

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between :  
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OCONTO COUNTY SHERIFF'S DEPARTMENT :Case 109  
LABOR ASSOCIATION :No. 48085  
 :MA-7502  
and :  
 :  
OCONTO COUNTY :  
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Appearances:

Mr. Michael G. Perry, Attorney at Law, 122 E. Main Street, P.O. Box 142, Coleman, Wisconsin 54112-0142, appearing on behalf of the Oconto County Sheriff's Department Labor Association.  
Mr. John E. Thiel, Godfrey & Kahn, S.C., Attorneys at Law, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54902-1278, appearing on behalf of Oconto County.

ARBITRATION AWARD

Oconto County Sheriff's Department Labor Association (hereinafter Association) and Oconto County (hereinafter County) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for arbitration of unresolved grievances by an Arbitration Board. The parties waived the requirement for an Arbitration Board and requested the Wisconsin Employment Relations Commission (hereinafter Commission) on September 28, 1992, to select an arbitrator. The Commission appointed James W. Engmann, a member of the Commission's staff, to act as the impartial arbitrator in this matter. Prior to scheduling this matter for hearing, the parties attempted to settle this matter. A hearing was held on April 13, 1993, in Oconto, Wisconsin, at which time the parties were afforded the opportunity to present evidence and make arguments as they wished. The hearing was transcribed, a copy of which was received on April 22, 1993. The parties filed briefs and reply briefs or a waiver thereof, the last of which was received on August 18, 1993. Full consideration has been given to the evidence and arguments of the parties in reaching this decision.

STATEMENT OF THE FACTS

Judy Kadlec (hereinafter Grievant) is a deputy in the Oconto County Sheriff's Department. Other members of the Department include the Grievant's husband, Dennis Kadlec (hereinafter

Husband), Dale Noack (hereinafter Lieutenant), Douglas McMahon (hereinafter Chief Deputy), and Kenneth Woodworth (hereinafter Sheriff).

In fall 1991, the Grievant discussed with the Sheriff the possibility of attending polygraph school. In late November or early December 1991, the Grievant told the Sheriff about the Backster School of Lie Detection in San Diego, California. The Sheriff authorized the Grievant to apply to the School and to apply for grant from the Wisconsin Department of Justice (hereinafter DOJ).

On December 20, 1991, the Grievant was informed via telephone that space was available in the class starting January 6, 1992, and that she was accepted into the School. That same day she sent a written application to the School and written application for a state grant to the DOJ. Also on that day the Sheriff wrote to the DOJ to support the schooling to which the Grievant was applying and to express appreciation for the DOJ's consideration regarding the request for the maximum grant allowed by the State Schooling Funds.

On December 26, 1991, the Grievant was informed via telephone that the Sheriff's Department would receive a grant of \$1000 from the DOJ for her to attend the School. After informing the Lieutenant of her acceptance and telling him that the County would save a lot of money by purchasing an airplane ticket a week before departure, she requested authorization to purchase an airline ticket. After the Lieutenant consulted with the Chief Deputy, he authorized her to purchase the ticket. She purchased a ticket on December 27, 1991.

On December 30, 1991, the Lieutenant advised the Grievant that there were not enough funds in the budget to pay her expenses and that she would not be able to attend the School. She talked to the Sheriff who indicated she would be reimbursed for the airplane ticket.

On December 31, 1991, the Grievant's Husband met with the Sheriff and the Lieutenant to discuss the Grievant's attendance at the School. As a result of that meeting, the Grievant's Husband and the Sheriff entered into an agreement allowing the Grievant to attend the School.

She was taken off road patrol and paid her salary while attending the School from January 6 through February 22, 1992. On January 22, 1992, the Sheriff drafted a "Memorandum of Understanding" which he and the Grievant's Husband signed. It reads as follows:

It is understood that Deputy Dennis Kadlec postdated a personal check to the Oconto County Sheriff's Department, in the amount of \$3,250.00, to cover the tuition cost of a

polygraph school in Dan Diego, California, being attended by Deputy Judy Kadlec.

It is also understood that Deputy Dennis Kadlec will also pay for meals, lodging and air fare expense incurred by Deputy Judy Kadlec for her attendance at the school.

It is further understood that, if it is determined by the Sheriff that money is available from State grants and/or the current Sheriff's Department budget to defray part of these costs, upon that determination, these monies could be applied accordingly to the expenses incurred for this school.

When she returned, the Grievant sought reimbursement as follows:

Tuition	\$3250.00
Food	\$ 423.94
Lodging	\$1897.40
Parking	\$ 46.67
Airfare	\$ 783.00

The total claim was for \$6401.01. The County received a grant from the state of \$1000. The 1992 budget for Schooling in the Sheriff department was \$6800, of which \$4750 was spent, leaving a balance in this part of the budget of \$2050. The County never paid the Grievant anything.

PERTINENT CONTRACT LANGUAGE

ARTICLE VIII

SCHOOLING

The County shall offer a minimum of forty (40) hours of schooling in Police Science courses per year per officer. Straight time rate of pay shall be paid to officers attending such school, outside of their regular scheduled work hours. The determination as to courses and the scheduling of the same shall be made by the Sheriff.

Officers who attend school and take accredited Police Science courses on their own time shall have the cost of tuition and class fees reimbursed by the County upon successful

completion of each course.

In order to be eligible for and maintain promotion an officer must attend a minimum of forty (40) scheduled hours of schooling per year in each of the previous five (5) years and in subsequent years. The Director of Police Services shall discuss the training program with representatives of the Union prior to establishing the program.

The Director of Police Service shall discuss training programs with Union representatives prior to establishing the programs for the upcoming year.

#### ARTICLE XIX

##### MANAGEMENT RIGHTS

The County possesses the sole right to operate County government and all management rights repose to it, subject only to the provision of this Contract and applicable law.

These rights include, but are not limited to the following:

- A. To direct all operations of the County;
- B. To establish reasonable work rules and schedules of work with the Sheriff, Sheriff's and Traffic Committee. Approval of schedule and shift changes must be obtained from the Personnel and Wages Committee, who shall negotiate such changes with the Union.
- C. To hire, promote, transfer, schedule and assign employees to positions within the County;
- D. To suspend, demote, discharge and take other disciplinary action against the employees;
- E. To relieve employees from their duties because of lack of work or any other legitimate reasons;
- F. To maintain efficiency of County government operations;

- G. To take whatever action is necessary to comply with State or Federal law;
- H. To introduce new or improved methods or facilities;
- I. To change existing methods or facilities;
- J. To determine the kinds and amounts of services to be performed as pertains to County government operation, and the number and kinds of classifications to perform such services;
- K. To determine the methods, means and personnel by which County operations are to be conducted;
- L. To take whatever action is necessary to carry out the functions of the County in situations of emergency.

ISSUE

At hearing, the parties were unable to agree on the framing of the issue. The parties stipulated that the Arbitrator would frame the issue in his award.

The Association would frame the issue as follows:

Did the County violated the 1991-92 labor agreement by refusing to reimburse an employe for her expenses she incurred while attending an authorized police training school?

The County would frame the issue as follows:

Did the Employer violate Article VIII of the collective bargaining agreement when it refused to reimburse tuition and class fees to the Grievant?

If so, what is the appropriate remedy?

I frame the issue as follows:

Did the County violate the collective bargaining agreement by refusing to reimburse the Grievant?

If so, what is the remedy?

#### POSITION OF THE PARTIES

On brief, the Association argues that the County violated the collective bargaining agreement by authorizing the Grievant to attend police school pursuant to Article VIII of the agreement and then refusing to reimburse her for the cost of the tuition and the expenses incurred in attending the schooling. Specifically, the Association argues that this dispute can be settled easily by reviewing the basic facts of what occurred and looking to the simple interpretation of the relevant contract provision; that the evidence is clear and convincing that the Grievant was authorized to attend the school; and that the contract is clear that if any employee is authorized to attend and successfully completes the school, he/she is entitled to be reimbursed for the tuition and the expenses incurred in attending the schooling. The Association request that the Arbitrator find that the County has violated the labor agreement and order the County to reimburse the Grievant for her school expenses as submitted.

On brief, the County argues that the record reflects that the Grievant was never authorized reimbursement of expenses by the County to attend school in California; that the County did not violated the collective bargaining agreement by not reimbursing the Grievant for expenses; that the Grievant's husband was never guaranteed that the Grievant's expenses would be reimbursed by the County; and that the proper focus on the municipal budget is to look at it on a yearly basis rather than focusing on the single line item, as will be advocated by the Grievant. On reply brief, the County argues that the Association's statement of facts should be afforded little weight in the determination of this dispute because it is merely an unsupported version of the Grievant's position; that the Grievant misconstrues her husbands agreement to pay for her schooling costs; and that the Association's arguments are unpersuasive on the issue at hand.

#### DISCUSSION

It is clear to me that the Grievant was authorized to attend the Backster School of Lie Detection in San Diego, California, from January 6 through February 22, 1992. The County is wise not to argue to the contrary.

But the County does argue that the Grievant was not authorized reimbursement of expenses by the County to attend the School. This is the key to this case and, of course, where all the confusion lies. There is a collective bargaining agreement,

past practice and a "Memorandum of Understanding" intertwined in the determination of this matter.

The Grievant was authorized to purchase the airplane ticket. When the County told her later that she was no longer authorized to go to the School, it is clear that the County owed the Grievant an amount of money equal to the purchase price of the airplane ticket. If that was all there was to this case, if the Grievant had not gone to California and if the County had not reimbursed her for the airplane ticket, I would order the County to do so.

But the Grievant did go to School. Nonetheless, the County did not reimburse her for her expenses for doing so. The question before me, then, is whether the Grievant should be reimbursed and, if so, to what extent.

It is not correct, as the County argues, that the Sheriff did not authorize the Grievant to be reimbursed for schooling expenses. It is correct that the Sheriff did not unconditionally authorize the Grievant to be reimbursed for schooling expenses.

Under the "Memorandum of Understanding", reimbursement was authorized, conditioned upon the determination by the Sheriff "that money is available from State grants and/or the current Sheriff's Department budget to defray part of these costs". The County has several arguments as to why it did not reimburse the Grievant in any amount and why its refusal to reimburse the Grievant did not violate the collective bargaining agreement.

First, the County argues that the Grievant did not complete the training. The collective bargaining agreement requires "successful completion of each course". The School certified that the Grievant "satisfactorily completed the 280 hour academic phase of the 'Polygraph Examiner' Training Program offered by the Backster School of Lie Detection."

The County makes much of the fact that the Grievant did not successfully complete the "Field Project" phase within twelve months, a requirement of the School's in order to award a diploma certifying compliance with the overall Polygraph Examiner's Training Course requirements.

But the Field Project is a separate and distinct phase from the academic phase, and it is the academic phase that the Grievant received authorization to attend and for which reimbursement is sought. Secondly, she was given an extension by the School to complete this phase of the course.

But thirdly, and most importantly, it is the County itself which prevented the Grievant from accomplishing this phase of the



course by not assigning her to polygraph exams. The County can not refuse to assign her polygraph exams and then argue she should not be reimbursed because she did not do polygraph exams.

Second, the County argues that because the Grievant was paid to attend the training program, she is therefore ineligible for reimbursement under the collective bargaining agreement.

This argument denies the existence of the "Memorandum of Understanding" or, worse, says that the Sheriff entered into a Memorandum with which he could not legally comply, an agreement he was encouraged to enter into by the County Board. On the face of the Memorandum, it states that reimbursement is possible. The Grievant's Husband signed the Memorandum with the understanding that reimbursement was possible.

Therefore, to accept the County's argument, I would not only have to accept that the County entered into said Memorandum in bad faith but I would be forced to be a party to said bad faith. The County cannot say to the Grievant that it will reimburse her and, after she has relied upon said statement, deny her reimbursement by saying the collective bargaining agreement does not allow it.

The County also argues that the collective bargaining agreement does not require it to reimburse for travel and related expenses for schooling. Again, this argument declares the Memorandum null and void. Even if this was true, tuition and class fees in this case amount to \$3250.

The Union, on the other hand, argues that the Grievant should be fully reimbursed; however, the Union does not address the issue of the Memorandum entered into by the Grievant's Husband. The record is clear that the Husband was acting as an agent for the Grievant. If the Husband had not intervened, the Grievant would not have been allowed to attend the School. The fact that she did not know about her Husband's action at first does not change this.

And since it was the Husband's intervention that allowed the Grievant to attend the School, the Grievant is bound by the Memorandum entered into between the Husband and the Sheriff.

Therefore, I find that the County is required to reimburse the Grievant the amount of money determined by the Sheriff to be available from state grants and the current (1992) Sheriff's Department budget.

The County argues that the Sheriff's Department budget experienced a \$72,000 deficit in 1992 and, thus, did not have the money available to reimburse the Grievant. Therefore, the Sheriff determined that no money was available and the County is not required to reimburse the Grievant.

But this determination by the Sheriff is not absolute. It must be held to a standard; in this case, the standard is one of reasonableness. The County received a grant from the DOJ of \$1000. This money was not paid to the Grievant to reimburse her for part of her expenses. And under the County's argument, the Grievant would have had to receive \$72,000 in state grants prior to receiving one cent of reimbursement.

I do not believe this was the understanding reached between the Sheriff and the Grievant's Husband. In any case, it is not a reasonable interpretation of the Memorandum. A reasonable interpretation is that the Grievant would receive the amount of money the County received for her attending the School.

In addition, the County had \$2050 remaining in the budgetary line item for Schooling. This money was not paid to the Grievant either.

The County argues that the proper focus should be on the total budget on a yearly basis and not on the single line item of Schooling. I disagree again. This Memorandum entered into by the Sheriff and the Grievant's Husband was not based on a shortage of money in the total budget, only in the line item of Schooling. Not to pay her this money is unreasonable; it was budgeted for schooling, and schooling is what the Grievant wants to be reimbursed.

The Association again argues that the Grievant should be reimbursed the full amount of \$6401.01. But this ignores the language of the Memorandum which limits reimbursement to "State grants and/or the current Sheriff's Department budget" (emphasis added). The amount left in the current budget for Schooling is \$2050; anything more than that is an unreasonable interpretation of the Memorandum.

Therefore, for the reasons stated above, the Arbitrator issue the following

AWARD

1. That the County violated the collective bargaining agreement when it refused to reimburse the Grievant.

2. That the County pay to the Grievant \$3050 within 30 days of the date of this Award.

Dated at Madison, Wisconsin this 16th day of November, 1993.

By James W. Engmann /s/  
James W. Engmann, Arbitrator