

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LABOR ASSOCIATION OF WISCONSIN, INC.

and

ADAMS COUNTY

Case 82
No. 54116
MA-9555

Appearances:

Mr. Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., on behalf of the Union.

Mr. Michael J. McKenna, Corporation Counsel, 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, hearing was held in Friendship, Wisconsin, on August 15, 1996. The hearing was not transcribed and the parties thereafter filed briefs which were received by September 23, 1996. Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUE:

The parties have agreed to the following issue:

Did the County violate the contract when it failed to pay grievant Shawn Long for the cleaning of his person and property due to allegedly contracting head lice and, if so, what is the appropriate remedy?

BACKGROUND:

A female inmate in the County's jail on or about December 20, 1995, related to jail personnel that she had lice. The County did not immediately alert its jailers or anyone else about her problem even though its own policy states:

C. Communicable Disease Control

1. The Sheriff or Jail Captain shall be responsible to protect, as reasonable under the circumstances,

inmates and staff by the quarantine of inmates who may have a communicable disease, as determined by medical staff.

2. The facility shall provide medical treatment for any inmate with a COMMUNICABLE DISEASE.
3. The Jail Officer will keep documentation of reason for quarantine in the inmate's red Confidential Medical file.
4. The Sheriff or Jail Captain will provide laboratory screening for inmates and employees who have or suspect to have been exposed to a communicable or a contagious disease. The necessary laboratory screening will be arranged after consultation with the needed medical staff.
5. The Sheriff or Jail Captain shall supply all employees with proper protection from communicable diseases. This will be in the form of latex gloves, CPR protection mask and other items that may be available for such purposes.
6. Wisconsin Statute 143.05(6)(a) requires that when an inmate has a communicable disease the PUBLIC HEALTH DEPARTMENT shall, in writing, direct the removal of such person to a hospital or other place of safety to be cared for and secured. Upon recovery, the person shall be returned to jail.
7. If the inmate displays signs and symptoms of a communicable disease, the Officer will place him/her in a segregation cell or a receiving cell rather than in the general population. The Officer will notify the Jail Nurse of the situation and will write a report stating that this was done.
8. The Jail Officers should also be alert to indications that inmates who are and who have been in custody may also have a contagious communicable disease. The Jail Officer shall isolate these inmates in a segregation cell or a receiving cell.

. . .

Jailer Long on or about January 1, 1996, 1/ heard from a co-worker that the inmate had lice and he subsequently verified that fact on or about January 3, 1996, during an examination of jail records. There was no report to that effect on the Report Board where such a notice should have been posted.

Long spoke to Nurse Paula Bakovka from Adams County Memorial Hospital who also works at the County's jail and who examined the hair on Long's head to see if he had lice. She gave Long a special shampoo kit to kill off any possible lice and told him that while she was not absolutely certain, she believed that he probably had lice.

Long who handles inmate's clothing as part of his regular job duties cleaned his clothes and apartment in order to prevent any possible lice infestation with the bill totaling about \$113 for the following items:

2 boxes Shampoo @\$16.32 and @ \$18.35	=	\$34.64
Laundering: 8 wash loads @ \$3.00 each	=	\$24.00
8 dryer loads @ \$1.50 each	=	\$12.00
8 fabric soft. @ \$0.50 each	=	\$ 4.00
Dry Cleaning: 1 Shirt	=	\$ 1.35
1 Trouser	=	\$ 2.10
1 Jacket	=	\$ 4.10
Tax	=	\$.42
Carpet/Upholstery Cleaner:	=	<u>\$31.10</u>
TOTAL		\$113.71

Nurse Bakovka testified that all of Long's expenses were reasonable and that all of the steps Long took were prudent under the circumstances.

Bakovka added that at least one inmate had lice and that she told about 3-4 other inmates and about 8-10 Jailers to treat themselves "for their own piece of mind". Long also testified that other Jailers told him that they had lice.

Long subsequently submitted the aforementioned bill for \$113.17 to the County to cover his expenses. There is a testimonial conflict between Long and Undersheriff Vern Tachtman as to whether Tachtman told Long that the County would pay for all his lice-incurred expenses with Long asserting, and Tachtman denying, that he did.

1/ Unless otherwise stated, all dates herein refer to 1996.

Sheriff Robert Farber in an April 2, 1996, letter to Union President David A. Carlson stated that the County should pay Long's claim and that the County's Law Enforcement Committee would vote on the matter on April 5, 1996. The Law Enforcement Committee thereafter denied the claim and only authorized the payment of \$7.55 to cover the drycleaning cost of Long's uniform, a sum which apparently has never been paid.

The Union contends in support of the grievance that the County was negligent in not following its own Communicable Disease Control Policy and in not immediately telling Long and other employees that an inmate had contracted lice; that "Employees should not have had to get this type of information through rumors and casual conversation"; and that the County should pay for all of Long's expenses because they were all reasonably related to the lice situation.

The County maintains that Article XV of the contract "does not require, mandate or prescribe payments such as those demanded by the grievant" because it is a "uniform replacement provision" which is limited to items which are "damaged or destroyed" and which is not the case here. It also claims that the grievant "simply had these items cleaned and dry-cleaned because he saw an opportunity to do so at County expense."

I disagree. The record in fact shows that Long reasonably believed that he had lice and that he cleaned his apartment and belongings because he was concerned that they could be infested. Indeed, the reasonableness of what Long did was attested to by Nurse Bakovka who was in the best position to know and who testified that Long probably had lice and that all of the steps he took in response to that problem were reasonable.

The record also establishes that the County knew about this lice problem on or about December 20, 1995, and that it did not immediately relay that important fact to Long or anyone else. This delay is important because it shows that the County was somewhat negligent in this matter and that the County did not follow the procedures set forth in its Communicable Disease Control policy, ante, which calls for immediate disclosure of such a situation.

In this connection, Article XV of the contract, entitled "Damage or Destruction to Employee's Personal Property", states:

Section I: The County shall pay for all employees' personal items damaged or destroyed while such employees are on active duty and the items are damaged or destroyed in the course of the employees' carrying out their assigned duties. The County may satisfy its obligation under this provision by purchasing insurance for the same. If payment for such items is made by or on behalf of the County and, at some later date, due to Court action or any other cause, an award for damages is made directly to the employee, such

award shall be turned over to the County in an amount not to exceed the amount paid by or on behalf of the County. Replacement for ordinary wear and tear of the uniforms is not to be included in this provision.

. . .

Here, it is undisputed that Long incurred \$79.07 in expenses for laundering, dry cleaning and carpet upholstery cleaning -- all "personal items" which were damaged because of the lice he contracted on the job. As a result, Long is entitled to reimbursement for these expenses under Article XV.

The remaining \$34.64 he spent on shampoo also was reasonable and also was related to the County's own failure to disclose the lice problem earlier. As to that, the Union correctly points out that the County under Article IV of the contract is required to make "reasonable work rules and regulations" and that the County failed to comply with its own Communicable Disease County Policy which requires immediate disclosure of any communicable disease. That Policy also states that the County shall provide for employes with "proper protection. . ." Since the shampoo here constituted "proper protection", the County is required to reimburse Long for the \$34.64 he spent for shampoo.

In light of the above, it is my

AWARD

That the County violated the contract when it failed to pay grievant Shaun Long for the cleaning of his person and property due to contracting head lice. The County therefore shall immediately pay and reimburse Long the sum of \$113.71.

Dated at Madison, Wisconsin, this 30th day of September, 1996.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator