

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
CITY OF GREEN BAY (POLICE DEPARTMENT)

and

GREEN BAY PROTECTIVE POLICE ASSOCIATION

Case 395
No. 67072
MA-13740

Appearances:

Dean R. Dietrich, Ruder Ware, 500 Third Street, PO Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of the Employer.

Thomas J. Parins, Parins Law Firm, S.C., Attorneys at Law, 422 Doty Street, PO Box 817, Green Bay, Wisconsin, 54305, appearing on behalf of the Association.

ARBITRATION AWARD

The Green Bay Police Protective Association, herein referred to as the Association, and the City of Green Bay, hereafter Employer or City, are parties to a 2005-2006 labor contract that provides for the final and binding arbitration of grievances. The Association, with the concurrence of the City, requested the Wisconsin Employment Relations Commission to appoint a WERC Commissioner or staff member to serve as the impartial arbitrator to hear and decide the dispute specified below. The Commission appointed Coleen A. Burns, a member of its staff, as Arbitrator and a hearing was held on September 18, 2007 in Green Bay, Wisconsin. The hearing was transcribed and each party filed post-hearing briefs; the last of which was received on November 26, 2007.

ISSUES

The parties were unable to stipulate to a statement of the issues.

CITED CONTRACT LANGUAGE

ARTICLE 1. RECOGNITION/MANAGEMENT RIGHTS

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1.03 MANAGEMENT RIGHTS. The Union recognizes the prerogative of the City, subject to its duties to collectively bargain, to operate and manage its affairs in all respects in accordance with its responsibilities, and the powers and authority which the City has not abridged, delegated or modified by this Agreement, are retained by the City, including the power of establishing policy to hire all employees, to determine qualifications and conditions of continued employment, to dismiss, demote, and discipline for just cause, to determine reasonable schedules of work, to establish the methods and processes by which such work is performed. The City further has the right to establish reasonable work rules, to delete positions from the Table of Organization due to lack of work, lack of funds, or any other legitimate reasons, to determine the kinds and amounts of services to be performed as pertains to City government and the number and kinds of classifications to perform such services, to change existing methods or facilities, and to determine the methods, means and personnel by which City operations are to be conducted. The City agrees that it may not exercise the above rights, prerogatives, powers or authority in any manner which alters, changes or modifies any aspect of the wages, hours or conditions of employment of the Bargaining Unit, or the terms of this agreement, as administered, without first collectively bargaining the same or the effects thereof.

...

ARTICLE 30. TRAINING

30.01 TRAINING ASSIGNMENTS. When non-required training opportunities are offered to members of the department, such training events and openings shall be posted and all officers given an opportunity to attend with the most senior employee given the opportunity as manpower allows. This clause may be waived if/when the department can show that the training will benefit only officers of a specific division or classification.

BACKGROUND

On July 25, 2006, Captain L. Sterr of the Green Bay Police Department Training Division issued a written memo to Commander Molitor and Captain's Fleury, Urban and Hemes that included the following:

RE: Summer 2006 Qualification

The summer qualification is under way. This qualification includes seated shooting using simmunition rounds and less lethal weapon qualification.

Rangemaster Wanta has trained on shift officers to assist in this qualification. When time and staffing permit, please allow the instructors to assist in completing this qualification.

Instructors trained to date:

Bill Galvin
Mike Knetzger
Jeff Engelbrecht

There will be additional instructors provided in the near future.

On August 8, 2006, Captain Sterr issued a written memo to "Shift Supervisors" that states:

RE: Summer 2006 Qualifications

In addition to the previously mentioned personnel assisting with the summer qualification on-shift, Officer Ramos and Off. Young have been trained and will also be assisting. Please provide them the time to accomplish this qualification as workload permits.

The instructor roster is as follows:

Bill Galvin
Mike Knetzger
Jeff Engelbrecht
Jerry Johnson
Officer Ramos
Officer Young

Thank you.

On August 8, 2006, Captain Sterr issued a written memo to Officers Ramos and Young that states:

Please begin assisting with on shift qualifications of "seated shooting" and less lethal. If you have any additional questions on the course content, please direct them to Rangemaster Wanta.

Be sure to clear sessions with your shift supervisors prior to commencing, and properly record those you have qualified.

Thank you,

By letter dated August 18, 2006, Association Counsel Thomas J. Parins advised City Police Chief Craig M. Van Schyndle that the August 8, 2006 memo informed the Association that Officers Ramos and Young were given training opportunities for firearms instructor that was not posted or offered to Association members as required by the labor contract and that:

The remedy sought by this grievance is that Officers Ramos and Young not be given duty assignments relating to firearms instructor until such times as senior officers are offered the opportunity of instructor training or such time that Officers Ramos or Young qualify by seniority to attend a future firearms instructor training.

The Police Chief responded by letter dated August 23, 2006 as follows:

Thank you for your letter of August 18, 2006, summarizing the Association's grievance on Instructor training. The department has non-supervisory officers that have been deemed qualified firearm instructors. Historically, these officers have qualified officers on shift as a duty assignment in accordance to Section 1.03. Therefore, I must deny this grievance.

I am open to discuss this situation with the Association.

Thereafter, the grievance was advanced to the next step and denied on the basis that Officers Ramos and Young were certified firearms instructors.

By letter dated May 4, 2007, Association Counsel Parins advised the City's Personnel Committee, *inter alia*, that Officers Ramos and Young should not have received firearms instructor training without offering this training to all Association members by a posting; that management should not be able to handpick officers to receive training opportunities; and, under the clear requirements of Article 30.01 of the labor contract, training opportunities are to be posted and assigned to senior qualified officers. Association Counsel Parins also stated:

Officer Ramos and Young should not be able to use their training to conduct firearms instruction until such time as they would have the seniority to receive training opportunities. Also, the department should be required to offer identical training, post this training opportunity, and assign the two senior qualified officers from that posting.

Following denial of the grievance at all steps, the grievance was submitted to arbitration.

Association

The Association agrees that on-shift firearm qualifications are not required to be posted under Article 30.01. This grievance, however, involves officers receiving training to qualify

them to become the instructors for the on-shift firearm qualifications which involved “seated shooting using simmunition rounds and less lethal weapon qualification.”

Rangemaster Wanta provided Officers Ramos and Young with a copy of the “2006 Summer Qualification Lesson Plan;” instructed them regarding the contents of the lesson plan; and gave them additional “hands-on knowledge” of the lesson plan by walking them through each step of the lesson plan. By this conduct, Officers Ramos and Young were given training opportunities that should have been posted under Article 30.01 of the parties’ collective bargaining agreement.

The conclusion that Officers Ramos and Young were provided Article 30.01 training opportunities is supported by various emails issued by then Capt. Sterr; the testimony of now Commander Sterr and Lt. Wesley; and the fact that, during the processing of the grievance, the City did not state that the two Officers had not received training.

The right to receive training opportunities is extremely important and impacts an employee’s right to future promotions and job assignments. The posting requirement ensures that all bargaining unit members have the opportunity to receive such training. Posting of the training opportunity that is the subject of this grievance would have provided Officer Duebner with an opportunity to challenge the determination that he was not qualified to assist the Rangemaster.

The Association position does not create a “slippery slope” that would render every instruction subject to Article 30.01. The grievance is not moot.

The Arbitrator should determine that the instruction offered and given to Officer Ramos and Young by Rangemaster Wanta on the lesson plan for the 2006 summer qualification constituted “non-required training opportunities” required to be posted under Article 30.01. The Arbitrator should issue a remedy which would prohibit the instruction given by Rangemaster Wanta to these two officers to be deemed qualifications for either of these officers to be given training or duty assignments until such time as the officer in question would be entitled on the basis of seniority to bid and receive this instruction by way of posting under Article 30.01.

City

City Rangemaster, Officer Michael Wanta, is responsible for setting up firearms training course outlines and lesson plans. In the fall of 2006, the City sought to qualify officers in seated shooting, simmunition, ammunition, and less-lethal ammunition training. In addition to the Rangemaster, these qualification sessions were staffed by City selected Officers who had already trained to become certified fire arms instructors.

The selected Officers were provided with an outline or protocol for the qualification process and a brief explanation of its contents. The information provided to the selected Officers was simply a lesson plan to ensure consistency in the qualification and training.

The Association muddles the differences between the time spent “qualifying” Officer Ramos and Young and the time allegedly spent in reviewing the lesson plan. The “qualifying,” which was required of all City Officers, involved approximately thirty minutes. Since this “training” was received by all Officers, it is not the subject of this dispute.

The language of Article 30.01 of the labor contract envisions officers trained in new skills, and specifically references providing officers the opportunity to attend training sessions. The evidence of instances in which the City viewed Article 30.01 to be implicated shows that Officers were offered the opportunity to learn or practice new techniques from an instructor over a number of hours.

No new techniques or skills were taught to the selected Officers. Nor did they attend any training session when they received their lesson plan. Article 30.01 of the labor contract does not apply.

Taking the Association’s argument to its logical conclusion, any work instruction would be considered training required to be posted under Article 30.01. Acceptance of the Association’s construction of Article 30.01 would conflict with the City’s Article 1.03 Management Rights to manage all City affairs and “establish the methods and processes by which such work is performed.”

The record is devoid of any evidence that an Officer has been damaged because of the City’s actions. As the Association cannot show that any new skills or certifications were provided to Officers Ramos and Young, the Association’s sole remedy would be to obtain the lesson plan. Inasmuch as it has a copy of this lesson plan, the grievance is moot. The grievance should be dismissed in its entirety.

DISCUSSION

Issues

At hearing, the Association proposed the following statement of the issues:

Whether the instruction and training given to Ramos and Young in anticipation of the summer of 2006 qualification was training required to be posed under Article 30 of the labor contract?

If so, what is the appropriate remedy?

Reserving the right to reframe the issue(s), the City proposed the following issue:

Whether the City violated Article 30.01 and Article 1 in the manner in which it designated certified firearm instructors to perform firearms qualification of Department members on their shift?

In post-hearing written argument, the Association proposes the following statement of the issues:

1. Did the activities of Rangemaster Wanta in giving Officers Ramos and Young information and “hands on knowledge” regarding how to conduct the 2006 Summer qualifications training to Green Bay officers constitute training?
2. If the answer to the issue 1 above is “yes,” did the City violate Section 30.01 by not posting this training opportunity?
3. If the answer to issue 2 above is “yes,” what is the appropriate remedy?

In post-hearing written argument, the City proposes the following statement of the issues:

Did the City violate Article 30.01 and Article 1 in the manner in which it designated certified firearms instructors to perform firearms qualifications of Department members on their shift?

If so, what is the appropriate remedy?

Following consideration of the grievance, as filed and processed through the grievance procedure, the undersigned concludes that the issues are most appropriately framed as:

1. Did Officers Ramos and Young receive training that was required to be posted under Article 30.01 of the parties’ collective bargaining agreement?
2. If so, what is the appropriate remedy?

Merits

The parties agree that Article 30.01 requires the City to post “non-required training opportunities.” In dispute is whether or not, during the Summer 2006 Qualification, Officers Ramos and Young were provided a “non-required training opportunity” that was required to be posted under Article 30.01.

As clarified at hearing, the Association does not assert that there was a “non-required training opportunity” that was required to be offered to all City Officers. Rather, the Association asserts that there was a “non-required training opportunity” that was required to be

offered only to those Officers in its collective bargaining unit who are certified firearms instructors. (T. 10)

Assuming *arguendo*, as the City argues, that Officers Ramos and Young will never perform the work for which the Association alleges they received Article 30.01 training, the grievance would not be moot. This conclusion is based upon the fact that this grievance involves the City's duty to post a training opportunity under Article 30.01, rather than an employee right to perform, or a City right to assign, a particular type of work.

The Association asserts that, if Rangemaster Wanta had handed out the "2006 Summer Qualification Lesson Plan," without discussion, to Officers Ramos and Young, then there would not have been a grievance. Relying upon the testimony of Lt. Wesley and Commander Sterr, the Association argues that these two Officers were provided with a "non-required training opportunity" required to be posted under Article 30.01 when Rangemaster Wanta explained the contents of the lesson plan and then took each Officer through the steps of the lesson plan.

At the time of the alleged "non-required training opportunities," Commander Sterr and Lieutenant Wesley were the Captain and Lieutenant in charge of the Police Department's Training Division. (T. 15-16; 91) Neither Commander Sterr, nor Lt. Wesley, claim to have been present at the time that the Association alleges that Rangemaster Wanta provided "non-required training opportunities" to Officers Ramos and Young. Rangemaster Wanta, Officer Ramos and Officer Young did not testify at hearing.

Article 30.01 does not define "non-required training opportunities" and the record is devoid of bargaining history. The Association offers dictionary definitions of the word "training" to support its claim that Officers Ramos and Young received "non-required training opportunities." These definitions range from the relatively broad definition of "the education, instruction or discipline of a person or thing that is being trained" to the more specific definition of "activity leading to skilled behavior."

In the absence of evidence of a mutually agreed upon definition of "non-required training opportunities," it is reasonable to apply a common sense definition. Under a common sense definition, "training" occurs when an individual or group of individuals instruct another individual or group of individuals with the purpose of imparting new knowledge and/or skills or enhancing existing knowledge and/or skills.

Such a definition is consistent with the evidence of the parties' past practice. For example, in February 2001, the Department posted a four (4) hour in-service program on the use of Redman Suits which was intended to enhance the employee's ability to properly use new Redman Suits. (Assoc. Ex. #6a,b) In May 2006, the Department posted an eight (8) hour course described as an introduction to S.P.E.A.R. – Basic, the focus of which was to give officers the tools that they needed to survive the sudden assault when they encounter sudden aggressive resistance (SAR). (Assoc. Ex. #7) In March 2007, the Department posted an eight

(8) course described as an introduction to S.P.E.A.R. – Basic. (Assoc. Ex. #8) In April 2007, the Department posted a “Firearms Instructor Update,” which indicated that Northeast Wisconsin Technical College was hosting a one-day (8:00 am to 4:00 pm) firearms instructor update covering such topics as a review of teaching fundamentals, running an effective range, developing better shooters and range safety.” (Assoc. #4)

This evidence of “past practice” reasonably indicates that the “common sense definition” should be further refined; with the effect that the instruction required to be posted is formal instruction such as an in-service, class or course. That the parties intended such a refinement is consistent with the testimony of Commander Sterr and Lt. Wesley; which testimony indicates that posting generally occurs when the Department or an outside agency “hosts” a school. (T. 70-76; 118-119)

Lt. Wesley states that the Department strives to have officers qualify in firearms three to four times a year, but at a minimum the Department will do two qualifications per year and that these qualifications are almost exclusively handled on shift. (T. 91) Lt. Wesley states that, while he was in the Training Division, he and the Rangemaster had the responsibility to develop the lesson plan and that once the lesson plan is developed, all officers of the Department are required to go through the qualification. (T. 91-92) It is not evident that the Department ever posted interactions between the Rangemaster and his assisting instructors as a Sec. 30.01 training opportunity.

In the opinion of Commander Sterr, Rangemaster Wanta would provide the lesson plan to Officers Ramos and Young for the purpose of ensuring that all instructors consistently administered the “Summer 2006 Qualification” and would then tell Officers Ramos and Young to implement the lesson plan. (T. 24; 32-33) Commander Sterr maintains that all of the instructors could have been given the lesson plan without any further instruction because they were certified firearms instructors who had already received all the training necessary to assist Rangemaster Wanta in the “Summer 2006 Qualification.” (T. 17-20; 24-25)

According to Lt. Wesley, the Rangemaster gets all of the instructors together; gives them the lesson plan; and shows them the lesson plan so that they can assist with the qualification. (T. 92-93) Lt. Wesley states that, based upon his nearly dozen years experience as a firearms instructor and his knowledge of the Summer 2006 Qualification, Rangemaster Wanta’s instruction on the lesson plan would not have been lengthy. (T. 111) Lt. Wesley further states that the Training Division always tries to get the instructors through the lesson plan first; that he understands that the information conveyed to the instructors is a ten minute deal, here’s the lesson plan, here’s the set-up; take it to your shift and complete it. (T. 100) Lt. Wesley states that the purpose of the lesson plan is to have all officers in the Department get the same qualification; that all of the instructors were simmunition instructors and had the necessary training to do the activities referenced in the lesson plan; and that the lesson plan did not involve any technique that these instructors would have been learning for the first time. (T. 100-102)

Lt. Wesley states that an attempt was made by Rangemaster Wanta to qualify all of the instructors because they have to be qualified like anybody else and that, after the qualification was done, Rangemaster Wanta would give them the lesson plan. (T. 98-99) Commander Sterr states that the instructors were “good to go” once they had been given the lesson plan and gone through the qualification itself. (T. 42) Any inference that Commander Sterr was stating that the instructors would not have been qualified to assist Rangemaster Wanta if they first had not been qualified under the lesson plan is rebutted by her testimony that they could have assisted Rangemaster Wanta if they had received nothing more than the lesson plan. (T. 43)

In a memo dated July 25, 2006, then Capt. Sterr states Rangemaster Wanta “has trained on shift officers to assist” in the “Summer 2006 Qualification” and that:

Instructors trained to date:

Bill Galvin
Mike Knetzger
Jeff Engelbrecht

There will be additional instructors trained in the near future. (Assoc. Ex. #2)

In a memo dated August 8, 2006, then Capt. Sterr states that “In addition to the previously mentioned personnel assisting with the summer qualification on-shift, Officer Ramos and Off. Young have been trained and will be assisting.” (Assoc. Ex. #1)

Capt. Sterr’s use of the word “trained” lead the Association to question whether Rangemaster Wanta had provided “non-required training opportunities” to Officers Ramos and Young that were required to be posted under Article 30.01. At hearing, Commander Sterr states that she may have used a bad choice of words and that any required “training” occurred when they became fire arms instructors. (T. 24;32) Commander Sterr considered the referenced “training” to be “you guys are going to administer the qualifications, and here is the lesson plan. Go to it.” (T. 24;32-33) Commander Sterr states that the information provided to the instructors was simply the lesson plan to ensure that the qualification was administered consistently. (T. 32-33)

Commander Sterr recalls that, within a week to a week and one-half prior to hearing, the Chief expressed that the Association was concerned about Commander Sterr’s use of the “training” terminology and that her “immediate thought process was, well, it’s not really training. It’s a lesson plan. It’s an outline. . . (T. 44-48) According to Commander Sterr, the Chief never suggested to her that she not use the term training; that the Chief never instructed her to do anything; and that she was the one that brought up that it was not training. (T. 48-49)

Commander Sterr does not reference Article 30.01 in her memos of July 25, 2006 or August 8, 2006. Notwithstanding any Association argument to the contrary, neither her

emails, nor any other record evidence, provides a reasonable basis to conclude that, until her meeting with the Police Chief, Commander Sterr considered Officers Ramos and Young to have received “non-required training opportunities” that were required to be posted under Article 30.01.

As the Association argues, in her memo of August 8, 2006, then Capt. Sterr advised Officers Ramos and Young that “If you have any additional questions on course content, please direct them to Rangemaster Wanta.” (Assoc. Ex. #3) The fact that then Capt. Sterr advised instructors who were expected to assist Rangemaster Wanta in the qualification to direct any questions regarding course content to Rangemaster Wanta does not provide a reasonable basis to infer, much less conclude, that Rangemaster Wanta offered or provided a “non-required training opportunity” within the meaning of Article 30.01.

As the Association argues, the City’s response to the grievance does not expressly state that the City does not consider Rangemaster Wanta to have provided training opportunities under Article 30.01. A review of the grievance documents reasonably indicates that the City understood the grievance to be questioning the right of the City to assign Officers Ramos and Young to firearms qualification duty. (Jt. #3, 6) Given the apparent misunderstanding of the grievance issue, the City’s failure to deny that Rangemaster Wanta had provided a training opportunity under Article 30.01 provides no reasonable basis to infer that the City knew, or conceded, that Rangemaster Wanta had provided such a training opportunity.

Conclusion

In conclusion, the record evidence regarding the content of discussions between Rangemaster Wanta, Officer Ramos and Officer Young is based upon the speculation of Commander Sterr and Lieutenant Wesley. This speculation is insufficient to establish the nature of any interaction between Rangemaster Wanta, Officer Ramos and Officer Young.

Assuming *arguendo*, that this speculation would provide a reasonable basis to reach any conclusion regarding interactions between Rangemaster Wanta, Officer Ramos and Officer Young, neither the testimony of Commander Sterr and Lt. Wesley, nor any other record evidence, reasonably establishes that Rangemaster Wanta provided any formal instruction, such as an in-service, class or course, with the purpose of imparting new knowledge and/or skills or enhancing existing knowledge and/or skills. Indeed, Commander Sterr and Lt. Wesley’s testimony most reasonably indicates that Rangemaster Wanta’s interaction with Officers Ramos and Young consisted of providing work instruction on how to perform a specific job duty which Officer Ramos and Young were qualified to perform. As the Association recognizes, such work instruction is not covered by the posting requirements of Article 30.01.

Based upon the above and foregoing and the record as a whole, the undersigned issues the following:

AWARD

1. Officers Ramos and Young did not receive training that was required to be posted under Article 30.01 of the parties' collective bargaining agreement.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 17th day of April, 2008.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator

