

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

GENERAL TEAMSTERS UNION, LOCAL  
NO. 662, affiliated with the  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO

and

EAU CLAIRE COUNTY, WISCONSIN

Case 178  
No. 52271  
MA-8897

Appearances:

Mr. Scott D. Soldon, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of General Teamsters Union, Local No. 662, affiliated with the International Brotherhood of Teamsters, referred to below as the Union.

Mr. Keith R. Zehms, Corporation Counsel, Eau Claire County Courthouse, 721 Oxford Avenue, Eau Claire, Wisconsin 54703, appearing on behalf of Eau Claire County, Wisconsin, referred to below as the County.

ARBITRATION AWARD

On April 19, 1994, I issued an arbitration decision involving the above-noted parties. That decision included the following:

AWARD

Section 17.06 is not an illegal infringement on the Sheriff's constitutional and statutory authority to appoint deputies making this grievance not arbitrable.

The County has violated Section 17.06 by not placing the most senior qualified employee applicant in the position of Floating Deputy.

As the remedy appropriate to the County's violation of Section 17.06, the County shall make Harry Pronschinske whole by reinstating him to the position of Floating Deputy to which he was appointed in April of 1993, and by compensating him for the difference between the wages and benefits he earned as a Correctional Officer and the wages and benefits he would have earned but for his removal from the position of Floating Deputy in May of 1993.

The County's implementation of that award provoked a grievance, filed on September 16, 1994, on behalf of Kelly A. Dahlke. The parties determined that the Dahlke grievance should be submitted by stipulation for a determination of the propriety of the County's implementation of the April 19, 1994 arbitration award. On February 15, 1995, the parties submitted a "Fact Stipulation." By March 2, 1995, each party had submitted its written statement of position.

#### ISSUES

The parties stipulated the issue for decision:

Whether Harry J. Pronschinske should be listed above Kelly A. Dahlke on the Deputy Sheriff seniority roster.

#### RELEVANT CONTRACT PROVISIONS

##### ARTICLE 17 SENIORITY

17.01 Seniority shall be based on the length of service for which pay has been received by an employee who has completed his probationary period. An employee who has voluntarily terminated his employment and has returned to employment with Eau Claire County shall have his seniority computed from the time he returns to work. Seniority shall commence with the first hour and date of work and shall continue to accrue during periods of vacation, leave of absence, temporary lay-off due to lack of work, military leave, periods of illness as set forth

herein or other periods of absence as may otherwise be mutually agreed upon. Should two (2) or more employees be employed on the same date and hour, seniority shall be determined by arranging these employees in alphabetical order on a seniority list starting with the last name and ending with the first name.

## BACKGROUND

The parties' Fact Stipulation reads thus:

1. On April 26, 1993 Sheriff Hewitt appointed Kelly A. Dahlke as a Deputy Sheriff for Eau Claire County in the position of Floating Deputy. On April 27, 1993 Sheriff Hewitt appointed Harry J. Pronschinske as a Deputy Sheriff for Eau Claire County as a Deputy Sheriff Jailer. Both appointments were made from the April 2, 1993 Deputy Sheriff eligibility list on which Kelly A. Dahlke was ranked No. 2 and Harry J. Pronschinske was ranked No. 5. Kelly A. Dahlke had not previously been employed by the Eau Claire County Sheriff's Department. Harry J. Pronschinske had been employed by the Eau Claire Sheriff's Department as a Civilian Correctional Officer prior to that time.
2. Shortly thereafter, Eau Claire County determined that there was only one Deputy Sheriff vacancy. Therefore, the Sheriff returned Harry J. Pronschinske to his position as Civilian Correctional Officer and retained Kelly A. Dahlke as a Floating Deputy.
3. General Teamsters Union, Local 662 filed a grievance alleging that the selection of Ms. Dahlke violated the Civilian Correctional Officers' collective bargaining agreement. On April 19, 1994 Arbitrator Richard B. McLaughlin issued his award finding the County had violated Section 17.06 of the Collective Bargaining Agreement by not placing the most senior qualified employee applicant in the position of Floating Deputy and ordered the County to make Harry J. Pronschinske whole by reinstating him to that position and compensating him for the

difference between the wages and benefits he had earned as a Correctional Officer and the wages and benefits he would have earned as Floating Deputy.

