

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

LEGAL ACTION OF WISCONSIN, INC.

and

LAWRENCE ALBRECHT

Case 4

No. 48303

Decision No. A-5002

Appearances:

Mr. Lawrence G. Albrecht, Attorney at Law, 322 East Michigan Street, Suite 600,  
Milwaukee, WI 53202 appearing pro se.

Mr. Jeffery R. Myer, Attorney at Law, 230 West Wells Street, Suite 800, Milwaukee, WI  
53203, appearing on behalf of Legal Action of Wisconsin, Inc.

ARBITRATION AWARD

Pursuant to the grievance procedure contained in the personnel policies of Legal Action of Wisconsin, Inc., Lawrence G. Albrecht (hereinafter referred to as grievant) and Legal Action of Wisconsin, Inc. (hereinafter referred to as either LAW or the Employer) jointly requested that the Wisconsin Employment Relations Commission designate the undersigned to serve as arbitrator of a dispute concerning the grievant's claim for payment of salary for days spent in travelling to and presenting at a conference on legal services in Kuala Lumpur, Malaysia. The undersigned was designated and a hearing was held on January 14, 1993 in Milwaukee, Wisconsin at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The parties submitted the case on oral arguments and the record was closed. Now, having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned makes the following Award.

ISSUE

The following is the issue in this case:

"Was the grievant was entitled under the LAW personnel policies to compensation as regular work for attendance at a conference in Malaysia, where he presented a paper? If so, what is the appropriate remedy?"

RELEVANT POLICY PROVISIONS

**A. PERSONNEL POLICIES  
LEGAL ACTION OF WISCONSIN, INC.**

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II. WORK POLICIES

A. Hours

1. Business Hours and Work Week. The regular business hours of LAW are from 9:00 a.m. to 5:00 p.m., Monday through Friday. This schedule may be modified to meet the needs of a particular office. The work week is from Sunday to Saturday. For accounting and leave purposes, the work week for exempt employees is 40 hours/week.

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III. EMPLOYEE BENEFITS

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D. Leave of Absence

Special leaves of absence without pay may be granted by the Director for educational purposes, military service, religious holidays, extended illness or in other special cases. Prior to taking such leave, an employee must request such leave in writing. Any such leave taken without prior written approval of the Director shall be cause for termination.

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J. Travel Reimbursements

All employees are entitled to reimbursement for travel expenses incurred in accordance with LAW Travel Policies.

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V. GRIEVANCE PROCEDURE

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In an effort promptly and fairly to resolve questions and disputes which may arise between management and employees of Legal Action of Wisconsin, Inc., the following procedure shall be utilized as the exclusive means of resolving such disputes. (Drake Bakeries v. Bakery Workers, 370 U.W. (sic) 254 (1962).)

Definitions: A "grievance or complaint" is any question or dispute of an employee arising out of his employment with Legal Action of Wisconsin. It shall include unfair treatment and problems relating to wages, hours and terms and conditions of employment.

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Step V Arbitration

If the matter is not satisfactorily settled, the employee may, within ten (10) days of the Board's decision, invoke arbitration. The arbitrator, to be appointed by the American Arbitration Association - Public Employee Panel, shall meet and issue his written decision within sixty (60) days of his appointment. His decision shall be final and binding upon the parties and all proceedings shall be conducted in accord with Chapter 298, Wisconsin Statutes.

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**B. TRAVEL EXPENSE POLICIES OF  
LEGAL ACTION OF WISCONSIN, INC.  
(LAW STAFF MANUAL - 4/10/89)**

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All out-of-town travel must be approved prior to departure by the Managing Attorney and the Director in the case of staff, and by the President of the Board or his/her designee in the case of members of the Board of Directors. A "Request and Authorization for Out of Town Travel" form should be submitted for approval at least five days prior to departure. The form should be thoroughly completed, including the purpose of the travel itinerary, beginning and ending dates of the trip, mode of travel, remarks (justification for making trip), and cost estimates. See Appendix B-1....

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**C. LEGAL ACTION OF WISCONSIN, INC.**  
**Training/Continuing Legal Education**  
**(LAW STAFF MANUAL - 12/15/90)**

This training/continuing legal education policy places more responsibility for selecting programs with individual staff attorneys, makes explicit the role of Priority Committee Coordinators in approving programs, and sets forth the standards to be used in approving programs.

1. Stipend. In each calendar year for each LAW attorney, LAW will pay the registration fees for any one ATS-CLE, CLEW, or other continuing legal education program, to the extent of the stipend amount.

Each attorney will select the program he/she believes meets his/her needs.

Attorneys wishing to attend a program where the registration fee does not exceed the stipend amount, need only complete the registration form and forward it to the Associate Director at least 5 days before the registration cut-off date. Submission of the registration form and payment will be done by the Milwaukee administrative staff and the attorney being registered will receive a copy of the registration letter as confirmation.

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Request that require overnight stays, per diems, or travel outside our service area and requests that take attorneys over their stipend are subject to prior approval by the Associate Director if there are expenses in excess of the stipend for which reimbursement is sought.

2. Other Programs. On a selective basis, LAW will continue to use continuing legal education programs put on by out-of-state organizations including the Practicing Law Institute, the American Bar Association, and the Bureau of National Affairs as well as programs sponsored by other LSC-funded organizations. Requests to attend these programs (where reimbursement for travel or per diems is sought) should be made to the Associate Director after consultation with the appropriate Priority Committee Coordinator.

In reviewing requests, for both out-of-state programs and programs that exceed the stipend, the following factors will be considered: the cost of the sessions, the importance of the session to the legal work of the particular attorney and to the work of a particular office or priority committee; the willingness of the attorney to prepare a summary of the session and make

that as well as written materials provided available to other attorneys in their office and the program; the importance of the subject matter and the likelihood of LAW holding a comparable session; any recommendation of the Priority committee Coordinators.

Requests by multiple attorneys in an office to attend a session on substantive law will rarely be approved, multiple requests on skills/procedural topics are more likely to be approved.

In reviewing requests, special consideration will be given in those cases where attorneys are willing to minimize non-registration costs.

Staff attorneys who will be out of the office for training/continuing legal education activities are expected to make appropriate arrangements with their Managing Attorneys.

## BACKGROUND FACTS

Legal Action of Wisconsin (LAW) provides legal assistance to low income persons. It is funded in part by the Legal Services Corporation and WisTAF. John Ebbott is the Director of LAW, and Michael Maher is LAW's Administrator. The grievant, Lawrence Albrecht, was the Associate Director of LAW at the time of this grievance, with responsibility for overseeing litigation and training.

In the late winter or early spring of 1991, Albrecht was informally approached to present a paper at an international conference in Kuala Lumpur, Malaysia. The conference was entitled "U.S. Legal System: Its Influence on Malaysia and Asia", and Albrecht was to present during a session on "Legal Aid in the United States and Malaysia". Between travel time and the three days of the conference, a total of six working days (Friday, July 5 - Friday, July 12, 1991) was required for attendance.

Albrecht spoke with several people about the proposed trip, including Walter White, one of the 15 members of the WisTAF Board. White was enthusiastic about Albrecht's participation in such a conference, and told him that he thought there would be no problem with having WisTAF monies used for the trip. He also spoke with Ebbott about the conference, and at one point sent Maher a lighthearted memo asking for an advance of "oh say \$1500 - 2000 or so plus R&R pocket change." Ebbott responded in a like manner, scribbling "OK" on the bottom of the memo and initialling it. In more serious conversations about the trip, Ebbott was dubious about a conference in Kuala Lumpur as the subject of an approved CLE expenditure for LAW.

Albrecht was able to secure funding from a foundation for his travel expenses and from the conference hosts for his expenses while in Malaysia. On June 24th, he sent a letter to Ebbott and Gilda Shellow, the Chair of the LAW Board, requesting authorization to attend the conference on

work time, as well as reimbursement of possible layover hotel expenses in Bangkok. He noted White's enthusiasm for the trip, as well as favorable responses from other professionals in the legal services field and the possibility of a published article based upon the presentation. Attached to the memo was a copy of the conference agenda, and an abstract of his presentation: "Historical and Analytical Perspectives on Legal Services Delivery Models: Legal, Political, Socioeconomic and Multicultural Considerations."

Albrecht did not receive a response to his memo before his departure date of July 5th. He attended the conference and returned to work on July 15th. He found a memo from Ebbott dated July 10th, denying his request to attend the conference:

I cannot approve your attendance at the "U.S. Legal System: Its Influence on Malaysia and Asia" Conference in Kuala Lumpur. I cannot find a sufficient nexus between your address to the Malaysia Association for American Studies and Legal Action's clientele. The conference appears to be focused on the influence of the United States legal system on Malaysia and Asia, and I cannot justify the use of Legal Action funds for the purpose of your discussing the historical development and organization of legal services programs in the United States for the purpose of educating and enlightening the Malaysian Association for American Studies and its conference attendees. While there may be some tangential benefits to Legal Action's having a spokesperson in the international legal community, those benefits are too ephemeral to warrant the payment for LAW working time.

For the same reason, I cannot authorize the covering of residual expenses with Legal Action of Wisconsin funds, specifically layover hotel expenses in Bangkok, Thailand. While certain members of the WisTAF Board may have no objection to the use of WisTAF funds to finance the trip, I think that the use of such funds for this purpose will create difficulties for Legal Action in the future.

On July 26th, Albrecht and Ebbott met to discuss the denial of his request for work time and expenses for the conference. They were unable to agree and Albrecht appealed Ebbott's decision to the LAW Board. He pointed out that LAW would benefit from the prestige attached to having an employee present a paper at an international conference, and from the subsequent publication of the paper in the United States. He also pointed to White's authorization of the trip, and the unfairness of Ebbott's late response, since he could have decided against the trip had he known it would cost him six days of salary plus expenses. He suggested a compromise of three days pay for the actual conference time, and the use of vacation for the three days of travel time. The Board denied his appeal. The matter was referred to arbitration after the exhaustion of the grievance procedure.

Additional facts, as necessary, are set forth below.

## THE POSITIONS OF THE PARTIES

The grievant argues that the conference in Kuala Lumpur was relevant to LAW's mission and beneficial to LAW as an organization. Principles of international law are increasingly utilized in civil litigation of the type pursued by LAW, and are regularly addressed at the National Legal Aid and Defenders Association conferences customarily attended by LAW employees. Moreover, LAW benefited from having one of its employees receive international recognition in the field of legal services. There was, he argues, a sufficient nexus between the conference and his duties with LAW to justify attendance on work time, and as the person responsible for approving such requests for staff members, he would not have hesitated to approve attendance.

More importantly, the grievant asserts, the Director's failure to make his opposition known before July 5th seriously prejudiced him. Had he known that the trip would not be approved, he could have considered whether he wished to invest six days of pay plus expenses in presenting this paper. The administration's silence led him to believe that the trip would be approved. LAW should be estopped from denying him pay since its inaction caused him to proceed in the reasonable belief that he would be paid for attending the conference.

For these reasons, the grievant asks that LAW be directed to pay him for the six days he devoted to attending the conference.

LAW argues that the denial of time and expenses was consistent with its policy on travel and conference attendance, as well as its past practices in these areas. As an agency competing for funding before public boards, including the Legal Services Corporation, LAW cannot afford to use its funds for out of country travel. Such conferences simply raise too many questions in funders' minds, and provide ammunition for those who might oppose LAW's funding. The connection between this presentation and the work of LAW is very attenuated, and not worth the risk of adverse publicity that might result if it became known that employees were being paid to spend six days going to Malaysia.

The fact that one member of the WisTAF Board expressed support for the trip is, LAW argues, meaningless. Walter White had no authority to approve or disapprove of the trip, and any support he expressed was purely informal. As for the claim that Ebbott should have responded more quickly, LAW points out that the grievant's request was submitted at a very busy time at the agency. It is not unusual for such requests to be answered after the conference dates, since the Director has 50 people sending him such requests and addresses them in the order they come up. In any event, Albrecht should have checked with Ebbott before leaving on the trip if he was not interested in attending without LAW funding.

## DISCUSSION

This case has two issues that must be resolved: First, was the grievant entitled to attend

the conference in Malaysia by virtue of the existing policies of LAW and second, regardless of the entitlement under the policies, should the Employer be estopped from denying the claim for six days' pay by virtue of its failure to respond to the grievant's request in a timely fashion. Each is addressed in turn.

### Attendance as a Matter of Right

The relevant policies of LAW require prior approval for conference attendance and out of town travel:

*All out-of-town travel must be approved prior to departure by the Managing Attorney and the Director in the case of staff, and by the President of the Board or his/her designee in the case of members of the Board of Directors. A "Request and Authorization for Out of Town Travel" form should be submitted for approval at least five days prior to departure. The form should be thoroughly completed, including the purpose of the travel itinerary, beginning and ending dates of the trip, mode of travel, remarks (justification for making trip), and cost estimates. See Appendix B-1.... (Jt. Exhibit #3, Emphasis Added)*

. . .

Request that require overnight stays, per diems, *or travel outside our service area* and requests that take attorneys over their stipend are subject to prior approval by the Associate Director if there are expenses in excess of the stipend for which reimbursement is sought.

2. Other Programs. *On a selective basis, LAW will continue to use continuing legal education programs put on by out-of-state organizations including the Practicing Law Institute, the American Bar Association, and the Bureau of National Affairs as well as programs sponsored by other LSC-funded organizations. Requests to attend these programs (where reimbursement for travel or per diems is sought) should be made to the Associate Director after consultation with the appropriate Priority Committee Coordinator.*

*In reviewing requests, for both out-of-state programs and programs that exceed the stipend, the following factors will be considered: the cost of the sessions, the importance of the session to the legal work of the particular attorney and to the work of a particular office or priority committee; the willingness of the attorney to prepare a summary of the session and make that as well as written materials provided available to other attorneys in their office and the program; the importance of the subject matter and the likelihood of LAW holding a comparable session; any recommendation of the Priority Committee Coordinators. (Jt. Exhibit #4, Emphasis Added)*



I am not able to find any reference in the policies of LAW or the record evidence of past practice to suggest that employees have the right to attend out-of-state legal education conferences without approval. Certainly attendance at the conference in question would not have been inconsistent with the criteria for out-of-state programs set forth in the Training guidelines. There is an argument to be made in favor of the grievant's attendance, and the grievant made it to Ebbott. The fact is, however, that Ebbott believed the possibility of prejudicing LAW's standing with its funders outweighed any benefit to the organization from the grievant's participation. That judgment is reserved to Ebbott by the Employer's policies, and I can find no basis for concluding that the grievant had the right to insist on attending in the face of Ebbott's opposition.

### Unfair Treatment

The grievance procedure defines a grievance as "any question or dispute of an employee arising out of his employment with Legal Action of Wisconsin. It shall include unfair treatment and problems relating to wages, hours and terms and conditions of employment." The grievant argues that Ebbott's failure to respond promptly to his request was unfair, since it misled him into believing that he would be paid for the trip.

I agree that Ebbott's silence was in some ways unfair, since he knew the grievant intended to make the trip and wanted LAW funding for his time and some expenses. He also knew that the trip was coming up within ten days of the grievant's memo. Even though a written response might not have been possible within that time frame, some indication of approval or disapproval would have been appropriate. However, fairness or unfairness is not an abstraction, and Ebbott was not the only party to this transaction. The grievant knew Ebbott was somewhat skeptical of the trip, and no reasonable person could have failed to understand that an eight day trip to Kuala Lumpur to discuss comparative American/Malaysian legal issues was not a routine request in the office. 1/

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1/ Two other cases of out of country travel requests were raised at the hearing. Neither appears to bear on this case. In one case, a staff attorney asked for work time to study elder law issues while on vacation in England. The grievant denied the request in his capacity as Associate Director. Without going into great detail, the fact that the primary purpose of the trip was a vacation, questions about the relationship between the attorney's work and the alleged training opportunity, and general concerns regarding performance distinguish this instance from the grievant's case. In the other instance, LAW employees, including Ebbott, attended a National Legal Aid and Defenders Association conference in Toronto. This took place after the grievant's trip, and could not have influenced his decision-making. Furthermore, the evidence strongly indicates that attendance at NLADA conferences is so widespread and routine, and the curriculum so obviously work-related, that it could not have been used to embarrass LAW before its funders. Finally, attendance by Wisconsin lawyers at a conference in Toronto simply does not strike one as being the same as a trip to Kuala Lumpur. The distinction is not easy to articulate, and is perhaps

The grievant was equally capable of speaking informally with Ebbott before finally committing himself to the trip as Ebbott was of speaking with the grievant. One of them should have. Neither of them did. Instead, the strong impression from the record is that both of them were avoiding the question.

While neither Ebbott nor the grievant acted reasonably in simply allowing the request to languish for ten days, I find it difficult to credit the grievant's claim that a reasonable person would have acted in reliance on Ebbott's silence. 2/ Silence may well indicate assent in some cases, but not in every case. In this case, the request was unusual enough that the grievant should have anticipated at least some possibility of a negative response. By committing to the trip without prior approval, he accepted the risk of having to use leave time rather than being paid.

In conclusion, the grievant was not entitled to attend this conference as a matter of right. Instead, the policies of LAW required prior approval by the Director. Although he requested such approval, he did not receive it prior to leaving for Kuala Lumpur. The unfairness of Ebbott's tardy reply to the request is offset by the unreasonableness of the grievant's decision to proceed without knowing whether the six work days required for this unusual trip would be paid by the employer. For these reasons, I have made the following

#### AWARD

The grievant was not entitled under the LAW personnel policies to compensation as regular work for attendance at a conference in Malaysia, where he presented a paper. Accordingly, the grievance is denied.

Dated this 9th day of April, 1993 at Racine, Wisconsin:

By  Daniel Nielsen /s/

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akin to Justice Stewart's test for pornography. Notwithstanding a certain vagueness, however, it is fair to say that the former would be considered a nice trip, while the latter would be considered exotic.

2/ The grievant claims that he did not finally commit to the trip until after submitting his request to Ebbott. However, he also testified that he confirmed his airline tickets before preparing the abstract of his presentation. Since the abstract was attached to the request, it appears that he had taken concrete steps to confirm his attendance before finding out whether LAW would underwrite the trip.

Daniel Nielsen, Arbitrator