

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

OSHKOSH PROFESSIONAL POLICE
OFFICERS ASSOCIATION

and

CITY OF OSHKOSH

Case 260
No. 53147
MA-9254

Appearances:

Frederick J. Mohr, S.C., Attorney at Law, by Mr. Frederick J. Mohr, appearing on behalf of the Association.

Godfrey & Kahn, S.C., Attorneys at Law, by Mr. William G. Bracken, Coordinator of Collective Bargaining Services, appearing on behalf of the City.

ARBITRATION AWARD

Oshkosh Professional Police Officers Association, hereinafter referred to as the Association, and the City of Oshkosh, hereinafter referred to as the City, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Association made a request, with the concurrence of the City, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Oshkosh, Wisconsin on April 16, 1996. The hearing was transcribed and the parties filed post-hearing briefs. The parties reserved the right to file reply briefs. The City filed its reply brief and the Association informed the arbitrator that it would not be submitting a reply brief and the record was closed on June 10, 1996.

BACKGROUND

The basic facts underlying the grievance are for the most part undisputed. The grievant has been employed as a police officer by the City since 1985. Prior to his employment, the grievant attended UW-Whitewater where he majored in Special Education. After joining the Police Department, the grievant enrolled at UW-Oshkosh seeking a major in Criminal Justice. UW-Oshkosh allowed the transfer of 93 credits from UW-Whitewater. In 1989, the grievant took two courses at UW-Oshkosh which were Introduction to Criminal Law and Constitutional Law and Judicial Policy for a total of six credits. The collective bargaining agreement provides for additional pay for every three credits up to 36 credits in the curriculum defined as the Police Administration program. The grievant was given credit for some courses from UW-Whitewater as part of the 36 credits as well as the six from UW-Oshkosh and was paid \$16.15 bi-weekly for

meeting the 21 credit level.

In 1995, the grievant applied to Mount Senario College in its Criminal Justice Administration program. Mount Senario allowed the transfer of 79 credits from UW-Whitewater as well as the 6 credits from UW-Oshkosh and 19 credits for the grievant's attending recruit school in 1980. The grievant requested that he be paid the maximum payment under the contract for educational benefits. The City denied the request. The grievant filed a grievance which was denied and appealed to the instant arbitration.

ISSUE

The parties were unable to agree on a statement of the issues. The Association states the issue as follows:

Is the grievant entitled to the maximum payment allowed under Article XV, "Education Benefits"?

If so, what is the appropriate remedy?

The City states the issue thusly:

Did the City violate Article XV of the Master Agreement by denying Greg Linse a salary adjustment for courses taken outside of the Police Administration Program? If so, what is the appropriate remedy?

The undersigned frames the issue as follows:

Did the City violate Article XV of the parties' collective bargaining agreement by not granting the proper amount of pay to the grievant based on the course credits taken at UW-Whitewater and UW-Oshkosh and granted him by Mount Senario College?

If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE XV

EDUCATION BENEFITS

This provision shall apply to those employees hired prior to 1-1-89 only.

In consideration of the successful completion of thirty-six (36) credits from the curriculum of any accredited institution, defined as the Police Administration Program the following schedule of benefits and provisions shall apply:

Educational Credits

For every three (3) credits an employee obtains in the aforementioned program of study he shall receive Bi-Weekly payments as listed:

<u>Credits</u>	<u>Bi-Weekly Rates</u>
3	\$2.31
6	4.61
9	6.92
12	9.23
15	11.54
18	13.85
21	16.15
24	18.46
27	20.77
30	23.08
33	25.38
36	27.69

Salary adjustments as contained herein shall be made at the beginning of the first pay period in February and the beginning of the first pay period in July of each year upon presentation of satisfactory evidence that the officer has completed the aforesaid courses of instruction. Employees shall not be paid for courses completed unless the final grade received is "C" or better.

An additional \$15.00 per month shall be paid to the employee upon completion of 60 credits in the Police Administration program.

All employees who have completed two (2) years of service are eligible to participate in the educational program set forth herein. An employee who has accumulated credits herein prior to the completion of two (2) years of service will receive the compensation as provided herein at such time as he has completed two (2) years of service.

Employees desiring to take certified courses in the Police Administration Program shall fund said courses through LEAA Grants, GI Benefit Grants or any other available grant made known to the employee. Should the employee not be able to receive funding for books and tuition from any other source for certified courses in the Police Administration Program then in that event and only in that event the City will pay the expenses of books and tuition. Should an employee be required to pay back any grant he has received due to termination or voluntary separation from the Oshkosh Police Department then in that event the City will reimburse the employee for those expenses due to participation in the Police Administration Program.

All payments shall be made at the undergraduate rate. If an employee wishes to take a graduate course, he shall be responsible for the differences between the graduate and undergraduate rate. If the employee drops a class, the employee will be responsible for the costs incurred by the City for that course including books and tuition.

If the reason for the employee dropping the course is due to a shift change, the employee will not be required to reimburse the City. Student classroom and study hours shall not be construed as work hours nor shall such time be subject to compensation.

No new employee hired after January 1, 1969, for purposes of the salary schedule shall be hired in other than the first step of the salary schedule unless educational achievement is such that the City may choose to start him in a step not to exceed step C of the salary schedule. The salary schedule is set forth in appendix A and incorporated herein by reference.

POSITIONS OF THE PARTIES

Association's Position

The Association contends that the issue for resolution is simply one of contract interpretation. It submits that the key word in need of interpretation in Article XV is "curriculum" and it urges a broad interpretation to include courses which are required (including electives) to satisfy the requirements for a degree in Criminal Justice. It points out that the City seeks a narrow interpretation as only allowing courses that meet the core requirements as eligible for payments.

The Association claims that the dictionary definition of "curriculum" is appropriate to determine the plain meaning of the term, which is the aggregate of courses of study given in a school, college, etc. The Association supports its position by reference to the testimony of Mike Novotny, who was on the Association bargaining team, to the effect that "curriculum" meant all courses within a major. It notes that the City called no one to refute the bargaining history and instead relies on an interpretation it recently developed. It asserts that the City relies on a historical basis for its interpretation but a review of the history fails to support the City. It refers to the certificate program which was eliminated in 1983 which had courses not found in the "core" of requirements of any Police Administration program. It observes that under the present Criminal Justice major program, a student must have 30 credits to enter the program, and then take 27 credits in criminal justice (core courses) and an additional 18 credits of which 12 are electives, as well as obtaining a total of 128 credits for a degree. It submits that of the five preliminary courses, three had been included in the certificate program, so for consistency, any of the 30 credits to enter the program should satisfy the requirement. It further insists that many of the certificate courses are electives of a major program and these too would qualify. It argues that a review of the grievant's course listing establishes that in 1989 he was short-changed and should have been given 49 credits and with Mount Senario giving him credits for recruit school, he is entitled to the maximum 60 credit allowance. It contends that the City has recently reduced the number of courses that qualify and is a major change in the practice of the parties and the City's previous understanding of qualifying courses. It claims that the contract language "of any accredited institution" permits Mount Senario to be the final arbiter of granting credit for recruit school. It concludes that the Association's interpretation must prevail.

City's Position

The City contends that it has never paid a salary adjustment for recruit school courses, a fact supported by witnesses for both parties. It observes that recruit school courses are preparatory courses that every officer must have to become an officer. It submits that the intent of Article XV was to upgrade the educational level of police officers and the pay for credits was an incentive to do so. It further argues that recruit school is not college credit work. It asks that Mount Senario's recognition of recruit school courses be rejected as inappropriate for a salary adjustment under Article XV.

The City claims that the benchmark for defining relevant courses in Police Administration is the original UW-Oshkosh Training Certificate curriculum. It maintains that although the Certificate program no longer exists, it was still used when the language was changed to "any accredited institution". It contends the basic intent was to restrict employees to a very narrowly-defined Police Administration curriculum. It refers to Article XV as not referring to just any curriculum but to the curriculum of the Police Administration Program and not to any and all credits but only those courses directly related to the Certificate curriculum which was first bargained and has been consistently applied. It notes that the grievant's transcript was initially reviewed and only those courses falling within the guidelines of the UW-Oshkosh certificate

curriculum were allowed. It alleges that Mount Senario has 29 credits in the Criminal Justice major and UW-Oshkosh has 27 credits and both have major supporting courses which fill out the 36 credit requirement. The City refers to a Memorandum of Understanding signed by the parties on November 26, 1979 which broadened the institutions for which credits would be recognized but the courses had to be approved or equivalent to those on the approved list. The City insists that this refutes the Association's claim that the change to "any accredited institution" somehow changed the intent of the obligation to pay for credits under Article XV. It maintains that the evidence establishes that even though the Criminal Justice or Police Administration degree program has expanded, the core 36 credits still relate to the benchmark Training Certificate. It refers to Novotny's testimony that he knew of no one who applied for a salary adjustment for electives and that the City referred to the Certificate curriculum to approve or disapprove courses for salary adjustments. The City argues that the Association's interpretation of Article XV is unreasonable and runs counter to its original intent. It asserts that to make sense of the Association's position, the language "defined as the Police Administration Program" would have to be deleted. It notes that this language remains intact and defines the curriculum and does not allow carte blanche for all credits.

The City insists that the Association's remedy is to seek a salary adjustment to the grievant for a full 60 credits retroactive to 1989. It claims that this is not timely as any error in 1989 could have been grieved then and any remedy should not predate the filing of the 1995 grievance. It argues that the issue here is limited to the recruit school credits but merely because Mount Senario applies these toward a degree which the grievant claims entitles him to a salary adjustment based on 60 credits is a sham and makes a mockery of the contract language. It reasons that the grievant did not take a single course since 1989 and would be unjustly enriched and allows him to go "credit shopping". It observes that the grievant would get another "kick at the cat" by having his credits evaluated by another educational institution. It asserts that the City has been consistent in reviewing the grievant's record and the resubmission based on what Mount Senario did changes nothing.

In conclusion, the City requests, for the reasons argued above, that the grievance be dismissed in its entirety.

City's Reply

The City contends that there is a discrepancy in the number of credits the Association claims the grievant was originally granted in 1989 but it does not affect the result in this case. The City argues that the Association has waived its right to seek 60 credits because it waited six years to contest this issue. The City disagrees with the Association's assertion that the word "curriculum" is the most important word in the disputed language as the word is limited by the phrase "defined as the Police Administration Program". It repeats its prior arguments that curriculum relates back to the Police Administration Certificate Program as the benchmark for courses which result in a salary adjustment. The City observes that the Union seeks to have all

credits and general coursework eligible for a salary adjustment and the evidence fails to support this interpretation. It rejects the Association's claim that the grievant should have been given 49 credits in 1989 as untimely and also rejects the Association's assertion that Mount Senario is the final arbiter of approved credits because it insists that recruit school is not covered. It maintains that the City derives no benefit by paying for the necessary credentials to become an officer in the first place but rather offers an incentive for officers to upgrade themselves professionally.

As to the Association's claim that the City has placed a very narrow definition on the term, curriculum, the City denies this and claims there is no evidence to support it. It admits that the qualifying institutions were broadened in the language but no evidence was offered that the courses were also broadened. It argues that the City has taken the total credits for a degree and arranged these into the 36/60 Police Administration Program credits that qualify for salary adjustment. It insists that the intent of the parties was never to pay for all college credits and the Association's remedy of allowing the grievant the maximum 60 credits is not supported. It contends that the grievant received a fair application of the standard in 1989 and it should not be disturbed, as to do so would be unfair and unjust and unjustly enrich the grievant. It repeats its arguments on recruit school courses and requests that the grievance be denied in all respects.

DISCUSSION

Article XV, Education Benefits, provides, in part, as follows:

In consideration of the successful completion of thirty-six (36) credits from the curriculum of any accredited institution, defined as the Police Administration Program the following schedule of benefits and provisions shall apply: . . .

The Association argues that the critical word in the above quote is "curriculum" which must be given a broad interpretation. On the other hand, the City ties curriculum to the Police Administration Program and argues that this be given a narrow interpretation. The language would be clear and unambiguous if there were a universal Police Administration Program but due to the passage of time, the demise of the Certificate program and the advent of the Criminal Justice Programs, the language has become ambiguous and it is necessary to review the genesis of this provision to determine its present-day application.

