

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

CLARK COUNTY COURTHOUSE EMPLOYEES
LOCAL 546-B, AFSCME, AFL-CIO

and

CLARK COUNTY

Case 90
No. 52384
MA-8945

Appearances:

Mr. Philip Salamone, Staff Representative, on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., by Ms. Kathryn J. Prenn, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "County", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, the parties waived a hearing and the filing of briefs and instead have submitted a Stipulation of Facts which was received on May 9, 1995.

Based upon the record, I issue the following Award.

ISSUE

Can the County under the existing contract unilaterally establish a total no-smoking ban in its County Courthouse and, if not, what is the appropriate remedy?

DISCUSSION

The parties have stipulated that the County Board on November 17, 1994, had its third vote on a proposed no-smoking ordinance and adopted the ordinance to be effective January 1, 1995. Among other things, the Ordinance prohibits smoking in the Clark County Courthouse by

providing, inter alia:

...

CHAPTER 8.08

SMOKING IN COURTHOUSE AND CLARK COUNTY HEALTH CARE CENTER PROHIBITED

8.08.010 SMOKING AND USE OF TOBACCO PRODUCTS PROHIBITED. The use of tobacco products, including but not limited to, cigarettes, cigars, pipes and chewing tobacco within the Clark County Courthouse and Clark County Health Care Center is totally prohibited.

8.08.020 SIGNS. The Public Property Committee is delegated the authority and responsibility of specifying and procuring signs to inform the public of the prohibition of tobacco use in the courthouse.

8.08.030 VIOLATION-PENALTY. The penalty for violating any of the provisions of this chapter shall be a forfeiture of not less than ten dollars, not more than fifty dollars, together with the cost of prosecution and applicable penalty assessment.

8.08.040 EFFECTIVE DATE. The provisions of Chapter 8.08 shall become effective on January 1, 1995.

...

The Union grieved this policy on the ground that smoking in the affected facilities represented a past practice which could not be unilaterally altered. The Union also filed several prohibited practices complaints over the policy.

Both parties have since agreed that: (1), all pending grievances relating thereto should be consolidated with the instant case; and (2), that the Union would withdraw its complaints with prejudice.

The parties further stipulated that if I rule in favor of the Union, the remedy shall be an

order directing the County to establish a smoking area in the Clark County Courthouse for the duration of the 1994-95 collective bargaining agreement, i.e. through December 31, 1995.

Having considered this matter, I find that the County is precluded from unilaterally adopting its no-smoking ordinance covering the Clark County Courthouse since bargaining unit members traditionally have been allowed to smoke on those premises. As a result, the County is hereby ordered to immediately establish a smoking area in the Clark County Courthouse for the duration of the 1994-1995 collective bargaining agreement, i.e., through December 31, 1995. Furthermore, in order to resolve any questions which may arise over application of this Award, I shall retain my jurisdiction indefinitely.

Dated at Madison, Wisconsin this 15th day of May, 1995.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator