

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**TOWN OF DELAVAN PROFESSIONAL POLICE ASSOCIATION,  
LOCAL 402, LABOR ASSOCIATION OF WISCONSIN, INC.**

and

**TOWN OF DELAVAN**

Case 17  
No. 65247  
MA-13162

*(Grievance of Officer Celeste Steele)*

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**Appearances:**

**Mr. Benjamin M. Barth**, Labor Consultant, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin 53022, on behalf of the Union.

von Briesen & Roper, S.C., by **Attorney James R. Korom**, 411 East Wisconsin Avenue, Suite 700, P.O. Box 3262, Milwaukee, Wisconsin 53201-3262, on behalf of the Township.

**ARBITRATION AWARD**

At all times pertinent hereto, the Town of Delavan Professional Police Association (herein the Union) and the Town of Delavan (herein the Township) were parties to a collective bargaining agreement dated May 17, 2005 and covering the period from January 1, 2005 through December 31, 2007. On October 21, 2005, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over a dispute between the parties regarding reimbursement of tuition expenses incurred by bargaining unit members. On March 8, 2006 the parties selected the undersigned from a panel of arbitrators to arbitrate the dispute. A hearing was conducted on July 13, 2006 and was not transcribed. The parties submitted briefs August 28, 2006, whereupon the record was closed.

**ISSUES**

The parties stipulated to the following statement of the issues:

Did the Town violate the collective bargaining agreement as alleged in Grievance 2005-33?

If so, what is the appropriate remedy?

Grievance 2005-33 characterizes the dispute as follows:

Did the Employer violate the expressed or implied terms of the collective bargaining agreement when it denied the request of three members of the Association when they asked to be reimbursed in accordance with Article XXI – Educational Pay?

### **PERTINENT CONTRACT LANGUAGE**

#### **ARTICLE III – MANAGEMENT RIGHTS**

**Section 3.01:** The employees recognize the right of the Employer and the Chief of Police to operate and manage their affairs in all respects in accordance with the laws of Wisconsin, ordinances of the Town of Delavan, Constitution of the United States, and the Wisconsin Statutes. The Employer recognizes the right of the Chief of Police to establish and maintain departmental rules and procedures for the administration of the Police Department during the term of this Agreement provided such rules and procedures do not violate any of the provisions of this Agreement. Implementation of said rules and/or procedures shall be subject to the approval of the Employer.

#### **ARTICLE XXI – EDUCATIONAL PAY**

**Section 21.01:** Full-time officers pursuing a degree in Criminal Justice or Police Science may elect to enroll in the tuition reimbursement program. Upon successful completion of each course, employees shall be reimbursed up to six hundred dollars (\$600) per course (effective 1/1/06, up to nine hundred dollars (\$900) per course), provided that the employee achieves a grade of C or better and shall provide a copy of the report card to the Town and proof of payment. Employees who participate in the reimbursement program and voluntarily leave the Town's employment within 3 years after receiving reimbursement shall reimburse the Town on the following schedule:

0-12 months	100%
13-24 months	75%
25-36 months	50%

## **BACKGROUND**

Prior to negotiating their 2005-2007 collective bargaining agreement, the Town of Delavan Professional Police Association and the Town of Delavan had contract language under which the Township agreed to reimburse certain tuition expenses of bargaining unit members, as follows:

**Section 21.01:** Any employee who takes a college course at an accredited institution in a police related field, or foreign language as approved by the department, shall receive a one time payment for that course in the sum of Thirty-five (\$35.00) per credit hour upon the successful completion of the course, provided that the employee achieve a grade of C or better.

During negotiations over the 2005-2007 agreement, the parties agreed to replace the language of Section 21.01 with that set forth in the preceding section above. While negotiations were ongoing, Town Chairman John Pelletier and Union Labor Consultant Ben Barth exchanged e-mail concerning a cap on the reimbursement, which reflected the parties' understanding that the reimbursement would only apply to one course per semester, although this understanding was not specifically included in the contract. The contract was executed by the parties on May 17, 2005.

Subsequent to execution of the contract a question arose as to the definition of the term "semester," inasmuch as many of the courses taken by bargaining unit members are 5 to 8 weeks long. The Union proposed that the Township agree to reimburse up to 6 courses per year, whereas the Township proposed to limit reimbursement to 3 courses per year. While these discussions were occurring, three bargaining unit members put in requests for reimbursement for courses they had satisfactorily completed. Payment was denied for more than one course each pending resolution of the question regarding the definition of a semester. On July 15, 2005, Officer Celeste Steele filed a grievance regarding the non-payment, which advanced through the contractual procedure to arbitration. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

## **POSITIONS OF THE PARTIES**

### **The Union**

The Union asserts that the language of the contract is clear and unambiguous and should be construed according to its terms. (citations omitted) The contract clearly specifies that employees are entitled to one reimbursement of course tuition per semester and contains no definition of semester nor creates limitation on the number of semesters which may be reimbursed. The only requirement on the employees to obtain reimbursement is to obtain a grade of C or better and provide the Township with a copy of the report card and proof of payment. The Grievant complied with the contractual requirements for obtaining reimbursement.

The Township had ample opportunity during negotiations to propose language clarifying the scope of the reimbursement and failed to do so. Despite e-mail communication between the parties about reimbursement after the tentative agreement was reached, but before the contract was signed, the parties never reached agreement about the definition of a semester. The Grievant, who also is the Association President, testified that the Union's agreement to one reimbursement per semester was based on its understanding that semesters were approximately 8 weeks in length. If the Township wanted a limitation on the benefit to 3 semesters per year, it had the responsibility to bargain for it. It did not do so and must now accept the consequences of the fact that there is no contractual limitation on how many semesters an employee may seek reimbursement for in a given year.

It should also be noted that since the filing of the grievance, the Township has not reimbursed employees for any courses taken, thereby violating even its own interpretation of the contract. The grievance should be sustained.

### **The Township**

The Township notes that the parties stipulate that the intent of the contract language was that the Township would only reimburse the cost of one course per semester. The grievance arises from the fact that the Union wants to apply a strained interpretation to the word "semester." It is clear that the Township always understood the intent of the provision to be to reimburse employees for no more than 3 courses per year. It is also clear that a reasonable interpretation of the word "semester" would be a period 16 to 18 weeks in length, which would reach the same result.

Where, as here, contract language is ambiguous, the intent of the parties should be relied on to give meaning to the language, as well as reference to all relevant circumstances surrounding the transaction. In addition, arbitrators employ a number of interpretive tools to determine the proper meaning of ambiguous terms, such as giving words their plain meaning, referring to bargaining history and construing the contract as a whole. There is no doubt that the Township is committed to supporting education for its employees, as evidenced by the marked improvement in the benefit, but the Township sought to limit the benefit in order to budget for the added expense. There was no discussion over the term "semester" because it is commonly understood that there are typically two semesters in an academic year.

Arbitrators often apply a "reasonable person" standard to contract interpretation. Clearly, a reasonable person would interpret a semester as being between 16 and 18 weeks in length. Nearly all high schools, colleges and universities divide the academic year into a Fall and Spring semesters, with a possible additional Summer semester. Further, Webster's Dictionary defines a semester as being between 15 and 18 weeks. Even the prefix "semi" means "half," or "occurring twice during." Although the Grievant denied such an understanding of the term semester, clearly the Township's interpretation is the more reasonable one. The e-mails make it clear that the Township's main concern was limiting reimbursement to one course per semester in order to control the cost of the program, because

the reimbursement level was going up dramatically. Thus, the Township believed the Union understood that the reimbursements were to be limited to 3 per year. The Union's interpretation of the provision would run counter to the clear intent of the limitation.

Reading the contract as a whole also supports the Township. The Management Rights clause allows the Chief of Police to establish department rules and procedures so long as they don't conflict with other provisions in the contract. Under this language, it was within the Chiefs' prerogative to determine the meaning of the word semester. His determination that it means a 16 to 18 week period does not violate any other provision in the contract and should be sustained. This is not outweighed by the Union testimony that the Chief supposedly had a conversation with the Grievant wherein he entertained the possibility of 5 week semesters. Even if so, the Chief and Grievant were not the principal spokespersons for the parties during negotiations and nothing they discussed would have binding effect. The grievance should be denied.

### **DISCUSSION**

The contract language adopted in 2005 specifies that the Township will reimburse qualified employees for tuition costs incurred for college courses in an amount of up to \$900 per course, but does not specify how many courses may be reimbursed in a given year. Because this new language represented a significant improvement in the educational benefit for employees, and potentially much greater cost for the Township, the Town Chairman sought to clarify the limits of the benefit in discussions with the Union Labor Consultant. Through an exchange of e-mails, the principals came to an understanding that reimbursement would be limited to one course per semester. (Jt. Ex. #11 & #12) For whatever reason, however, the parties did not choose to incorporate this limitation into the contract language, nor, apparently, did they discuss prior to ratification what was meant by the word semester. Subsequent to ratification, the issue arose when employees began seeking reimbursement for tuition expenses for multiple courses approximately 5 to 8 weeks in length taken at a nearby university. It was the position of the Union that each 5 to 8 week term constituted a separate semester, entitling the employees to reimbursement for potentially 6 to 9 courses per year. The Township rejected the Union's definition of a semester and took the position that the commonly accepted understanding of a semester was a period of time 16 to 18 weeks in length, entitling employees to no more than 3 reimbursements per academic year. This dispute, therefore, centers on what, if any, limitation exists on the number of courses for which an employee can seek tuition reimbursement under the language of Section 21.01 of the contract, as modified by the parties' discussions memorialized in the emails between the Town Chairman and Union Labor Consultant.

In the first place, it is my view that there is no dispute that the reimbursement benefit is limited to one course per semester, even though that limitation does not appear in the contract language. The e-mail exchange between Town Chairman Pelletier and Labor Consultant Barth makes it clear that Pelletier wanted the one course per semester limitation clarified before taking the tentative agreement to the Town Board for ratification. (Jt. Ex. #11) Barth's

response indicated that the Union shared that understanding and agreed to the limitation. (Jt. Ex. #12) Thus, even though the language itself is ambiguous as to whether, and to what extent, the reimbursement benefit was to be limited, the bargaining history between the parties, reflected in the e-mails between the principals, clarifies their intent that only one reimbursement per semester would be allowed.

It appears, however, that when this exchange was occurring, the Township and the Union had differing understandings of what constitutes a semester. The Town believed it was limiting its exposure to no more than 3 courses per year per employee, whereas the Union had a much broader understanding which would allow for as many as 9 courses per year to be reimbursed. At the arbitration, the Grievant, who, as Union President, also participated in the negotiations, testified that the Union's acceptance of the Township's limitation of one course reimbursement per semester was based on its understanding that a semester was no more than 8 weeks in length. Unfortunately, the parties did not discuss their respective definitions of the word "semester" and this difference of opinion did not come to light until after the contract was ratified and employees began seeking reimbursement.

In circumstances where parties have agreed to use a particular term, but have not communicated to each other the meaning they attach to it, it falls to the arbitrator to interpret the term. In so doing, the arbitrator may resort to objective standards of interpretation and give terms their ordinary and usual meanings. *COSTCO WHOLESALE CORP.*, 114 LA 39 (Hockenberry, 2000). One of the tools commonly used by arbitrators to supply the ordinary and usual meanings to words is a dictionary. *MID-STATE TECHNICAL COLLEGE*, WERC Case 74, NO. 56695, MA-10383 (Jones, 9/22/99). The *Merriam-Webster Dictionary* defines a semester as "either of the two usually 18-week periods of instruction into which an academic year is often divided." The *American Heritage Dictionary of the English Language* defines a semester as "one of two divisions of 15 to 18 weeks each of an academic year." The *Random House College Dictionary* uses the following definition: "an academic session constituting half of the academic year, lasting typically from 15 to 18 weeks." I have been unable to identify any commonly used reference that defines a semester consistent with the Union's interpretation of the term. Consequently, I am of the view that the Township's definition of a semester comports more closely with the commonly accepted meaning of the term. That being the case, I find that under the language of Sec. 21.01, as limited by the parties' sidebar understanding, qualified bargaining unit members are entitled to one course reimbursement per semester, a semester being defined as a period 15 to 18 weeks in length approximating one-half of an academic year, and no more than 3 reimbursements per year, where an additional Summer term is available.

The record indicates that the courses for which the Grievant sought reimbursement were approximately 5 to 8 weeks in length, but does not specify the time periods within which the courses were taken. The effect of my ruling is that, while the length of a course does not preclude an employee from receiving reimbursement, only one course per semester, as I have defined that term, may be reimbursed. Thus, if the courses taken by the Grievant were scheduled, for instance, such that one fell into what would typically constitute the Fall semester

and one fell into the normal Spring semester, there is no reason she may not recover for each of them, but if they were taken within the same semester, she may only recover for one. Thus, for the reasons set forth above, and based upon the record as a whole, I hereby enter the following

**AWARD**

Whether the Town was in violation of the contract depends upon when the courses submitted by the Grievant for reimbursement were taken, not by the length of the courses. If the courses were taken within separate semesters, as that term has been defined herein, the Town violated the contract by not reimbursing the Grievant for them and it is hereby ordered to do so forthwith. If, however, the courses were taken within the same semester, as defined herein, there has been no violation and the grievance is denied.

The Arbitrator will retain jurisdiction of this award for a period of thirty (30) days in order to resolve any issues arising with respect to its implementation.

Dated at Fond du Lac, Wisconsin, this 22nd day of November, 2006

John R. Emery /s/

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John R. Emery, Arbitrator