The evidence established that the UW-Oshkosh offered a program for professional improvement of law enforcement personnel which led to a Police Administration Training Certificate. 1/ A total of 36 credits was required for the Certificate with six credits required from

1/ Ex. 3, Tr. 13-14.

six different groups. 2/ There were a number of different courses within each group and a choice could be made from these different courses so long as the six credit requirement was satisfied. The curriculum was updated and more courses were offered in each group but the groups remained the same and the six credit per group requirement did not change. 3/ As time went on, courses from Fox Valley Technical Institute and other learning institutions were approved. 4/ The Training Certificate program went out of existence sometime in the 1980's and the UW-Oshkosh offered programs in Criminal Justice but to receive approval for pay increases under Article XV, the City determined whether courses taken fell within the original certificate program. 5/ This is consistent with the language of Article XV which states that payments will be granted for every three (3) credits an employe obtains "in the aforesaid program of study". In 1989, the contract allowed courses from any accredited institution that fell within the Police Administration Training Certificate program to be approved and appropriate pay increases granted.

Article XV also provides that employes will be paid an additional \$15.00 per month upon completion of 60 credits in the Police Administration program and the same procedure for approval is as above.

This history or past practice gives meaning to the language of Article XV, which is that an employe can take courses from any accredited institution and the courses are then reviewed with the requirements of the Police Administration Training Certificate courses, and if they pass muster, credit is given. If they do not, no credit is given. The grievant had this procedure applied to him without complaint or a grievance. His transcript of courses in Special Education from UW-Whitewater was evaluated against the Police Administration curriculum and he was given credit for those deemed to meet the Police Administration Program. The grievant took two courses in 1989 at UW-Oshkosh which met the requirements and he was given credit for these also.

In 1995, the grievant applied to Mount Senario College and without taking any courses was given additional credits for recruit school. The grievant's request for additional pay was denied, and the Association challenges this. Recruit school does not meet the criteria of the curriculum for the Police Administration Program. 6/ Thus, the City appropriately denied approval for these credits from Mount Senario. Captain Van Ess on behalf of the City on August 2, 1995, issued a memo indicating that only Criminal Justice major courses and only seven credits

2/ Ex. 3.

3/ Ex. 4.

4/ Ex. 9, Tr. 15.

5/ Tr. 17.

6/ Exs. 3, 4 and 12.

of major supporting courses would be reimbursed. 7/ This memo interprets the Police Administration program too narrowly as the 36 credits can include other credits outside those identified as Criminal Justice major courses, such as English, Speech, General Psychology, etc. 8/ On the other hand, the Association is asserting that any and all courses that would count toward a degree in Criminal Justice at any accredited institution would qualify for reimbursement. This ignores the past practice of applying the Police Administration curriculum requirements to courses taken to determine if they qualify. Under the Association's view, any college graduate would meet the 60 credit requirement. This is not warranted by the contract language as applied for so many years. Otherwise, someone with a degree in Classical Music with no Criminal Justice courses could qualify for the 60 credits simply because he has 60 credits that someone with a degree in Criminal Justice also has. However, the language of the contract requires these 60 credits to meet the Police Administration Training Certificate requirements. Thus, the individual with a Music degree would not qualify for the maximum, whereas the Criminal Justice degree would. This result is more reasonable and in accord with the contract language as interpreted and applied over a long period of time. If the parties wish to change the requirements, they must do so in negotiations.

As applied to the grievant, his courses taken were properly compared with the Police Administration program and he was given the proper credit. His credits from Mount Senario for recruit school do not qualify under the Police Administration program and these were appropriately denied. Essentially, the grievant took courses for a major in Special Education and took two courses related to Police Administration and Criminal Laws and Procedures for which he was correctly given credit. He has taken no courses since 1989 and thus has not added to his education any credits that fall within the Police Administration program, so his request for additional education benefits was properly denied.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

The City did not violate Article XV of the parties' collective bargaining agreement but has properly granted pay to the grievant based on the credits he has earned at UW-Whitewater, UW-Oshkosh and granted by Mount Senario College, and therefore, the grievance is denied and dismissed in all respects.

7/ Ex. 2.

8/ Ex. 3.

Dated at Madison, Wisconsin, this 17th day of September, 1996.

By Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator