

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

AFSCME LOCALS 70 (HIGHWAY), 990 (JAIL  
NON-SWORN), 990 (PROFESSIONALS) and  
1090 (PARKS)

and

KENOSHA COUNTY

Grievances numbered  
92-99OC-008 and  
92-1392-012  
(health/dental insurance  
for married employes who  
both work for the County)

Case 134  
No. 49267  
MA-7881  
Supplemental Award

Appearances:

- Mr. John Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, PO Box 624, Racine, WI 53401-0624, appearing on behalf of the Union, with briefing by Mr. Bruce F. Ehlke, Attorney at Law, and Ms. Donna L. Ginzl, Law Clerk, Lawton & Cates, S.C., 214 West Mifflin Street, Madison, WI 53703-2594.
- Mr. Mark F. Olson, Attorney at Law, Davis & Kuelthau, S.C., 111 East Kilbourn, Milwaukee, WI 53211, and Mr. Brooke E. Koons, Personnel Director, appearing on behalf of the County, with Mr. Victor A. Lazzaretti, Attorney at Law, on the brief.

SUPPLEMENTAL ARBITRATION AWARD

On June 20, 1994, the undersigned Arbitrator issued an award concerning the above-noted grievances arbitrated under the grievance arbitration provisions of the 1992-94 Local 1392 Institutions collective bargaining agreement and of the 1990-92 and 1993-95 Local 990 Courthouse and Social Services Clerical collective bargaining agreements. In that Award, the Arbitrator expressly declined to extend the remedy to employes beyond those two bargaining units "because the Arbitrator has not been formally accorded authority beyond those particular bargaining units in this matter."

Following issuance of the Award, the Union, by its Staff Representative, John Maglio, requested that the Arbitrator extend the June 20 Award to the other AFSCME units of Kenosha County employes, namely, Local 70 Highway, Local 990 Jail Non-sworn, Local 990 Professionals and Local 1090 Parks. By letter dated July 8, 1994, the County, by its Personnel Director, Brook E. Koons, joined in the Union's request. The parties further stipulated "that the facts and contract language regarding the additional AFSCME units are, for purposes of this case, materially the same as those involved in the June 20 award." On those bases, the Arbitrator issues this

## Supplemental Award.

The Arbitrator incorporates by reference the introductory paragraphs and the statements of the ISSUES, PORTIONS OF THE AGREEMENTS, BACKGROUND, POSITION OF THE UNION, POSITION OF THE COUNTY and DISCUSSION from the June 20, 1994 Award as if those portions of that award were fully set forth here, but deleting the DISCUSSION paragraph limiting the scope of the remedy to Locals 1392 Institutions and 990 Courthouse and Social Services Clerical.

### SUPPLEMENTAL DECISION AND AWARD

For the reasons set forth in the portions of the June 20, 1994 Award incorporated by reference above, and based on the original record and the post-Award stipulations of the parties noted above, taken as a whole, it is the SUPPLEMENTAL DECISION AND AWARD of the undersigned Arbitrator on the stated ISSUES as they relate to the additional AFSCME-represented bargaining units noted above that:

1. The County did not violate Art. 18 by its prohibition against married employes both of whom work for the County receiving two family plans.

2. The County did violate Art. 18 by otherwise limiting married employes both of whom work for the County to one family plan as their only option, because in so doing it failed to provide each of those employes the choice of plans required by Sec. 18. 1.

3. Section 3.1 of the Agreements authorizes the Arbitrator to consider the WFEA and related case law only to the extent necessary to determine:

a. whether one proposed construction or application of the terms of the Sec. 18.1 of the Agreements would be illegal while a competing construction or application would not; and

b. whether the WFEA and related case law provide persuasive guidance regarding the meaning of the term "discriminatory manner" in Agreements Sec. 1.2.

4. The Union's WFEA marital status discrimination contentions are not persuasive as guidance to the proper construction and application of the terms of the Agreements in this case. Except to the extent necessary to determine whether those contentions provided such guidance, the Arbitrator has not

determined whether the County has committed marital status discrimination within the meaning of the WFEA. The Arbitrator has not endeavored in this Award to remedy any WFEA violation.

5. By way of remedy for the violation noted in 2, above, the County, its officers and agents, shall, during the 1994 and subsequent open enrollment periods and at such other times after the 1994 open enrollment period when insurance options are customarily exercised, permit each married employe in the bargaining units covered by the Agreements whose spouse works for the County:

a. to opt for whichever of the two plans available to active employes under Art. 18 the employe prefers; and

b. to further opt for family or single coverage so long as two family plans are not provided and so long as neither employe is provided coverage both as a dependent and as an employe.

c. First example: one of the employes in a two--employee couple with no children could opt for single coverage under the Pyramid Plan and the other employe could opt for single coverage under the Flexible Spending Plan or under the Pyramid Plan.

d. Second example: one of the employes in a two employee couple with children could opt for family coverage under the Pyramid Plan covering that employe and the children but not the spouse, and the other employe could opt for single coverage under either the Flexible Spending Plan or the Pyramid Plan.

e. Third example: one of the employes in a two employe couple with children could opt for family coverage under the Flexible Spending Plan for that employe and the children but not the spouse, and the other employe could opt for single coverage under either the Flexible Spending Plan or the Pyramid Plan.

f. The Union's requests for other or additional relief are denied.

Dated at Shorewood, Wisconsin  
this 31 st day of August, 1994 by \_\_\_\_\_  
Marshall L. Gratz, Arbitrator