

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

CITY OF WAUPUN UTILITY EMPLOYEES
LOCAL 1112, AFSCME, AFL-CIO,
WISCONSIN COUNCIL #40

and

CITY OF WAUPUN (UTILITY)

Case 51
No. 52411
MA-8957

Appearances:

Mr. James L. Koch, Staff Representative, on behalf of the Union.
von Briesen & Purtell, S.C., by Mr. James R. Korom, on behalf of the Utility.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "Utility", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Waupun, Wisconsin, on June 13, 1995. The hearing was not transcribed and the parties there presented oral argument in lieu of filing briefs.

Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUE

Did the Utility violate Section 26.05 of the contract when it refused to reimburse grievant Barbara Armga for eyeglass wear and, if so, what is the appropriate remedy?

DISCUSSION

The parties in the collective bargaining negotiations leading to the 1992-1995 contract agreed to Section 26.05 therein contract which states:

26.05 The Employer will provide the employees with two (2) pair of prescription safety glasses, which may be sunglasses or regular glasses, per contract term, provided the second pair is required as a result of a change in the employee's prescription. If said safety glasses are damaged due to an on-the-job accident, the safety glasses will be replaced by the

Employer. Safety glasses are defined as those with impact resistant lenses. The Employer will pay up to One Hundred-Fifty Dollars (\$150.00) for said glasses, and any replacement, provided the glasses are approved by the Manager. It is agreed that employees will wear their safety glasses in those situations where it would be reasonable and prudent to do so. If an employee takes an eye exam that does not result in the employee needing glasses, the employee will be reimbursed for the actual cost of the exam, not to exceed One Hundred and Fifty Dollars (\$150.00).

This marked the first time that the parties ever agreed to reimburse employees for wearing safety glasses.

Union Representative James L. Koch, who represented the Union in these negotiations, testified here that the Union then assumed that Section 26.05 would cover all eyewear for all employees buying impact resistant glasses, even for office employees who were not otherwise required to wear special glasses for their jobs. He also stated, "All I know is that there were no discussions about exclusions" for such eyewear coverage and that he in those negotiations "saw the same faces" representing the Utility as those negotiators who represented the City of Waupun in negotiations over a separate AFSCME collective bargaining unit which ultimately agreed to the same eyeglass language found in Section 26.05. The separate contract between the City of Waupun Police Department and the police union also has this same language.

Utility Manager Dennis Westhuis also sat in on the Utility negotiations. He testified that the Utility is a separate legal entity from the Waupun City Council; that linemen in the Utility originally pushed for reimbursement for purchasing safety glasses, rather than continue using goggles; that Utility mechanics and the water crew then also said they wanted such reimbursement; and that when the parties agreed to Section 26.05, he assumed that the eyewear referred to impact resistance glasses which were required on the job, thereby excluding office personnel such as himself and grievant Armga. He also said that he does not remember the specifics which were addressed in the contract negotiations leading up to the language in Section 26.05.

Grievant Armga - who works as a secretary in the Utility's offices - purchased a new pair of impact-resistant glasses in 1993 which, along with her eye examination, cost a total of \$303.

She subsequently sought reimbursement of \$150 from the Utility under Section 26.05 of the contract even though she had not broken her prior glasses on the job. After the City refused to reimburse her, she filed the instant grievance. 1/

Westhuis denied the grievance via a December 14, 1994, letter to then-Union President Brian Schepp which stated:

Dear Brian:

I'm writing in response to the grievance filed on behalf of Barbara Armga.

We will continue to deny the claim for costs incurred as a result of an eye exam and purchase of glasses by the above mentioned employee. The intent of the language agreed upon by all parties during negotiations was to provide safety glasses for dangerous jobs by crew members, not to provide general eyeglass coverage. As an example, we do provide coverage for serious dental injury, however, we do not have a dental plan per se.

No discrimination is intended. I recently purchased new glasses for myself and never intended to seek reimbursement.

Please contact me if you have any questions.

The Utility in the past has only reimbursed a Lineman, a Mechanic Operator, a Lead Water Plant Operator, and the Foreman of the construction crew when they purchased safety glasses, along with a member of management. Prior to Armga, no other office personnel had ever sought such reimbursement even though some of them wear eyeglasses, including Westhuis.

The record further shows that the City of Waupun has reimbursed the following individuals for shatter-proof eyeglasses: Police Officer Melinda Hendricks; Police Dispatcher Donna Smith; Police Officer Jenne Frost; City Hall Secretary Heidi Wardin; Police Secretary Sharon Haase, a non-bargaining unit member; Library employes Kathy Jensen and Beverly Mollion; non-bargaining unit Library Director Steve Norman; Betty Dvorak, a non-bargaining unit member who works as a Secretary in City Hall; Police Dispatchers Margery Raube, Ellen Redeker, Marilyn Raube, Troy [?], and Department of Public Works' Worker Ron Beers who is not in a bargaining

1/ While Armga sometimes visits the Utility garage, she does not do so on sufficient occasions to warrant finding that she is entitled to impact-resistant glasses on this basis alone.

unit;

In support of the grievance, the Union principally argues that it assumed in negotiations that Section 26.05 covered all eyewear; that this language was never meant to give the Utility carte blanche to determine which employes were entitled to eyewear reimbursement; and that the Union's interpretation is supported by the fact that the two other City bargaining units receive this benefit.

The Utility in turn, asserts that Section 26.05 only covers safety glasses which are required on the job; that "common sense in the real world" shows that the Utility never intended to grant the benefit sought here; that a past practice shows that Utility office clericals are not entitled to this benefit; and that the past practice under other City bargaining units is "not as extensive" as first appears because Police Dispatchers and certain other City employes need to wear impact-resistant eyeglasses as part of their regular jobs.

But for the caveat noted below, the City presents a persuasive case as to why it should prevail, as the term "prescription safety glasses" in Section 26.05 is a term of art which generally refers to eyeglasses which must be worn to protect employes from on-the-job eye injuries. This is borne out by the fact that Section 26.05 elsewhere states, "If said safety glasses are damaged due to an on-the-job accident. . ." and the further proviso that, "It is agreed that employees will wear their safety glasses in those situations where it would be reasonable and prudent to do so." In short, the contract language supports the Utility's position.

However, there is one important caveat to all of this: the City under identical contract language pays for all impact-resistant glasses worn by its employes, irrespective of whether they are needed for safety purposes. That is why it has paid for eyewear worn by City Hall office personnel, Library personnel, and Police Dispatchers. The Utility asserts that the Police Dispatchers should be excluded from consideration because they sometimes deal with disruptive prisoners, thereby requiring the use of safety glasses. This argument represents something of a stretch, however, since it is not at all clear that Police Dispatchers need to wear safety eyewear in order to avoid possible on-the-job injuries.

Normally, what goes on in separate bargaining units is not controlling as to what should be done here since the Utility is a separate legal entity from the City. But here, Koch credibly testified that certain City Council negotiators sat in on the Utility negotiations and that he therefore assumed - since they bargained the same language for the other City unit - that the language here would be construed the same as the language there. The fact that the City has followed the same interpretation as the one voiced here by the Union shows that Koch's view of the negotiations is correct. That being so, this language must be applied in a uniform manner given the uniform bargaining history surrounding it.

In light of the above, it is my

AWARD

1. That the Utility violated Section 26.05 of the contract when it refused to reimburse grievant Barbara Armga for impact-resistant eyeglass wear.

2. That to rectify that contract violation, the Utility shall pay her \$150 to help cover part of that expense and it henceforth will grant the same benefit to other similar eyeglasses.

Dated at Madison, Wisconsin this 29th day of June, 1995.

By Amedeo Greco /s/

Amedeo Greco, Arbitrator