated Article 20.02 of the collective bargaining agreement when it applied the meal reimbursement limits contained in Chapter 11.1 of the County Personnel Policy to Article 20.02 meal expenses.
3. The County is to immediately cease and desist from applying the meal reimbursement limits contained in Chapter 11.1 of the County Personnel Policy to Article 20.02 meal expenses.
4. The County is to immediately reimburse employes for all monies lost as a result of the County's contract violation, effective with meal expenses incurred in May of 1994.

Dated at Madison, Wisconsin, this 24th day of February, 1995.

4/ Meal expenses are reimbursed on a monthly basis. Prior to May of 1994, there was only one month in which a bargaining unit employe was denied full reimbursement of a meal expense due to the application of the meal reimbursement limits, i.e., March. This denial was not grieved and is not subject to remedy herein.

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator