

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
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 MANITOWOC COUNTY SHERIFF'S DEPARTMENT : Case 252
 EMPLOYEES, LOCAL 986-B, AFSCME, AFL-CIO : No. 46632
 : MA-7024
 and :
 :
 MANITOWOC COUNTY (SHERIFF'S DEPARTMENT) :
 :

Appearances:

Mr. Gerald D. Ugland, Staff Representative, Wisconsin Council 40, AFSCME,
 appearing on behalf of the Union.
 Lindner & Marsack, S.C., by Mr. Alan M. Levy and Ms. Lisa M. Leemon,

appear

ARBITRATION AWARD

The Employer and Union above are parties to a 1989-1990 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties agreed to apply the terms of this Agreement to the instant dispute. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve two grievances relating to education tuition costs.

The undersigned was appointed and held a hearing on February 24, 1992 in Manitowoc, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on August 18, 1992.

STIPULATED ISSUES:

1. Did Manitowoc County fail to fulfill the requirements of the collective bargaining agreement when, in 1991, it denied employees' requests for tuition and book payments for courses in excess of six credits per calendar year?
2. If so, what is the remedy?
3. Did Manitowoc County fail to fulfill the requirements of the collective bargaining agreement when, in 1992, it limited the amount it would pay toward the cost of a three credit course to \$176?
4. If so, what is the remedy?

RELEVANT CONTRACTUAL PROVISIONS:

. . .

Article 3 - Management Rights Reserved, paragraph 4:

The Employer agrees that all amenities and practices in effect for a minimum period of twelve (12) months or more, but not specifically referred to in this Agreement shall continue for the duration of this

Agreement. . . . (Jt Ex 1)

Appendix "A", Education Incentive Compensation

For each credit satisfactorily completed in a Police Science course (while in the employe (sic) of Manitowoc County) offered by an accredited institution and approved by the Law Enforcement Committee the employee shall receive the amount in the schedule below. Said payment shall also be applicable to a maximum of six (6) credits per year. Said payment is in addition to any other salary or benefit to which an employee is entitled. The maximum number of credits for which the employee will be paid shall be thirty (30) credits. Payments shall be adjusted at the end of each semester not exceed two (2) semesters in one (1) year.

The County shall pay the cost of tuition and required books when such costs are not made or cannot be made by some other governmental or public agency shall become the property of the County. The County will not reimburse members for books which are available from the County.

Satisfactory completion of a course shall be construed to mean a grade of "C: or better. In the event a course is one offered "pass - fail", a "pass" shall be considered satisfactory completion. In the event an employee has the option of taking a course for a letter grade or pass-fail, the employee shall take the course for a letter grade. No employee shall be reimbursed for more than six (6) new credits per calendar year.

Payment Schedule:

1 credit	\$.01 per hour
2 credits	\$.02 per hour
3 credits	\$.02 per hour
4 credits	\$.03 per hour

5 credits . . . \$.03 per hour
6 credits . . . \$.04 per hour
(Jt. Ex 1)

. . .

DISCUSSION:

When the hearing in this matter was held, the issues before me were limited to items 1 and 2 above. Subsequently, the parties agreed that the factual basis for that grievance was similar to the facts surrounding a second grievance, which had occurred after the hearing. The parties thereupon entered into the following stipulations:

. . .

NOW COME, the parties in the above-captioned matter and hereby stipulate to the following facts and procedure for resolving Grievance No. 92-003, which was filed on March 20, 1992 and processed through the third step of the grievance procedure in accordance with the terms of the collective bargaining agreement.

1. A hearing was held in the above-captioned matter on February 24, 1992, in Manitowoc, Wisconsin before Arbitrator Christopher Honeyman of the Wisconsin Employment Relations Commission. That hearing concerned an interpretation of Appendix A of the 1989-1990 collective bargaining agreement and the issue was stipulated as: "Whether Manitowoc County failed to fulfill the requirements of the collective bargaining agreement when in 1991 it denied employee requests for tuition and book payments for courses in excess of six credits per calendar year?" "If so, what is the appropriate remedy? At the hearing, both parties were given the opportunity to present oral and documentary evidence, and to cross-examine the other parties' witnesses. The hearing was not transcribed.

2. On February 25, 1992, at a regular meeting of the Judiciary/Law Enforcement Committee of the Manitowoc County Board of Supervisors, Inspector Ken Petersen presented seven applications for a course at Mount Scenario at a tuition cost of \$455.00 per course. The Committee refused to approve the seven applications at that cost. It voted to limit the amount the County would pay toward the cost of any course to \$176.00. Minutes from the Committee's meeting of February 25, 1992 are attached hereto as Exhibit A. Never before has the County attempted to "cap" or "otherwise limit" reimbursement provided under contract terms.

3. Employees are permitted to take courses at any educational facility of their choosing, including, but not limited to, UW-Manitowoc Extension, Lakeshore Technical College, and Mount Scenario.

4. The cost for a three credit course at Mount Scenario in 1984 was \$300.00. In 1992 a three credit

course at Mount Scenario costs \$455.00. In both 1984 and 1992, books costs were in addition to tuition costs. A three credit course at UW-Manitowoc Extension in 1992 is \$176.00. A three credit course at Lakeshore Technical College in 1992 is less than \$176.00.

5. Lakeshore Technical College offers a two-year associate degree in police science in addition to providing courses which may be taken to fulfill the two-year general requirements towards a four-year bachelor degree. UW-Manitowoc Extension offers classes which fulfill the two-year general requirements towards a four-year bachelors degree. Mount Scenario College offers classes which fulfill general and specific requirements towards a four-year bachelors degree with a major in police science. Employees have previously obtained their bachelor's degree through Mount Scenario College under this arrangement.

. . .

At the hearing, the parties also entered into certain stipulations of fact. Among them was a record of a series of courses in which the Employer had paid for tuition and books, all of which had been taken through Mount Scenario College except for two credits at NWTI.

In 1984 through 1990, the Sheriff had authorization to pay for schooling within the Department's budget. At times the Sheriff approved more than two courses, at times as many as six or seven courses per calendar year, for tuition and book payments. Some of the employes took all of their five to seven courses through Mount Scenario.

The parties further stipulated that if the grievants were to testify, they would confirm that prior to 1991 tuition and books were paid by the Employer for more than two courses per calendar year [i.e. more than six credits in the calendar year]. There is also no dispute that in 1991 the Employer refused to pay for tuition and books for more than six credits in the calendar year. A number of employes' requests had been denied, all subject to the grievance presented herein. The Department's Chief Investigator, Gene Kusche, testified that in 1979 he served as Chief Deputy, and represented the Sheriff in contract negotiations in that year. Kusche testified that in negotiating Appendix A, which first contained language related to tuition payments in that year, the County's concern was with long-term costs. Kusche stated that employes coming in from outside would not be paid for accumulated credits they came in with. Kusche stated that the County's concern was not with limiting the tuition and books, rather with limiting the employes' pay rate. Kusche stated he thought the third paragraph was an afterthought, and that was why the subject changed in the second paragraph and changed back to incentives in the third paragraph. But Kusche conceded that his recollection was "hazy" as to these negotiations. He stated that he told the Sheriff at the time of the negotiations what was said and why, but made no written report.

Inspector Kenneth Petersen, who has represented the Sheriff in labor negotiations since 1987, testified that employes had taken courses at Mount Scenario since 1984. He testified that they were told at the time by the Sheriff that as long as the dollars lasted they would be able to take courses from Mount Scenario. Petersen stated that the policy first expressed in a Law Enforcement Committee meeting of the County Board on October 16, 1984 had been followed since. That policy stated:

Sheriff Kocourek requested permission for officers at the Manitowoc County Sheriff's Department to participate in educational training offered through Mount Scenario College. The classes would be provided at the Manitowoc County Sheriff's Department, and they would all be related to criminal justice training. Motion by Steeber and seconded by Kestly to authorize such training as long as the cost did not exceed the training budget, and also with the understanding that any employees eligible to receive funding for training from other resources would utilize those resources first. Motion carried.

. . .

Petersen explained that since 1991, the state's policy has changed "drastically". The state has reduced its funding from paying for most of the costs associated with training to a mere \$75 per head directly payable to departments. Petersen testified that he did not believe Mount Scenario was eligible for state repayment under the state's current rules. Petersen stated that in 1992 the training budget was limited to \$20,000.00, and that something had to be cut because not everything could be done without greater state aid. Petersen also stated that prior to 1992 no one in the Department brought specific information to the County Board's Law Enforcement Committee concerning training expenses; only gross amounts were provided. Petersen conceded that the Employer had never bargained any particular school with the Union.

The Union contends that Employer's Exhibit 2 indicates that the rate at which the state will reimburse the Department has actually gone up from \$100 to \$123, between 1990-92 and the subsequent budget period. The Union contends that there is no evidence that the Employer would not pay for classes taken through Mount Scenario, and that the Employer in fact has no preference, as indicated by item 3 of the stipulation filed with the briefs in this matter. The evidence and stipulations further demonstrate that the Employer has been paying for more than six credits in the past. The Union argues that the practice of paying for courses in full and paying for more than six credits is of long-standing, well known to the Employer and Union, and mutually accepted despite the County's assertion that the County Board never knew of it. The Union argues that while the Employer may argue a change in underlying circumstances, in view of the "amenities" clause of the contract, this would justify new negotiation but not unilateral action. The Union further contends that there is no dollar limit on per-course tuition in the contract. The Union notes that Mount Scenario is the only program which provides general and specific requirements for a four year bachelor's degree with a major in police science, and that employes have previously obtained their bachelor's degrees through Mount Scenario using provisions of the contract to pay for the tuition costs. The Union contends that the Employer does not have authority to limit the number of credits for which tuition and books are paid, since there is no limitation for this in the contract or in past practice, and that the Employer does not have the authority to limit the number of dollars per course paid because there is neither a limitation in the contract nor one proved in past practice. The Union requests that the Arbitrator sustain both the grievances and order that the Employer reimburse all affected employes for tuition and books for courses taken at Mount Scenario or other police science programs.

The Employer contends that as this is a contract interpretation case the Union has the burden of proof, and has failed to meet it on both grievances. The Employer contends that the language of the contract is clear and unambiguous in specifying a number of conditions which must be met before an employe is entitled to any reimbursement for college credit, stating these as:

1. The credits must be taken at an accredited institution. 2. They must be "satisfactorily" completed, and 3. They must be "approved" by the Law Enforcement Committee. The County argues it incurs the cost of tuition and books up to a maximum of six credits per year only after these conditions are met, and has reserved for itself the right to approve or disapprove "reimbursement for any credit requested by an employe." The County argues that the actions taken by the Committee in 1991, limiting the budget to \$20,000.00 for all Department training and education, and subsequently to limit the costs of college credits to \$176.00 per course, were well within the rights reserved to it by the contract. The County notes that the contract clearly states in Appendix A "no employee shall be reimbursed for more than six new credits per calendar year." The County further contends that "each and every credit" must first be approved by the Law Enforcement Committee. In addition, the County contends that the Union has failed to establish that a mutually agreeable and acceptable past practice existed, because the Law Enforcement Committee never approved any practice extending payment to more than six credits per year. Since the committee was the entity charged with granting approval of credits under the contract, there could not have been mutual agreement to any such practice without its approval. The County portrays this case as one not involving past practices, but rather involving rights reserved to the committee which it simply did not exercise until a change in circumstances required the exercise of those rights, citing City of Gainesville 1/ as demonstrating that an employer does not waive clear contractual rights for the future merely by not exercising those in the past. The Employer requests that both grievances be denied.

I find that while both of these grievances revolve around the provisions of the "amenities" clause, the results are not the same in both cases. In the "six credit" grievance, I find the Union's interpretation of Appendix A to be strained. The last sentence of the third paragraph in that Appendix clearly states "no employee shall be reimbursed for more than six new credits per calendar year." The use of the word "reimbursed" is different on its face from the reference in the first paragraph of Appendix A to "said payment" being applicable to a maximum of six credits per year. The payment referred to in the first paragraph is clearly the salary improvement. The word "reimbursement" is not ordinarily applied to a salary increment; its ordinary and usual meaning refers to an employe recouping some kind of expense the employe has undertaken. In this instance, giving it that meaning would also result in this sentence having a purpose of its own, whereas giving that sentence the meaning urged by the Union would render the sentence duplicative of language in the first paragraph and therefore redundant. For these reasons, I conclude that the specific language of Appendix A did entitle the Employer to refuse to repay employes' expenses for more than six credits per year. That being so, the fact that the Employer tolerated a practice of greater payments for many years creates a potential conflict between the amenities clause and the specific language of Appendix A.

I am unpersuaded by the Employer's argument that the Law Enforcement Committee's specific approval of a practice was required for the practice to have any value, for reasons discussed below in connection with the other grievance. Yet it is not customary in arbitration to give general language such as the "amenities" clause precedence over a specific requirement in the contract. Furthermore, the amenities clause itself limits its coverage to ". . . all amenities and practices . . . not specifically referred to in this Agreement." Since I have concluded above that "reimbursement" means repayment of fees in Appendix A, it follows that a six-credit limit for such

1/ 82 LA 825, Arbitrator Malcolm J. Hall, 1984.

reimbursement is "specifically referred to" in the Agreement. The amenities clause, by its own terms, has no power to modify such a specific term of the Agreement. I conclude that the Employer was entitled, particularly in view of the changed circumstances, to insist prospectively on rigorous application of the clear language of Appendix A. This justified the limitation to six credits per year.

There was, however, nothing in the collective bargaining agreement which limited reimbursement to any specific institution or any specific price. With respect to the second grievance, I find that it is the County which strains the language of Appendix A by its interpretation of the first sentence in that Appendix. In effect, the County is reading the sentence as if it stated "for each credit . . . approved by the Law Enforcement Committee the employe shall receive the amount in the schedule below". That is not what this language says on its face. The fact that whatever it is that is to be "approved by the Law Enforcement Committee" must also be "offered by an accredited institution" indicates that it is the course that is offered and approved. The fact that the word "course" appears immediately before the word "offered" in that sentence makes it a matter of general construction that it is the course that is offered, not the credit; and that which is offered is that which is approved, in this language. The consequence is that since the parties have stipulated in item 3 that "employees are permitted to take courses at any educational facility", including Mount Scenario, the Law Enforcement Committee has in fact approved courses at Mount Scenario. Furthermore, there is no specific language referring to Mount Scenario in the collective bargaining agreement, or specifying any limitation in the price or source of such courses; and the 1984 minutes of the Law Enforcement Committee (Exhibit E1) clearly show that Mount Scenario was expressly approved. A broad availability of fully subsidized courses is clearly an amenity, in the sense of a benefit of value to an employe, and on its face is therefore covered by the amenities clause of the contract.

The Employer is not, under this clause, without control of the resulting expenses: The practice which led to the amenity was limited to the size of the Department's training budget, and the practice clearly was that attendance at courses could be curtailed for the balance of the year once the budget was spent. But for the Employer now to introduce unilaterally a requirement limiting the amount that could be received by any one employe to \$176.00 per course, thereby creating a distinction that did not exist before between Mount Scenario and other institutions, introduced a price disincentive to employes pursuing their bachelor's degree through the Mount Scenario courses. This amenity the County was not entitled to abrogate.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the Employer did not violate the collective bargaining agreement when it prospectively insisted on strict application of the six credit per year maximum for repayment under Appendix A.

2. That the "six credit" grievance (number 11) is denied.

3. That the Employer violated Article 3, paragraph 4 of the collective bargaining agreement when it restricted payment for courses in 1992 to \$176.00 per credit.

4. That as remedy, the Employer shall, forthwith upon receipt of a copy of this Award, reimburse all affected employes for tuition and books for courses taken in the Mount Scenario Police Science program and other Police

Science programs for which the cost of tuition and books exceeds \$176.00.

5. That I will retain jurisdiction, in the event of a dispute concerning the application of this Award, for at least sixty days from the date below.

Dated at Madison, Wisconsin this 12th day of November, 1992.

By _____
Christopher Honeyman, Arbitrator