

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
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CALEDONIA PROFESSIONAL :
POLICEMEN'S ASSOCIATION : Case 34
 : No. 43931
and : MA-6113
 :
TOWN OF CALEDONIA :
 :
- - - - -

Appearances:
Mr. Patrick J. Coraggio, Labor Consultant, Labor Association of
Wisconsin, Inc., 2825 N. Mayfair Road, Wauwatosa, Wisconsin 53222
appeared on behalf of the Association.
Mr. William R. Halsey, Consultant, Long and Halsey Associates, 1100

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ARBITRATION AWARD

On April 26, 1990, the Caledonia Professional Policemen's Association and the Town of Caledonia requested the Wisconsin Employment Relations Commission to appoint William C. Houlihan, a member of its staff, as Arbitrator to hear and issue a final and binding award on a pending grievance. A hearing was conducted on June 27, 1990 in Caledonia, Wisconsin. The proceedings were not transcribed. Post-hearing briefs were filed and exchanged by August 15, 1990.

This case addresses the computation of education credits for payment under the terms of the contractual Education Benefits Article.

BACKGROUND AND FACTS

On, or about October 13, 1989, Chief of Police Jeffrey Meier distributed the following memo:

MEMO TO: All Personnel
FROM: Chief Jeffrey Meier
RE: Educational Benefits

All personnel wishing compensation for college credits in POLICE WORK RELATED COURSES shall furnish complete and accurate documentation of the same from a certified training institute.

Employees must have held the required credits for at least twelve (12) months prior to December 1, 1989.

If you wish compensation for educational benefits, provide this information to me by November 6, 1989.

BY ORDER OF:
Jeffrey Meier
Chief of Police

Police Officer Louis Salimes, the grievant, filled out the appropriate form indicating that he had 87 credits and returned it on or about November 8, 1989.

At a November 12, 1989 Union meeting, Sergeant Ric Storbeck advised those present that he believed the Chief was erroneously calculating educational credits and advised each officer to recalculate their credits. Officer Salimes subsequently recalculated his credits and arrived at a new total of 90.33. The new total is significantly higher than the old because 90 credits is a threshold beyond which additional compensation is due. Following recalculation of credits, Salimes sent Meier this memo:

TO: Chief Meier
FROM: Officer Salimes
DATE: November 17, 1989
REF: EDUCATIONAL BENEFITS

During our last employees union meeting on November 12th, it was brought to our attention that the letter you distributed among the employees concerning the formula used to calculate our educational benefits

was incorrect according to our contract.

Attached are resubmitted copies of my certificates and a breakdown in my credits which equals 90.33.

Respectfully submitted

Officer L. Salimes

Chief Meier responded by memo dated November 17, 1989 wherein he indicated that Education Pay would be \$250 and directed Salimes to see him by November 21 if not in agreement. Salimes received the memo on third shift and tried, unsuccessfully, to see the Chief. Having failed to make personal contact with Meier, Salimes sent the following:

TO: Chief Meier
FROM: Officer Salimes
DATE: November 20, 1989
REF: INFORMATION ON EDUCATIONAL PAY.

I received your memo on Longevity/Educational Pay Saturday November 18, when I arrived for 3rd Shift. It appears I did not make the next grade of pay, being \$350.00. I waited for your arrival this morning till 8:15 AM and found out that you will be in at about 10:30 AM. I probably will not be able to see you any more today, because I work 3rd shift tonight and will not be up until 5:00 PM. Could you please explain in a return letter the error I made in my calculations so I understand why I did not make this next level and to ensure I do not make the same mistake again. I also have personal business this Tuesday as well from 8:00 AM to 5:00 PM, unless I can do this by phone after 5:00 PM Tuesday. The only time I can see you is Wednesday morning, is this possible if the above is not.

Respectfully submitted

Officer Louis Salimes #6

Chief Meier typed the following response on the bottom of Salimes' November 20, 1989 memo and returned it to Officer Salimes:

From the information/documents provided, I came up with a total of 89.5 credits. One training program that stood out in particular was Evidence Technician School, in which you made a claim for credits. It was my understanding from information provided from you yourself in the past that although you attended this school, you did not learn anything. It was further noted also in the past that on requests for you to do evidence technician work, you declined stating that you do not know how, or words to that effect.

Again, if you have anymore concerns regarding this matter, see me in person by 15:00 Hours 11/21/89.

J. Meier

More memos were exchanged. From Salimes:

TO: Chief Meier
FROM: Officer Salimes
DATE: November 21, 1989
REF: EDUCATIONAL PAY

I received your response concerning information on my educational pay, thank you for your quick response. It has been recently brought to my attention that an Academy Diploma can be considered when totaling benefits concerning Educational Pay, this was not known to me or brought to my attention, but a copy of this document was placed in my personnel files upon my employment with this department. At this time I would like to include this with my other certificates which brings me well past the next pay grade. I will get back to you with a breakdown as before as soon as I

can. If there is a problem with this please let me know.

In response to the Evidence Technician School, I recently did E.T. work lifting three partial prints off a glass jar, see Complaint No. 14466-89 and have done E.T. work in the past.

Respectfully submitted

Officer Salimes
No. 6

From Meier, in response:

Ptlm. Salimes, you have been misinformed regarding this matter. No one is receiving credit for State Mandated Certification Training to become a law enforcement officer.

Again, as stated in my response submitted to you on 11/20/89, you are to see me in person if you have anymore concerns regarding this matter no later than 15:00 Hours 11/21/89.

J. Meier

The parties held the matter in abeyance to permit discussion, and subsequently met on January 4, 1990. It appears that there was an agreement to allow 20 days to pass for reconsideration/rehabilitation of credits. The parties believe that they achieved an agreement but now disagree as to what that agreement was. On or about February 19, 1990 the Town advised the Union that no more compensation would be forthcoming. A grievance was filed on February 19, 1990, seeking an additional \$100.

Substantively this dispute centers on two areas of disagreement. The first is what credit, if any should be awarded to Officer Salimes for attending Evidence Technician School. Salimes attended the school but felt he learned nothing because the school consisted of little more than war stories. Following attendance at the School, Salimes requested that he not be required to perform Evidence Technician work alone. Three or four other employees attended the school and were so credited. It appears that none of them expressed similar objections and it appears that each of them perform some Evidence Technician work. Salimes has since performed same Evidence Technician work.

The second area of disagreement arose when the Chief received the number of hours credit accorded four other training programs. Certificates for the four programs do not list credits awarded. In reporting the number of hours spent in training, Salimes treated each full day as eight hours. Chief Meier subtracted one hour from each day based upon his experience that a one hour lunch was commonly provided.

At one point in the processing of this dispute a procedural objection was raised. It has since been abandoned.

ISSUE

The parties stipulated to an issue:

Did the Town of Caledonia violate the terms of the 1988/1989 collective bargaining agreement, specifically Article XV - Education Benefits, when they denied the grievant his request for three hundred fifty dollars (\$350.00)? If so, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE XV - EDUCATIONAL BENEFITS

Section 15.01: An employee shall receive the following amounts of additional compensation for college credits in police work related courses accumulated by him or her from an accredited institution, computed on an annual basis:

- a. 15 to 29 credits - \$100.
- b. 30 to 64 credits - \$200.
- c. 65 to 89 credits - \$250. (for associate degree)
- d. 90 to 120 credits - \$350.

e. 120 credits and above - \$400.

Section 15.02: For purposes of computation, twelve (12) hours of instruction in non-mandatory special education training at an unaccredited institution shall equal one (1) credit. Such training must be related to police work.

Section 15.03: An employee qualified for one of the above categories shall receive his or her educational benefits on the first pay day in December, or pro-rated portion thereof. The employee qualified for the full allotment must have held the required credits for at least twelve (12) months prior to December 1st of any given year.

Section 15.04: Any educational benefits may be granted by the Town Board upon recommendation by the Chief of Police.

POSITIONS OF THE PARTIES

It is the view of the Employer that the Chief's reading of the contract, relative to the treatment of lunch hours, is reasonable. There are no hours of instruction listed in the disputed courses and subtracting out lunch breaks offends no provision of the labor agreement. According to the Town there is no practice to examine for purposes of clarifying what prior treatment these courses have received.

The 1989 reimbursement was Chief Meier's first. Previous Chiefs have all placed their particular stamp on the process and Meier, supported by the Management's Rights clause, was merely doing the same.

In the view of the Union the language of the agreement is clear and unequivocal on its face, and has been violated. The Union points out that the arbitrator draws his authority from the agreement and must render his decision from the agreement. Substantial authority is cited in support of this basic premise.

The Union argues that the Chief's discriminatory treatment toward the grievant is an unreasonable exercise of Management's rights. The Chief initially attempted to frustrate processing of the grievance by requiring a series of inconvenient personal meetings. A meeting had to be held before the Chief would consent to discuss his calculation methodology and substantively answer the grievance. According to the Union the meeting ultimately produced an agreement that 90.5 was accurate but the Chief refused to apply 90.5 to Salimes. The Chief then took the position that the grievance was untimely, notwithstanding an agreement to hold open the filing period. The timeliness objection was subsequently withdrawn.

The Union contends that the Chief's treatment of the educational hours was at best, arbitrary, with no foundation in fact. In the Union's view the fact that only Salimes was subjected to this scrutiny, despite the fact that other officers received credit for attending these same programs, was discriminatory. The Union views the Chief's actions as having unilaterally, and without notice, changed a substantive, contractual benefit.

Finally, the Union alleges that the Town is asking this arbitrator to award something that the Town should be seeking at the bargaining table. Sergeant Storbeck, a long-standing and active member of the Local testified that for the twelve years the benefit has been in the contract there has never been a deduction for lunch.

DISCUSSION

It is my reading of this record that Officer Salimes has been subjected to disparate treatment relative to the computation of his continuing education credits. Several other officers attended the Evidence Technician training program, and all were given credit for their attendance. Only Salimes was not.

The facts are similar with respect to the lunch deduction. As noted, Sergeant Storbeck indicated that for the lengthy existence of the education benefit no lunch deduction had ever been taken. Salimes corroborated Storbeck's testimony in that regard. It is a fair summary of the Chief's testimony that, aside from this incident, no inquiry or deductions for lunch breaks have been made.

The real question that must be asked is whether or not this differing treatment of Salimes is rationally based or is arbitrary and/or capricious. It appears that Salimes created a distinction between himself and his peers when he complained that he had learned nothing and expressed a lack of confidence in his ability to perform the Evidence work. The Chief reacted by refusing to count the course. I believe Salimes should be credited for his attendance at the Evidence Technician schooling. Some continuing education programs are better than others. Some are very good. Some are worthless. It is common for those attending useless training to either complain quietly or to tolerate such

programs without complaint. Attendees return to their jobs without have received value for the time and money spent on the training. Ineffective training programs continue to enroll students and continue to fail to provide educational value. Salimes was not passive in his criticism of the program. He declared to all that it was useless. As a matter of fact, I don't know whether Salimes was right or wrong in his assessment of the course. I do know that he should not be singled out and penalized for flagging to his department the fact that a training program it had paid for, and might use again, was inadequate to the task.

Salimes further indicated that he felt uncomfortable doing Evidence Technician work following his training. This is a far more substantive comment. The Departmental command should be concerned if an officer cannot perform some dimension of his job. It is not hard to imagine how mishandled evidence could lead to serious problems. Again, I don't know if Salimes was expressing sincere reservations about his abilities. However, I don't think he should be penalized for these expressions. If the man cannot do the job the Department is best served if he declares that to be the fact so that his shortcomings can be addressed. Better that than he remain silent and proceed to screw things up. If the purpose of the Evidence Technician schooling was to train Salimes, and Salimes accurately described the school as useless, his subsequent comment that he feels uncomfortable doing the Evidence work follows logically.

The Chief was no doubt frustrated, and perhaps chagrined, over this sequence, but penalizing Salimes is contractually unwarranted. Article 15.01 requires an employee to "accumulate credits." This, Salimes did. Nothing in the record suggests that he did anything less than attend and fully participate in a course that the Department has obviously approved. There is no contractual right to invoke a post-training performance test as a condition of granting the educational credits which otherwise attach to the training programs. As a practical matter Officer Salimes testified that he has since performed Evidence Technician work. Salimes is entitled to credit for the Evidence Technician schooling.

The second question raised was the propriety of subtracting one hour for lunch from four other training programs. The real question is whether lunch is counted as an "hour of instruction" within the meaning of Section 15.02. From this record it appears to me that breaks, including that for lunch, have been treated as instruction for purposes of this benefit. All testimony is that these breaks have been counted or that no one has ever questioned whether or not breaks had been counted in hours submissions. This question has now been raised with respect to Salimes, but not for anyone else. There is absolutely no explanation in the record as to why Salimes has been singled out.

The Town argues that the Chief, who is administering his first round of educational benefit payments, has the discretion to place his stamp on the system, as have his predecessors. Provided he complies with the provisions of the agreement the Chief does have his prerogatives. However, the meaning of the contract is common to all members of the bargaining unit. Salimes may not be arbitrarily singled out to suffer a construction of the labor agreement not otherwise applied.

Salimes is entitled to have his four lunch hours treated as "hours of instruction."

AWARD

The grievance is sustained.

REMEDY

The grievant's credits are to be adjusted to 90.33 and he is to be paid an additional \$100.

Dated at Madison, Wisconsin this 19th day of June, 1991.

By _____
William C. Houlihan, Arbitrator