4. By the time of the award, another Deputy Sheriff vacancy had been created. Effective January 1, 1994, Sheriff Hewitt appointed Harry J. Pronschinske to the Deputy Sheriff position to fill the newly created vacancy. Kelly A. Dahlke continued to serve as a Deputy Sheriff. As a result of Arbitrator McLaughlin's award, Harry J. Pronschinske's Deputy Sheriff seniority date was changed to April 26, 1993.
5. The Deputy Sheriff seniority list dated November 28, 1994 (copy attached as Exhibit "A") listed Harry J. Pronschinske as having more seniority than Kelly A. Dahlke.
6. On September 16, 1994, Kelly A. Dahlke filed a grievance requesting that her seniority be changed to make her senior to Harry J. Pronschinske (a copy of the grievance is attached as Exhibit "B"). This grievance arose under the collective bargaining agreement covering Deputy Sheriff's at Eau Claire County (a copy of that collective bargaining agreement is attached as Exhibit "C").
7. The parties agreed to stipulate to the basic facts and the issue and to file letter briefs with Arbitrator McLaughlin.
8. The issue presented is "whether Harry J. Pronschinske should be listed above Kelly A. Dahlke on the Deputy Sheriff seniority roster."
9. In considering this issue, the Arbitrator may utilize as he deems necessary the entire record in the underlying arbitration case in which the award issued on April 19, 1994.
10. As needed, the Arbitrator may order a hearing or such supplemental submissions as he may deem necessary.

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#### THE UNION'S POSITION

The Union states its position thus:

Teamsters Local 662 has members whose seniority interests conflict. On the one hand, Mr. Pronschinske asserts that he is entitled to have the higher seniority standing, since he should have been appointed to the vacant position. On the other hand, Ms. Dahlke claims that she should have the same seniority date as Mr. Pronschinske. If that is the case, she further claims that she should be placed ahead of Mr. Pronschinske on the seniority list since her last name appears first in the alphabet.

### THE COUNTY'S POSITION

The County states its position thus:

It is Eau Claire County's position that the November 28, 1994 Seniority Roster is correct in listing Harry J. Pronschinske above Kelly A. Dahlke. It is the County's position that Section 17.01 of the contract which would otherwise result in Kelly A. Dahlke being placed first on the seniority list since her last name appears first in the alphabet is inapplicable due to your decision in "Eau Claire County (Sheriff's Department) Case 178 No. 49623 MA-7879."

Your arbitration decision required the County to make Harry J. Pronschinske whole for wages and benefits he would have earned but for his return to the Civilian Unit. One of the benefits he would have earned was seniority status beginning with the date he should have been appointed. Since, under your award, Kelly A. Dahlke had absolutely no right under the contract to be appointed on April 26, 1993, it logically follows that Harry J. Pronschinske should be listed above Kelly A. Dahlke on the seniority list. To reverse the order would lead to an absurd result and would in effect overrule at least to some degree your arbitration award. The November 28, 1994 seniority list should be upheld in its present form, with Harry J. Pronschinske being listed above Kelly A. Dahlke.

### DISCUSSION

The issue is stipulated, as is the factual background. The contractual background to the

Dahlke grievance poses a technical problem, since the April 19, 1994 decision addressed rights granted under Section 17.06 of the agreement covering non-sworn personnel while Dahlke's grievance questions rights under Section 17.01 of the agreement covering sworn personnel. The presence of two labor agreements affecting Pronschinske's and Dahlke's rights poses only a technical point. The County and the Union are the contracting parties to each agreement. Section 17.06 of the agreement covering non-sworn personnel addresses the conditions governing an employe's transition from one unit to the other. Whether or not the language of that provision is clear and unambiguous, it clearly and unambiguously anticipates movement from one unit to the other. It is apparent, then, that the parties intended the two agreements to operate in concert. Thus, there is no basis to conclude that the provisions of Article 17 of the two agreements, standing alone, pose any interpretive conflict.

The conflict posed by the Dahlke grievance is factual, and focuses on the provisions of Section 17.01 of the agreement covering deputies. The Dahlke grievance has some basis in that provision. If Pronschinske and Dahlke were "employed on the same date and hour," then the final clause of the final sentence of Section 17.01 provides the tie-breaking mechanism the Dahlke grievance asserts. That the seniority roster for Sheriff's Deputies lists Pronschinske and Dahlke as sharing "04/26/93" as the "DATE OF SENIORITY" lends factual support for the Dahlke grievance.

That support, however, breaks down under further examination. The parties' fact stipulation notes that Dahlke was appointed a Floating Deputy by Hewitt on April 26, 1993, while Pronschinske was so appointed on April 27. Pronschinske was moved back to the non-sworn unit when the County determined to retain only one Floating Deputy position. In the April 19, 1994 arbitration award, I determined that "by not placing the most senior qualified employe applicant in the position of Floating Deputy" the "County has violated Section 17.06" of the agreement covering non-sworn personnel. As noted above, I ordered the County to make Pronschinske whole.

The Dahlke grievance is based on the fact that Pronschinske, originally appointed Floating Deputy on April 27, 1993, acquired, through the make-whole order, a starting date of April 26, 1993. Since this is the same date as Dahlke's appointment, the Dahlke grievance presumes the tie-breaking mechanism of Section 17.01 must be applied to assess Pronschinske's and Dahlke's seniority rights. This presumption rests, however, on facts which cannot be viewed standing alone, but must be viewed against the background which prompted the grievance underlying Pronschinske's appointment. By isolating the facts noted above, and ignoring the circumstances surrounding the April 19, 1994 award, the Dahlke grievance, in significant part, reads the contract violation found in the preceding grievance out of existence.

The violation found in the original case rests on the basis that Sheriff Hewitt did not, under Section 17.06, have the discretion to prefer Dahlke, as an outside applicant, over Pronschinske as the most senior and qualified applicant from the non-sworn unit. From this it follows that the

position filled by Hewitt with Dahlke on April 26, 1993, should have been filled with Pronschinske. That there were two Floating Deputy positions involved, and that the original grievance questioned whether unit members outside the "Rule of Five" had rights superior to Pronschinske and to Dahlke made the point raised by the Dahlke grievance non-essential to the resolution of the original grievance. However, the remedy ordered in the original grievance required the County to make Pronschinske whole. To find the Dahlke

grievance persuasive effectively makes Pronschinske less than whole for the contract violation found in the April 19, 1994 decision. He would be penalized for Hewitt's wrongful placement of Dahlke in the position he should have been offered.

The County could have reflected this conclusion by noting Dahlke's seniority date as April 27, 1993. This would have, however, ignored the fact that Dahlke, through no apparent fault of her own, assumed her employment on April 26, 1993. The County correctly chose to reflect her seniority accurately and note that due to the make-whole requirement of the April 19, 1994 decision, Pronschinske must be considered the more senior employe. Any other conclusion would pose an unnecessary conflict between the provisions of the agreements covering the sworn and the non-sworn bargaining units. As noted above, the two agreements were intended to operate in concert, and must be construed to do so.

AWARD

Harry J. Pronschinske should be listed above Kelly A. Dahlke on the Deputy Sheriff seniority roster.

Dated at Madison, Wisconsin, this 22nd day of March, 1995.

By Richard B. McLaughlin /s/  
Richard B. McLaughlin, Arbitrator