

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION  
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**

and

**VILLAGE OF CROSS PLAINS**

Case 8  
No. 66372  
MA-13506

(Tuition Reimbursement Grievance)

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**Appearances:**

**Mark Hollinger**, Staff Attorney, Wisconsin Professional Police Association, 340 Coyier Lane, Madison, Wisconsin 53713, appeared on behalf of the Association.

**Shana Lewis**, Attorney, Lathrop & Clark, Attorneys at Law, 740 Regent Street, Suite 400, P.O. Box 1507, Madison, Wisconsin 53701, appeared on behalf of the Village.

**ARBITRATION AWARD**

The above-captioned parties, hereinafter the Association and Village or Employer, respectively, were parties to a collective bargaining agreement which provided for final and binding arbitration of unresolved grievances. The above-captioned grievance was appealed to arbitration in October, 2006. Afterwards, at the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide that grievance. It was subsequently twice set for hearing and postponed pending settlement discussions. Those settlement efforts were unsuccessful. A hearing was held on July 23, 2007 in Cross Plains, Wisconsin at which time the parties presented testimony, exhibits and other evidence that was relevant to the grievance. The hearing was transcribed. The parties filed briefs by November 19, 2007. The Employer filed a reply brief on January 15, 2008. The record was closed on February 1, 2008 when the Association notified the undersigned that it would not be filing a reply brief. Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the undersigned issues the following Award.

## ISSUE

The parties stipulated to the following issue:

Did the Village violate Article 25 (Educational Incentive) of the collective bargaining agreement when it denied tuition reimbursement to the grievants, Gregory Kosharek and Jeff Davis? If so, what is the remedy?

## PERTINENT CONTRACT PROVISIONS

The parties' 2005 collective bargaining agreement contained the following pertinent provisions:

### **INTRODUCTION**

THIS AGREEMENT is made and entered into by and between VILLAGE OF CROSS PLAINS, hereinafter referred to as the "Village" or the "Employer", AND WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LEER DIVISION, hereinafter referred to as the "Association", and shall continue in full force and effect as hereinafter set forth.

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### **ARTICLE 25: EDUCATIONAL INCENTIVE**

25.01 In order to furnish an incentive for employees who desire to participate in criminal justice educational or other approved programs on their own time, an educational incentive program is hereby established.

25.02 All employees who desire to participate in this program shall submit their request to the Employer in writing, stating the school which they desire to attend, the subjects of instruction, the number of credits and the tuition costs for such attendance. All requests are subject to prior approval of the Employer and approval shall be in the sole discretion of the Employer.

25.03 Upon successful completion of each course the employee shall present to the Employer an official school record indicating at least a "C" or 2.0 on a 4.0 scale in the subjects taken in that semester together with an application for reimbursement of the tuition costs by the Employer. In addition, the employee shall submit documentary evidence indicating that the tuition costs have been paid by him/her. Upon compliance with the provisions of this section, reimbursement of the tuition costs shall be made by the Employer. No reimbursement shall be made for tuition costs which have been paid under any veterans benefit program or other program of a similar nature.

25.04 Nothing in this Article shall constitute a guarantee of any minimum level of funding for educational program.

### FACTS

The Village operates a police department. The Association is the exclusive collective bargaining representative for the department's police officers. Gregory Kosharek and Jeff Davis are full-time police officers in the department.

Here is a short summary of the facts which follow. Between 2003 and 2005, Kosharek and Davis took college classes and eventually received a degree in a criminal justice-related field. During that time period, Officer Davis incurred and paid a total of \$33,555.50 in tuition costs to American Intercontinental University and Officer Kosharek incurred and paid a total of \$11,748.00 in tuition costs to Upper Iowa University. They sought tuition reimbursement from the Village in 2003, 2004 and 2005. Here is what happened to their requests. In the fall of 2003, the Village Board approved a 2004 Police Department budget that did not include any funds for Officer Kosharek's and Davis' tuition reimbursement requests. With this action, the Village Board effectively denied the officers' requests for tuition reimbursement. In the fall of 2004, the Village Board approved a 2005 Police Department budget that included some money for tuition reimbursement for the two officers, but was less than what they sought. The amount earmarked in that budget for tuition reimbursement for the two officers was \$5860. None of that amount was paid to the two officers. In the fall of 2005, the Village Board again considered the officers' request for tuition reimbursement. The amount which they sought at the time was \$37,665.47. At a meeting in November, 2005, the Village Board rejected the officers' request for full reimbursement of the amount just referenced, but voted to offer them half of the amount sought (i.e. half of \$37,665.47). The Association responded by filing the instant grievance which seeks reimbursement for the full tuition paid by the two officers. The amount sought totals \$45,303.50.

#### **A. Overview of the Police Department Budget Process**

The Police Chief is responsible for the Police Department budget. Doug Clemens was the Police Chief in the Village from 1990 until January 2005. Thereafter, Todd Kuschel served as the Interim Police Chief for about six months. Thomas Janssen has been the Police Chief since July, 2005. The Police Chief reports directly to the Village Administrator and the Village Board, as well as to the Police Committee.

The annual budget is created in the fall preceding each fiscal year. Each year, before the Chief makes his budget proposal to the Village Board, he asks the police officers for their input on budgetary items, equipment or programs that they want included in the coming year's budget. If the Chief concurs with the suggestion, he includes it in his budget proposal. The Chief then creates a budget proposal along with an accompanying "Fiscal Plan and Policy" document which explains his monetary requests. The Chief then submits his proposed Police Department budget and the accompanying "Fiscal Plan and Policy" document to the Police Committee.

The Police Committee makes recommendations to the Village Board on the Police Department's fiscal plan and its policies and procedures. After the Police Committee gets the Chief's proposed budget, they review it. Then, the Police Committee makes a recommendation to the Village Board about the Chief's proposed budget. In this recommendation, they either approve or reject the Chief's proposals, including individual line items. While the Police Committee makes recommendations to the Village Board about funding for the Police Department budget, it does not determine the Police Department budget. Additionally, it does not make decisions with respect to approval of tuition reimbursement.

After the Police Committee makes its recommendations on the proposed Police Department budget, it goes to the Village Board for their action. The Village Board has the final say on the Police Department budget. It approves all funding requests.

#### **B. Tuition Reimbursement and its Relationship to the Budget Process**

In order for a police officer to receive tuition reimbursement, the Village Board has to provide/allocate funds for same in the Police Department budget. Thus, tuition reimbursement is inextricably tied to the budget process. An officer who wants tuition reimbursement initially makes a request for same to the Police Chief. When the Police Chief subsequently prepares his proposed budget for the next year, he includes the tuition reimbursement request in his proposed budget. The Village Board ultimately decides whether or not to fund the request. If the Village Board does not include any funding in the budget which they approve for tuition reimbursement, then the officer's request for tuition reimbursement is effectively denied. If the Village Board includes some or all of the funding sought for tuition reimbursement in the budget which they approve, then the request for tuition reimbursement is effectively granted. After the Village Board finalizes the budget, the Police Chief informs the officer who submitted the request for tuition reimbursement what happened to their request. If an officer's request for tuition reimbursement was denied during the annual budget process, the officer can resubmit their request for reimbursement the following year; however, the subsequent request would remain subject to the budget approval process.

#### **C. Officers Kosharek's and Davis' Requests for Tuition Reimbursement in 2003.**

On July 28, 2003, Officer Kosharek submitted a letter to Chief Clemens in which he stated that he intended to continue his education at Upper Iowa University in order to pursue a Bachelor of Science degree in Public Administration with a law enforcement emphasis. The letter identified the number of credits Officer Kosharek needed to take in order to receive his degree, the cost per credit, and the courses he needed to take in order to complete his degree.

On July 29, 2003, Officer Davis submitted a memorandum to Chief Clemens in which he stated that he wanted to continue his education at the University of Phoenix in order to pursue a Bachelor of Science degree in Criminal Justice Administration. The letter identified the courses he intended to take and the cost for the courses.

When Chief Clemens received the requests for tuition reimbursement from Officers Kosharek and Davis, he told them both that he would include their tuition reimbursement requests in his 2004 budget proposal. He did not tell either of them that he was approving their requests for tuition reimbursement. Instead, he told them that he did not have the authority to approve their requests – only the Village Board had that authority. Additionally, Clemens told Officer Davis that the amount he (Davis) was requesting for tuition reimbursement seemed high, and that he (Clemens) doubted that approval for the tuition reimbursement request would be granted given budget constraints.

When Chief Clemens prepared his proposed budget for 2004, he included funds in it for tuition reimbursement for Officers Kosharek and Davis to enroll in courses and receive tuition reimbursement. The requested funds were included in the line item dealing with training. In his accompanying “Fiscal Plan and Policy” document, he explained that he was requesting an increase in the training line item from \$4,000 to \$21,000 in order to provide tuition reimbursement to two officers who wished to continue their educations.

In September, 2003, the Police Committee reviewed the Police Chief’s proposed 2004 budget. In the course of doing so, it did not address or decide whether to approve tuition reimbursement for Officers Kosharek and Davis. Instead, it dealt with whether the Chief’s proposed line item request of \$21,000 for training should be approved. The Police Committee decided to recommend that \$5,000 be earmarked in the 2004 budget for tuition reimbursement. The proposed budget was then presented to the Village Board for its consideration.

In November, 2003, the Village Board approved the Police Department budget for fiscal year 2004. The 2004 budget approved by the Village Board did not include any funds for tuition reimbursement. Since the 2004 budget did not include any funds for tuition reimbursement, this meant that the Village Board effectively denied the officers’ request for tuition reimbursement. The record indicates that the reason the Village Board took this action (i.e. not to fund the officers’ tuition reimbursement requests) was because of budget constraints (i.e. the Board’s view that there was not enough money in the budget to approve the tuition reimbursement requests).

Chief Clemens subsequently told both officers that the Village Board had not approved their requests for tuition reimbursement. He also told them that he would put their requests for tuition reimbursement in his next year’s budget request (i.e. the 2005 budget), but that approval would still be at the discretion of the Village Board. No grievance was filed concerning the Board’s denial of the officers’ requests for tuition reimbursement.

Although the Village Board denied the officers’ requests for tuition reimbursement in 2003, both officers chose to continue taking courses anyway. They continued to take courses and incur tuition costs in 2004 and 2005, even though they had been advised there was no guarantee that they would be reimbursed. As will be noted below, they also sought reimbursement in the fall of 2004 and 2005.

**D. Officers Kosharek's and Davis' Requests for Tuition Reimbursement in 2004.**

In an e-mail on July 22, 2004, Chief Clemens asked the two officers to provide him with "transcripts or documents describing courses completed in 2004, tuition costs associated with these courses and grades achieved" because he intended to seek tuition reimbursement for these costs via his 2005 budget request. His e-mail went on to say: "Understand that these reimbursements are still at the discretion of the Village Board." Officer Davis responded with an e-mail that said in pertinent part: "Will do, but I'm not going to hold my breath." Both officers subsequently re-submitted their requests for tuition reimbursement to Chief Clemens.

Sometime later - the record does not indicate when - Davis wrote a memo to Chief Clemens wherein the subject line read "Request Approval for Classes". In that memo, Davis asked for the Chief's approval for tuition reimbursement for the classes he planned to take in 2005. At the bottom of that memo, Davis put two boxes: one said "Approved" and the other said "Denied". Davis received no response to his memo from the Chief or the Village one way or the other.

In the fall of 2004, Chief Clemens prepared his proposed 2005 budget. When he did so, he included funds for tuition reimbursement for Officers Kosharek and Davis. On October 27, 2004, the Police Committee voted to recommend funding in the 2005 Police Department budget for tuition reimbursement for Officers Kosharek and Davis. The proposed budget was then presented to the Village Board for its consideration. The Village Board subsequently approved the Police Department budget for fiscal year 2005. The 2005 budget approved by the Village Board included \$5860 earmarked for tuition reimbursement. That amount was less than the Chief had requested. Since the Village Board included some of the funding sought for tuition reimbursement in the 2005 budget, the Village Board effectively granted approval for Officers Kosharek and Davis to share \$5860 between them for tuition reimbursement in fiscal year 2005.

The \$5860 just referenced was not paid to Officers Kosharek and Davis.

In Section F below, it is noted that the Association filed a grievance seeking reimbursement for the employees' tuition costs. This grievance did not seek payment of the \$5860 just referenced. Instead, it sought a higher amount.

**E. Officers Kosharek's and Davis' Requests for Tuition Reimbursement in 2005.**

In the fall of 2005, Officers Kosharek and Davis submitted their requests for tuition reimbursement a third time. By that time, Kosharek had finished his degree and Davis was close to finishing. The total amount they sought at the time was \$37,665.47.

The Police Committee discussed their requests at a meeting on October 19, 2005. While the minutes of that meeting refer to the officers' "schooling" as having been "approved", the Police Committee did not make such a determination at that meeting (i.e.

approve the officers' requests for tuition reimbursement). The record indicates that the statement in the minutes about "schooling" being "approved" is attributable to a comment made during the meeting by Chief Janssen, who urged that the officers be reimbursed in full. The Police Committee took no formal action in that meeting except voting to seek a joint meeting with the Village Board to discuss the matter further.

The joint meeting with the Village Board was held on November 15, 2005. At that meeting, they considered the officers' requests for reimbursement of \$37,665.47. The official minutes of that meeting devote almost two single-spaced pages to the discussion which ensued. The following sentence is contained early in the minutes: "Jeff Davis and Greg Kosharek have had classes approved and are requesting reimbursement." The first part of this sentence (i.e. the part which says Davis and Kosharek "have had classes approved") is attributable to Chief Janssen who argued at the meeting that the two officers should be reimbursed in full. There is nothing in the minutes which indicates that the issue of whether approval was ever granted was discussed. Instead, the minutes indicate that the main topic which was discussed was the amount of money being sought. A motion to reimburse the officers in full was defeated. A motion to pay the officers about half of the amount being sought passed. The exact wording of the motion which passed was this: "to pay 50% of UW tuition reimbursement rate at current 2005 tuition rates to Jeff and Greg or half of \$37,665.47, whichever is less."

The next day, November 15, 2005, Chief Janssen sent the following letter to Officers Kosharek and Davis:

On November 14, 2005, the Police Committee and the Village Board had a joint meeting to discuss your request for tuition reimbursement. I did take the position, on your behalf, that your request for tuition reimbursement be granted and paid in full.

I regret to inform you that our request for full reimbursement was voted on by the Village Board and was denied. The Village Board did authorize reimbursement of 50% of the current 2005 UW tuition rate for the credits already earned OR 50% of your total request, which ever is less.

In order to expedite this process, I am requesting that you resubmit your request at 50% of the current 2005 UW tuition rate for the credits that you have already earned and get that to me as quickly as possible. When I receive that request I will compare the two amounts and make the authorized payment to you.

I would like to thank you for your time and patience in this matter. If you have any questions please ask.

**F. The Association's Grievance**

Several days later, on November 17, 2005, the Association filed the instant grievance. It provided in pertinent part:

Davis and Kosharek have followed the provision in Article 25 of the collective bargaining agreement. They submitted requests to the employer as prescribed in section 25.02 and received approval of those requests. The employees completed the courses with grades that satisfy the provisions of section 25.03. The employees submitted evidence that the tuition costs were paid by them. The employees complied with all requirements outlined in Article 25. The collective bargaining agreement states, "Upon compliance with the provisions of this section, reimbursement of the tuition costs shall be made by the Employer."

As a remedy, the Association requested that "PO Davis and PO Kosharek be reimbursed the total cost of tuition for courses approved by the Employer." As was noted earlier, the amount sought for Davis is \$33,555.50 and the amount sought for Kosharek is \$11,748.00, for a total of \$45,303.50.

On December 13, 2005, Chief Janssen denied the grievance. His denial letter stated in pertinent part:

At this time, I have not seen any evidence proving that the Village violated Article 25 when it denied the full tuition reimbursement requests of Davis and Kosharek related to completed coursework. Accordingly, I must deny the grievance.

In January, 2006, the parties agreed to hold the grievance in abeyance during negotiations for a successor agreement to the 2005 Agreement in an attempt to resolve the grievance during contract negotiations. Their efforts to resolve this grievance through negotiations were not successful. As a result, the parties agreed to proceed to arbitration.

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**G. Facts Involving Officer Baumbach's Tuition Reimbursement**

The record indicates that other than the requests for tuition reimbursement involved in the instant grievance, there has only been one other officer in the department who requested tuition reimbursement pursuant to Article 25. The officer involved was Sean Baumbach, who was a Cross Plains police officer from 1998 to 2001. In 1999, Baumbach submitted his request for tuition reimbursement to Chief Clemens. Baumbach then waited to hear whether his request was approved or denied. While Baumbach thought it was Chief Clemens who decided whether to approve or deny his request for tuition reimbursement, it was actually the Village Board – not Chief Clemens – who decided whether to approve or deny Baumbach's

request for tuition reimbursement. The Chief's role in the approval process was simply to inform Baumbach whether his tuition reimbursement request was approved or denied. After Baumbach submitted his request for tuition reimbursement in 1999, the Chief presented it to both the Police Committee and the Village Board as part of the annual budget process. The Village Board decided that funds were available for that purpose and approved Baumbach's tuition reimbursement request. He was subsequently reimbursed \$4768 in 1999. This process was repeated at least once more: Baumbach requested tuition reimbursement; the Chief presented the request to the Village Board as part of the annual budget process; and the Village Board approved Baumbach's request for tuition reimbursement and earmarked funds in the budget for that purpose. One time though, the Village Board decided that funds were not available for that purpose (i.e. tuition reimbursement) and it denied Baumbach's request for tuition reimbursement. When that happened, the Chief told Baumbach that there was not enough funding available at that time for tuition reimbursement. Baumbach then stopped taking courses until funding was approved as part of the next annual budget process and the necessary funds were put into the budget. Additionally, the Village did not pay Baumbach's last request for tuition reimbursement in 2001 because he had left the Village's employment. No grievance was filed concerning same. The record does not identify the total amount of Baumbach's tuition which the Village reimbursed.

### **POSITIONS OF THE PARTIES**

#### **Association**

The Association contends that the Village violated Article 25 of the collective bargaining agreement when it denied full tuition reimbursement to Officers Kosharek and Davis. It makes the following arguments to support that contention.

The Association avers at the outset that the arbitrator should "focus his analysis on the larger picture of what the reality of the circumstances were for them [the grievants] up to and including the time the Village made it clear that it was only offering 50% of their tuition costs be reimbursed." According to the Association, both Kosharek and Davis believed that they had the necessary/requisite "prior approval" required under Article 25 for tuition reimbursement through Chief Clemens "verbal assurances" that the Village would reimburse them for their criminal justice-related studies. The Association asserts that the Village did nothing to dissuade them of this assumption/belief. The Association argues that "to deny tuition reimbursement to the grievants under the totality of circumstances here is to deny them the basic fairness each is entitled to under any interpretation of the collective bargaining agreement." Building on the "fairness" matter just referenced, it's the Association's view that "the equities of this case must come down on the side of Kosharek and Davis, and the Village, not the grievants, must be held responsible for the payment of the tuition."

Next, the Association contends that both grievants believed that their tuition reimbursement requests had been approved by Chief Clemens, and that as a result, they thought they had received "prior approval" within the meaning of Article 25. It cites the

officers' testimony and the totality of the circumstances to support that premise. It also avers that neither officer received either a verbal or a written notification that their tuition reimbursement request had been denied. Responding to the fact that there is no document which indicates that "prior approval" was granted, the Association admits that, in hindsight, it's easy to say that the officers should have gotten "a written, explicit and unequivocal affirmative response" from the Village that they had "prior approval" for tuition reimbursement. By not doing that, the officers were, as the Association put it in their brief, "foolishly trusting and naïve."

Building on the premise just noted that both grievants believed they had prior approval for tuition reimbursement by the Village, the Association maintains that the "only remaining question is whether that belief was reasonable or not." The Association maintains that it was, once again citing the officers' testimony and the totality of the circumstances. The Association dismisses Chief Clemens' testimony that he clearly told the two officers that their tuition reimbursement requests were not granted. It avers that "the implications of such an argument are not believable, if not an insult to their [the officers'] heretofore unquestioned honesty and integrity." The Association asks rhetorically that "if the Village and Chief Clemens' assertion on this point is assumed to be accurate. . . then does it not necessarily follow that both Kosharek and Davis have engaged in a knowing and exceedingly risky scheme to bluff and shame the Village into paying for their tuition, even though they supposedly knew that the Village had already been unequivocal in its denial of tuition reimbursement?" According to the Association, there is no evidence whatsoever to suggest that the officers engaged in such a ploy. As the Association sees it, "common sense and the totality of the circumstances here" should cause the arbitrator "to conclude that each of the grievants honestly believed they had prior approval for tuition reimbursement, as they have both claimed."

As part of this topic, the Association also relies on Kosharek's and Davis' understanding of how the tuition reimbursement process worked for Officer Baumbach when he worked for the Police Department. According to the Association, Baumbach's experience shows the following. First, it maintains that Baumbach got "prior approval" for tuition reimbursement through Chief Clemens - not the Village Board. Second, it asserts that Baumbach received tuition reimbursement "for all courses except for his last semester when he left employment with the Village before receiving his grades." The Association argues that the grievants "were led to believe that Chief Clemens' admonitions to them about the discretion of the Village Board with respect to the budget process were merely factors that might delay reimbursement, not whether, or not, they would be reimbursed eventually." It further contends that "when one considers that the Village at no time told the grievants that they would *not* be reimbursed, their assumption that lack of money in the budget merely meant a delay, not a denial, is completely reasonable because that is exactly what it had meant to Baumbach, who was the only example Kosharek and Davis had as to how the process worked." The Association also alleges that the fact that the Employer had no policy or procedure spelling out how the "prior approval" process works makes the argument for the reasonableness for the grievants' assumptions in this regard "even more compelling."

Next, the Association argues that the Village's contention that the reason it denied tuition reimbursement to the grievants was because of lack of "prior approval" does not square with what is contained in the Village's own meeting minutes. First, it notes that the minutes for the October 19, 2005 Police Committee meeting say that the "schooling" for Kosharek and Davis had been "approved". Second, it notes that the minutes from the November 14, 2005 Joint Village Board/Police Committee meeting say that "Jeff Davis and Greg Kosharek have had classes approved and are requesting reimbursement." Third, it notes that at that meeting, Chief Janssen recommended that both Kosharek and Davis have their respective reimbursement requests paid in full, citing the precedent of the Baumbach tuition reimbursement. Fourth, the Association goes on to note that in the discussion that followed, no one ever asserted that either Kosharek or Davis lacked the requisite prior approval for tuition reimbursement. Instead, the Village Board members discussed the amount of money being sought. The Association argues that it is disingenuous for the Village to now argue that the sole reason for refusing reimbursement to the grievants was the supposed lack of prior approval when the Village Board on November 14, 2005 did not even contemplate whether Kosharek or Davis had the requisite prior approval. Fifth, it notes that the Board approved a motion "to pay 50% of UW tuition reimbursement rate at current 2005 tuition rates to Jeff [Davis] and Greg [Kosharek] or half of \$37,665.47, whichever is less." According to the Association, this action by the Village Board was not a settlement offer because it was made prior to any grievance being filed by the Association. Instead, the Association views it as an attempt by the Board to pay less than what it "owed" Kosharek and Davis. The Association contends that even if the Board mistakenly thought it could unilaterally reduce the amount it owed Kosharek and Davis, the fact that the Board passed the motion to pay this amount to the two officers for tuition reimbursement "constitutes a tacit admission that both officers had prior approval of their tuition reimbursement requests." The Association asks rhetorically why else would the Board vote to pay anything at all if it were not the case?

In sum, it's the Association's position that the grievants had a reasonable belief that they had received prior approval of their respective tuition reimbursement requests. Additionally, it's the Association's view that when the Village Board denied their claims for reimbursement in November of 2005, it did not deny the claims because they failed to obtain the requisite "prior approval" from the Village; instead, they did so because of concerns about the size of the reimbursements requested.

The Association therefore asks that the arbitrator grant the Association's grievance, and order the Village to pay Officers Kosharek and Davis "the tuition reimbursement each is owed." As noted in the grievance, the Association seeks full tuition reimbursement for each officer.

### **Village**

The Village contends it did not violate Article 25 by refusing to reimburse Officers Davis and Kosharek for \$45,000 in tuition costs which they incurred between 2003 and 2005. The Employer maintains that Article 25 requires that an officer receive "prior approval" in

order to receive tuition reimbursement and in this case, that did not happen. According to the Employer, the evidence demonstrates that the Village Board never approved their requests for tuition reimbursement. Building on the foregoing, it is the Village's position that it had no (contractual) obligation to pay for tuition expenses that it never approved, so it did not violate the Agreement when it denied them tuition reimbursement. It elaborates on these contentions as follows.

The Employer avers at the outset that since this case involves an alleged contract violation, the Association has the burden of proving same (i.e. that the Employer violated Article 25 when it denied the grievants' requests for tuition reimbursement). It asserts that the Association failed to meet that burden for the following reasons.

First, the Employer submits that in order to receive tuition reimbursement under Article 25, one of the necessary steps is that officers must receive "prior approval" of their request which is "in the sole discretion of the Employer". The Employer submits that obtaining "prior approval" is an affirmative step (i.e. the affirmative step being receiving prior approval from the Village). The Employer emphasizes that in this case, the Association does not even contend that the two officers actually received the requisite prior approval from the Village. Instead, it notes that both officers simply claimed that they never got an explicit, written denial of their reimbursement request, and they then assumed – erroneously – that the lack of an express written denial somehow meant their requests had been approved. The Employer argues that was insufficient to satisfy the "prior approval" step for receiving tuition reimbursement.

Second, the Employer views the "prior approval" required by Article 25 as a step in the annual budget process. According to the Employer, the process works as follows: if the Village Board approved sufficient funding in the annual Police Department budget to fully cover the amount of the tuition reimbursement request, then "prior approval" was considered to have been granted. Conversely, if the Village Board approved funding in any amount less than that requested for tuition reimbursement, or did not approve funding for tuition reimbursement at all, then the request was considered to be denied. It cites the testimony of longtime Village Board and Police Commission member Jay Lengfeld to support that premise. The Employer maintains that since the Association did not refute his testimony, it must be accepted by the arbitrator.

Third, the Employer contends that under Article 25, employees who wish to take advantage of the educational incentive program must submit their request to the Village, and obtain prior approval from the Village. It cites the reference to "Employer" in Article 25 to support that contention. Building on that premise, the Employer avers that only the Village (meaning the Village Board), and not the Police Chief or the Police Committee, has the authority to approve requests for tuition reimbursement. The Employer asks the arbitrator to reject the Association's assertion that approval can come from either the Police Chief or the Police Committee.

Fourth, the Employer avers that the Village never approved the officers' requests for tuition reimbursement. To support that premise, it notes that while Chief Clemens included funds for tuition reimbursement for the officers in his 2004 proposed budget that he submitted to the Police Committee, when the Village Board ultimately approved the Police Department budget for fiscal year 2004, it did not include funds for the officers' tuition reimbursement requests. The Employer also notes that while Chief Clemens again included funds for tuition reimbursement in his 2005 proposed budget, the Village Board did not include what it characterizes as "sufficient funds" for tuition reimbursement in the Police Department budget it approved for fiscal year 2005. Building on the foregoing, it is the Employer's position that the Village Board never included sufficient funds to cover the two officers' tuition reimbursement requests in its 2004, 2005 and 2006 Police Department budgets, so it never approved the officers' requests for tuition reimbursement, or granted the "prior approval" required for them to receive tuition reimbursement.

With regard to what happened at the November 15, 2005 Village Board meeting, the Employer maintains that a careful review of the minutes of that meeting confirms that the Village Board's vote to offer to pay the officers 50% of the tuition rates was a settlement offer, and not an admission that "prior approval" had been granted. To support that premise, it notes that the minutes indicate that "denial of payment was simply because no money was available". As the Employer sees it, this indicates that the reimbursement requests had previously been denied. The Employer also emphasizes that nowhere in the minutes does it indicate that any Village Board members believed the Village was obligated under Article 25 of the Agreement to pay any reimbursement. Addressing the Association's contention that the Board's offer to pay could not have been a settlement offer because a grievance had not yet been filed, the Employer responds that the Village Board recognized that it was possible that the Association would file a grievance if the Village Board did not reimburse the officers for some or all of the tuition costs they incurred over the years. The Employer submits that it is clear from the minutes that the Village Board considered the likelihood that a grievance would be filed, and considered the costs that would be associated with a grievance.

Next, the Employer argues that notwithstanding the fact that Chief Clemens did not have the authority to approve requests for tuition reimbursement, he never approved the officers' requests himself or informed them – either verbally or in writing – that their tuition reimbursement requests had been approved. It cites the following to support that premise. First, it notes that when both officers first presented Chief Clemens with their requests for tuition reimbursement, Chief Clemens made it clear to both officers that their requests for tuition reimbursement were contingent upon the final approval of the Village Board. Second, the Employer notes that Chief Clemens never once informed either Officer Kosharek or Officer Davis that he was approving their requests for tuition reimbursement. Third, the Employer notes that after the Village Board failed to include funds for tuition reimbursement in the 2004 budget – and thus denied their requests for tuition reimbursement – Chief Clemens informed the officers that although they could try for reimbursement the following year, approval would still be at the discretion of the Village Board. In response, Officer Davis advised, in writing, that he would not hold his breath. Fourth, the Employer notes that after Officer Davis

submitted his request for approval, he received no response Chief Clemens or the Village one way or the other. The Employer argues that given these facts, even if the officers believed they had obtained prior approval from Chief Clemens, their belief was not reasonable. Aside from that, the Employer argues that this case is not about whether the officers “reasonably believed” or “honestly believed” that they had the requisite approval; instead, it is about whether the Village violated the Agreement.

Next, the Employer asserts that the Police Committee never approved the officers’ requests for tuition reimbursement either. To support that premise, it cites the testimony of Police Committee members Lengfeld and Kalscheur that the Police Committee neither approved the officers’ reimbursement requests nor had the authority to do so. According to the Employer, the Association failed to present any evidence which refuted their testimony.

With regard to the minutes of the October, 2005 Police Committee meeting, the Employer maintains that the minutes from that meeting should not be interpreted as granting prior approval. The Employer acknowledges that the minutes do indeed refer to the officers’ tuition reimbursement requests as having been granted. The Employer avers that that statement in the minutes is attributable to a comment made by the new Police Chief – Chief Janssen – during the course of the meeting. Apparently, Chief Janssen said that the requests had previously been approved. The Employer characterizes Janssen’s comment as a misstatement, and it avers that there is “no documentary or testimonial evidence to support the statement about the tuition reimbursement requests being approved.” That being so, the Employer asks the arbitrator to not rely on Chief Janssen’s “stray comment” recorded in the October, 2005 Police Committee minutes, and use it as a basis for finding that he, or the Police Committee, gave “prior approval” to the officers’ requests for tuition reimbursement.

Finally, the Employer argues that the Baumbach situation supports its position herein. According to the Employer, the Association “mischaracterizes” what happened there. The Employer summarizes the applicable facts as follows: “Although at times the Village Board approved sufficient funding so that Officer Baumbach could take his requested courses, on at least one occasion the Village Board determined that it did not have sufficient funding available and it denied Officer Baumbach’s request for tuition reimbursement.” As the Employer sees it, these facts prove three things. First, Officer Kosharek’s and Davis’ assumption that they would receive reimbursement – even if there was a delay – because Officer Baumbach had previously received reimbursement, was erroneous. Second, since the Village Board once denied Officer Baumbach’s request for approval for tuition reimbursement, this demonstrates that reimbursement was never intended to be automatic, and was subject to approval from the Village Board in the Village Board’s sole discretion. Third, it also demonstrates that the Village applied Article 25 the same to Baumbach as it did to the two officers here. The Employer argues that by the time the two officers submitted their requests for tuition reimbursement here, though, the Village’s and Police Department’s “financial circumstances” had changed from what it was when Baumbach requested tuition reimbursement, and the Board decided it did not have “the necessary funding available” (to reimburse the two officers). The Employer maintains that the final sentence in Article 25 gives it the right to make that

determination (i.e that it did not have funds available to provide full tuition reimbursement to the two officers).

In sum, the Employer believes it did not violate Article 25 when it denied tuition reimbursement to the officers. It asks that the grievance be denied. In its view, the Association is asking the arbitrator to ignore the language of the Agreement and instead fashion a remedy that the Association believes would be more fair. The Employer submits that to do so would be outside the scope of the arbitrator's authority.

### **DISCUSSION**

I've decided to begin my discussion with a summary of my main findings. First, I find that this contract does not require the Employer to reimburse officers for all of their tuition expenses. To the contrary, this contract gives the Employer the discretion to decide whether it reimburses any of their tuition costs. Thus, the Village Board gets to decide what is fair and equitable. Next, I find that the only time the Village Board gave "prior approval" to the officers' requests for tuition reimbursement was in the fall of 2004 when it earmarked \$5860 in the 2005 budget and authorized its expenditure for that purpose. That money was never paid to them, so it is still "owed" to them. Finally, I find that the officers are not contractually "owed" any money over and above the \$5860 just noted. The following discussion explains why.

My discussion is structured as follows. First, I'll review and interpret the contract language. Second, I'll address the Baumbach situation. Third, I'll address whether the grievants met the "prior approval" requirement.

#### **A. An Analysis of the Applicable Contract Language**

Since this is a contract interpretation case, I'm going to start by reviewing the contract language involved. Just one provision is applicable here – it's Article 25. That provision establishes an educational incentive for employees who desire to participate in criminal justice educational programs.

An overview of Article 25 follows. In order for an officer to receive tuition reimbursement under Article 25, the officer must satisfy the following steps: 1) submit a request in writing; 2) obtain "prior approval" from the Employer (which is in the Employer's sole discretion); 3) present the Employer with a school record indicating that he or she earned a grade of at least a "C" or 2.0 on a 4.0 scale in the subjects taken; and 4) present the Employer with evidence that tuition costs have been paid by him or her. Each of the foregoing is a step in the tuition reimbursement process that must be met. If an employee misses one of the steps (meaning they do not satisfy it), they do not qualify for Article 25 tuition reimbursement.

In this case, the parties dispute whether the “prior approval” step was satisfied. I’ll address that matter later in this discussion. Here, though, I’m going to elaborate further on the contractual requirement that the employee get “prior approval” and what that entails.

First, as was already noted, receiving “prior approval” from the Employer is one of the necessary steps to receive tuition reimbursement. If the parties intended that an officer could obtain tuition reimbursement merely by submitting a request in writing, earning the requisite grades, and paying the tuition bill, the parties would not have included the sentence “All requests are subject to prior approval of the Employer. . .” The standard rules of contract construction dictate that the “prior approval” requirement be given meaning, and that “prior approval” be interpreted as a separate and essential step in the tuition reimbursement process.

Second, if the parties had intended that “prior approval” would be automatic for officers who satisfied the other requirements, the parties would not have included the phrase “approval shall be in the sole discretion of the Employer” after the phrase “all requests are subject to prior approval of the Employer. . .” The inclusion of that modifier in Section 25.02 means that approval is not automatic for officers who meet the other requirements, and that whether or not approval is granted is indeed within the Employer’s sole discretion.

Third, the language in Section 25.02 does not say that an officer will receive tuition reimbursement if his/her request is not denied. Instead, it specifically refers to the affirmative step of receiving “prior approval” from the Employer. Given the existence of same, the contract language will not support the conclusion that the lack of a written denial to a tuition reimbursement request satisfies the “prior approval” requirement. An employee’s assumption that they received approval is not sufficient either.

Fourth, the next point which I’m going to address about “prior approval” is who authorizes it. Specifically, is it the Police Chief, the Police Committee, or the Village Board that gives “prior approval”? The answer to that question is found in the final sentence in Section 25.02 wherein it expressly gives this authority to the “Employer”. The contractual Introduction clause identifies the Village of Cross Plains as the “Employer”. The governmental entity which speaks for the Village is the Village Board. In the context of this case, this means that officers who request tuition reimbursement have to get “prior approval” from the Village Board. Approval from the Police Chief and/or the Police Committee does not satisfy Sec. 25.02.

A final point which is made about “prior approval” is this: while the granting of “prior approval” can be done implicitly or be inferred from the circumstances, that is not the case with funding the request in the budget. Funding for tuition reimbursement cannot be done implicitly or inferred from the circumstances. It requires an affirmative act by the Village Board. The affirmative act is that the Village Board has to authorize the inclusion of funds in the budget for that express purpose, and the spending of funds for that express purpose. Were it otherwise (i.e. if the Village Board were to give “prior approval” to a tuition reimbursement request, but not authorize the inclusion of funds to pay for it), the granting of “prior approval”

would be an empty gesture. Thus, when the Village Board grants “prior approval” to a tuition reimbursement request, it also has to fund the request in the Police Department budget.

I’m now going to elaborate further on the topic just referenced (i.e. funding tuition reimbursement) by raising three factual scenarios where an officer makes a tuition reimbursement request, and then deciding in those instances whether the request was effectively approved or denied. (Note: the reason I’m doing this will become apparent later in my discussion). The first scenario is where an officer makes a tuition reimbursement request, but the Village Board does not include any funding whatsoever for tuition reimbursement in the budget which they approve. In that situation, I believe it is apparent that the officer’s request for tuition reimbursement has effectively been denied. The second scenario is where an officer makes a tuition reimbursement request, and the Village Board funds the entire request in the budget which they approve. In that situation, I believe it is apparent that the officer’s request for tuition reimbursement has effectively been granted. The third scenario is where an officer makes a tuition reimbursement request, and the Village Board funds some – but not all – of the tuition reimbursement request in the budget which they approve. According to the Employer, if that scenario occurs, the request was effectively denied. I disagree. Here’s why. The Employer’s interpretation that it’s all-or-nothing for tuition reimbursement requests (meaning that unless the entire budget request is approved and funded in the budget, it is considered denied) is at odds with the political nature of the budget process where policy makers often reduce budget requests. An extreme example of same was noted in the first scenario above where the Village Board killed a budget request outright. While killing a budget request outright is certainly one option available for policy makers dealing with budget requests, another option is to partially fund the budget request. If that happens, I see that as an approval – not a denial. I therefore find that if the Village Board earmarks some money in the budget for tuition reimbursement – no matter how much the amount requested was – the officer’s request for tuition reimbursement has effectively been approved.

Having addressed what the contract says about “prior approval”, the focus now turns to what the contract says happens if the employee meets all four of the previously-identified steps in the tuition reimbursement process. (By that, I mean 1) that the employee has submitted a request in writing; 2) that the employee has received “prior approval” from the Employer; 3) that the employee has earned the required grade in the classes taken; and 4) that the employee has presented the Employer with evidence that the tuition costs have been paid). According to the Association, what happens if the employee satisfies all four steps is that the Employer has to reimburse the employee for all their tuition costs (i.e. 100%). To support that premise, it relies on the following sentence contained in Sec. 25.03: “Upon compliance with the provisions of this section, reimbursement of the tuition costs shall be made by the Employer.” On its face, the Association’s proposed interpretation certainly seems logical, because that sentence, standing alone, can be read to mean that the Employer will reimburse all of the tuition costs because the sentence does not say anything to the contrary. For example, it does not say that the Employer will reimburse, say, half of the costs. However, while this sentence does not say anything of the sort, there is language two sentences later that undercuts the Association’s proposed interpretation. I’m referring, of course, to the following sentence

found in Section 25.04: “Nothing in this Article shall constitute a guarantee of any minimum level of funding for educational program.” This sentence says in plain terms that there is no “minimum level of funding” for tuition reimbursement. In other words, the Employer is not contractually obligated to reimburse any certain percentage or amount of the employee’s tuition costs. While the Association relies on Sec. 25.03 to justify its contention that the Employer owes full tuition reimbursement to officers who satisfy the four previously-identified steps, the Association’s proposed interpretation lacks a sound contractual basis in light of the existence of Sec. 25.04. The latter section (i.e. Sec. 25.04) clearly establishes that the Employer is not required to reimburse the employee for all of their tuition costs. Section 25.04 is far more specific on the level of funding required than the third sentence of 25.03 is, so in accordance with standard contractual interpretation, Section 25.04 is controlling herein. While there are some law enforcement contracts with tuition reimbursement provisions that provide that officers will be reimbursed for all of their tuition expenses, this particular contract simply does not say that. Furthermore, this contract does not even guarantee that employees who complete the four steps in the tuition reimbursement process will be reimbursed a fixed percentage (such as a quarter or half), or even a certain dollar amount. Under this language, the Employer gets to decide what the level of reimbursement will be. If it wants, the Employer can reimburse the employee for all of their tuition costs. Conversely, if it wants, the Employer can pay nothing toward the employee’s tuition costs. Ditto for every number in between these two extremes (i.e. full reimbursement and no reimbursement). Thus, Sec. 25.04 gives the Employer the contractual cover, so to speak, to justify whatever decision is made about tuition reimbursement.

**B. The Baumbach Situation**

Next, I find that the contract interpretation just made is not altered by the Baumbach situation. The basis for this finding is that the facts therein cut both ways, so to speak. The following shows this. In 1999, the Village Board decided that funds were available for Baumbach’s tuition reimbursement, and it approved his tuition reimbursement request. He was reimbursed \$4768 by the Employer for tuition costs that year. This process was repeated at least once more, with the Village Board approving Baumbach’s tuition reimbursement request and reimbursing him the full amount sought. These facts obviously support the Association’s reading of the contract in that they show that the Employer reimbursed Baumbach’s tuition costs. One time, though, the Village Board decided that funds were not available for Baumbach’s tuition reimbursement, and denied his request for tuition reimbursement. This fact obviously supports the Employer’s reading of the contract in that it shows that tuition reimbursement is not automatic and is subject to approval from the Village Board. Additionally, the record shows that the Village did not pay Baumbach’s last request for tuition reimbursement because he had left the Village’s employment. This fact also supports the Employer’s reading of the contract in that it shows that tuition reimbursement is not automatic and is granted at the Employer’s discretion. All in all, what happened to Baumbach is not particularly helpful in interpreting the contract. That being so, I find that the Baumbach situation does not change the contract interpretation reached above.

**C. Whether The Grievants Met The “Prior Approval” Requirement**

As previously noted, the parties dispute whether the grievants met Article 25’s “prior approval” requirement. The focus now turns to making that call. Quite frankly, making that call was the hardest part of this case. In the discussion which follows, I will first address whether the Police Chief approved the grievants’ requests. Then, I’ll address whether the Police Committee approved the grievants’ requests. Finally, I’ll address whether the Village Board approved the grievants’ requests.

I begin by noting, once again, that the last sentence of Sec. 25.02 provides that approval of tuition reimbursement requests must come from the Employer (meaning the Village Board) and is at the sole discretion of the Employer (meaning the Village Board). Furthermore, it has already been held that neither the Police Chief nor the Police Committee is empowered to approve an employee’s tuition reimbursement request.

Notwithstanding the foregoing, it’s the Association’s position that the grievants thought or assumed they had received “prior approval” from Chief Clemens. The facts show otherwise. Here’s why. First, when both officers first presented Chief Clemens with their requests for tuition reimbursement in 2003, Chief Clemens made it clear to both officers that their requests for tuition reimbursement were contingent on the Village Board giving approval. Second, insofar as the record shows, Chief Clemens never said or did anything that suggested to the officers that he was approving their requests for tuition reimbursement. Specifically, he never told either employee – either verbally or in writing – that he approved their requests for tuition reimbursement. Third, after the Village Board failed to include funds for tuition reimbursement in the 2004 budget (and effectively denied their requests for tuition reimbursement), Chief Clemens told the officers that while they could try for reimbursement the next year, approval would still be at the discretion of the Village Board. In response, Officer Davis advised the Chief that he would not hold his breath. Fourth, Davis later wrote a memo to the Chief wherein the subject line read “Request Approval For Classes”. In that memo, Davis asked for the Chief’s approval for the classes he planned to take in the next school year. At the bottom of the memo, Davis put two boxes: one said “Approved” and the other said “Denied”. Davis received no response to his memo from either the Chief or the Village Board. The foregoing facts persuade me that even if the officers assumed/believed they had the requisite “prior approval” from Chief Clemens, their assumption/belief was not reasonable under the circumstances.

The focus now turns to whether the Police Committee approved the officers’ requests for tuition reimbursement. According to the Association, that committee approved the officers’ requests. Once again, the facts show otherwise. Here’s why. Police Committee members Lengfeld and Kalscheur both testified that the Police Committee was not empowered to approve officers’ tuition reimbursement requests. No evidence was presented which refuted their testimony. Additionally, both testified that the Police Committee did not approve the officers’ requests. While the Association did not try to refute their testimony on this point, it notes that the minutes of the October 19, 2005 Police Committee meeting refer to the officers’ “schooling” as having been “approved”. Essentially, the Association wants me to credit the

minutes over the testimony of the Police Committee members on this point. I decline to do so for the following reason. The record establishes that the statement in the minutes about the “schooling” being “approved” is attributable to a statement made during the meeting by Chief Janssen (when he was urging that the officers be reimbursed in full). When all the record evidence is considered, it is apparent that Chief Janssen’s statement that “approval” had previously been granted was either a misstatement or an error because there is no other evidence – either documents or testimony – which supports his statement at the October 19, 2005 meeting that the employees’ tuition reimbursement requests had been approved. That being so, that statement in the minutes will not be used to establish that the Police Committee gave “prior approval” to the officers’ requests for tuition reimbursement.

The focus now turns to whether the Village Board ever approved the officers’ request for tuition reimbursement. In making that call, I will review the events of 2003, 2004 and 2005 separately.

In 2003, Officers Davis and Kosharek first approached Chief Clemens about obtaining tuition reimbursement. In response, Chief Clemens included funds for their tuition reimbursement in his 2004 proposed budget. The Chief’s proposed budget was ultimately reviewed by the Village Board. When the Village Board adopted a Police Department budget for 2004, it did not include any funding whatsoever in the 2004 budget for the officers’ tuition reimbursement. In my discussion on the contract language, I addressed this exact factual scenario and found that it constituted a denial of the tuition reimbursement request. Application of that finding here means that the Village Board did not give the officers “prior approval” for tuition reimbursement in 2003.

In 2004, the two officers again sought tuition reimbursement. In response, Chief Clemens again included funds for their tuition reimbursement in his 2005 proposed budget. The Chief’s proposed budget was ultimately reviewed by the Village Board. This time, the Village Board did not do what it did the prior year (when it did not include any funds for tuition reimbursement in the budget). Instead, this time, when the Village Board adopted a Police Department budget for 2005, it placed some funds in the budget for tuition reimbursement. While there are probably instances where funds are placed in a municipal budget that are not intended to be spent, that was not the situation here. The record establishes that when the Village Board debated this matter in the fall of 2004, and decided to place some funds in the training budget, they intended that those funds would be expended to reimburse the two officers for some of their tuition expenses. The amount which the Board included in the budget was \$5860. This amount was less than the amount requested. In my discussion on the contract language, I addressed this exact scenario (i.e. where the Village Board funds some – but not all – of the tuition reimbursement request in the budget which they approve) and found that it constituted an approval of the reimbursement request. Application of that finding here means that the Village Board effectively granted approval for the two officers to share \$5860 between them for tuition reimbursement in 2005.

Given the Village Board's decision in the fall of 2004 to earmark \$5860 in the 2005 budget for tuition reimbursement for the two officers, and to expend the money for that purpose, one would think that this money would have been paid to the employees. However, it was not. Although the record does not indicate why, the undersigned surmises it was because the Association was seeking a much higher figure (rather than just \$5860). When the Association filed a grievance in the fall of 2005 seeking Employer payment of the tuition costs incurred by the two officers, that grievance did not seek payment of the \$5860 which was earmarked in the 2005 budget for tuition reimbursement. Instead, the remedy sought in that grievance was for the Employer to pay the full amount of tuition costs incurred by the two officers. I'll deal with that matter next. Here, though, I'm still focusing on the \$5860 which was earmarked in the 2005 Police Department budget for tuition reimbursement, and authorized for expenditure for that purpose. Since that amount was never paid to the two officers, I find it is still "owed" to them. The question of whether they are "owed" additional funds over and above that amount (\$5860) will be addressed next.

In the fall of 2005, the two officers again sought tuition reimbursement. By that time, Kosharek had finished his degree and Davis was close to finishing. As a result, they were not seeking "prior approval" for classes to be taken in the next year. Instead, they were seeking payment retroactively for all of the tuition costs which they had incurred and paid going back to 2003. That is an important distinction because it is not what is envisioned under Article 25. What is envisioned under Article 25 is that employees first get "prior approval", and then they seek reimbursement. The employees had tried that in 2003 and 2004, but in 2005, they sought payment retroactively for \$37,665.47. They could do that (meaning seek payment retroactively), but the Employer still had the contractual right to decide what amount, if any, to reimburse the employees retroactively. The fact that the Employer had earmarked, authorized and approved \$5860 in the fall of 2004 for tuition reimbursement for the two officers did not mean that the Employer was obligated, a year later, to give its approval again and pay the officers the full amount sought. Clearly it was not. It still retained the right to grant approval and to decide how much to reimburse them.

The Village Board considered the officers' requests for reimbursement of that amount at their meeting on November 15, 2005. The minutes of that meeting indicate that the Board neither discussed nor granted "prior approval" for classes to be taken prospectively because, as was just noted, they knew that the officers had finished, or were close to finishing, taking their classes. Instead, the main topic which the Village Board members addressed was money (specifically, the amount of money being sought by the two employees) because the Board members knew it was their call to decide what level of reimbursement the employees would receive. The minutes from that meeting indicate that the Board members discussed and voted on various options in an attempt to decide what they considered was fair and equitable for the employees, as well as the Employer and its residents. They ultimately decided to offer the two officers half of the \$37,665.47 which they sought at the time.

As the Association sees it, the Employer's offer to pay the employees that figure (i.e. half of \$37,665.47) was an admission by the Employer that it was obligated to reimburse the

employees for all their tuition costs (i.e. that it “owed” them full reimbursement). I don’t see it that way. Here’s why. As was noted in my discussion on the contract language, the Employer is not contractually obligated under Sec. 25.04 to pay any reimbursement, much less the full amount. The decision to pay anything is at the Employer’s sole discretion. I find that the Village Board’s offer to pay half of \$37,665.47 to the employees was a settlement offer made to settle the underlying dispute. In so finding, I am well aware that when the Village Board made this offer, a grievance had not yet been filed. However, the Board members certainly considered the likelihood that a grievance would be filed, and also considered the costs associated with the grievance arbitration process. They also knew that this was the third time, and likely the last time, that the employees would seek reimbursement. Accordingly, they decided to offer the employees something which they hoped would settle the matter. They could do that. Notwithstanding the Association’s contention to the contrary, the Employer’s offer to pay half of the amount sought was neither an admission of a contract violation nor does it prove same. Instead, the Employer offered to do something which was not “owed” under Article 25 (meaning that Article 25 did not require the Employer to pay half of the employees’ tuition expenses). That was their call to make. The undersigned considered holding the Employer to that offer, but decided against doing so. Thus, I am not going to order the Employer to pay that amount to the employees.

Having so found, the final question is what remedy is ordered here. I find that the only amount which is contractually “owed” to the employees herein is the \$5860 which was earmarked, authorized and approved in the fall of 2004, but was not paid. The Employer violated Article 25 when it did not pay them that amount. In order to remedy this contractual violation, the Employer shall pay this \$5860 to the employees. I leave it to the parties to decide how this money is split between the two employees (meaning they are free to divide it as they see fit). In the event the parties cannot agree on another method, it is my order that the money be split evenly between the two employees.

Based on the above, it is my

### **AWARD**

1. That the Village violated Article 25 (Educational Incentive) of the collective bargaining agreement when it failed to pay the \$5860 to the grievants for tuition reimbursement which it authorized and approved in the fall of 2004.

2. That in order to remedy this contract violation, the Employer shall pay the \$5860 to the grievants. That amount shall be split evenly between the two grievants unless the parties agree otherwise.

3. That payment referenced in number 2 above is the only amount ordered to be paid to the grievants.

Dated at Madison, Wisconsin, this 13th day of June, 2008.

Raleigh Jones /s/

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Raleigh Jones, Arbitrator