

BEFORE THE ARBITRATOR

In The Matter of the Arbitration of a Dispute Between

THE CITY OF OAK CREEK

and

**THE LABOR ASSOCIATION OF WISCONSIN, INC., For and on Behalf of the
OAK CREEK POLICE OFFICER'S ASSOCIATION, LOCAL 228**

Case 143
No. 68572
MA-14272

(Tuition Reimbursement Grievance)

Appearances:

Robert H. Buikema, Attorney, Davis & Kuelthau, S.C., 300 N. Corporate Drive, Suite 150, Brookfield, WI 53045, appeared on behalf of the City of Oak Creek.

Benjamin M. Barth and **Jason E. Ganiere**, Labor Consultants, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, WI 53022, appeared on behalf of the Oak Creek Police Officer's Association, Local 228, and Officer David Stecker, Grievant.

ARBITRATION AWARD

The City of Oak Creek, herein the City, and the Oak Creek Police Officer's Association, Local 228, herein the Association, are parties to a collective bargaining agreement which provides for the final and binding arbitration of certain disputes. The Association filed a request to initiate grievance arbitration with the Wisconsin Employment Relations Commission for arbitration of a grievance filed by the Association concerning a request for tuition reimbursement made by Officer David Stecker, herein the Grievant. The parties jointly requested that Paul Gordon, Commissioner, serve as the arbitrator. Hearing was held on the matter on February 24, 2009 in Oak Creek, Wisconsin. No transcript was prepared. A briefing schedule was set, the parties filed written briefs and the record was closed on April 15, 2009.

ISSUES

The parties did not stipulate to a statement of the issues. The Association states the issues as:

Did the City violate the expressed or implied terms and conditions of the collective bargaining agreement when it refused to make payment to Marion College after Officer David Stecker showed proof that a grade C or higher was achieved in the approved course he completed?

If so, what is the correct remedy?

The City states the issues as:

Did the City violate the contract when it refused to pay Marion University directly for tuition rather than reimburse directly Officer Stecker?

If so, what is the appropriate remedy?

The Association's statement of the issues is selected as that which more closely reflects the record.

RELEVANT CONTRACT PROVISIONS

Article 3 Management and Employee Rights

The City retains and reserves the sole right to manage its affairs in accordance with the applicable laws, ordinances, and regulations and all management rights repose in it. Included in this responsibility, but not limited thereto, is the right to determine the kinds and numbers of services to be performed; the right to establish work rules, the reasonableness of which shall be subject to the grievance procedure; the right to determine the number of positions and the classifications thereof to perform such services; the right to direct, assign and schedule the work force; the right to establish qualifications for hire, to test and to hire, promote and retain employees; the right to transfer and assign employees subject to existing practices and the terms of this Agreement; the right, subject to Police and Fire Commission procedures and the terms of this Agreement related thereto, to suspend, discharge, demote, or take other disciplinary action for just cause; the right to maintain efficiency of operations by determining the method and means and the personnel by which such operations are conducted and to take whatever actions are reasonable and necessary to carry out the duties imposed by law upon the City.

. . .

Article 26 Personal Development Program

A. Requirements: Any officer who enrolls in an educational (associate or undergraduate) program which is job related will, if such course is approved by the Chief, be reimbursed for 100% of the cost of registration, tuition fees, and course books required. The City will make payment upon presentation of proof that a Grade C or higher was achieved. Upon completion of the course, books purchased will become the property of the Police Department. Such completion and reimbursement for course work shall not guarantee subsequent upgrading of the employee who took the course.

B. Tuition Reimbursement Allocation: Members of the bargaining unit are eligible to apply for funding under the guidelines above up to the amount established annually for the bargaining unit. The City will allocate \$285 per year per full time employee into an account for the entire unit's use. The unused funds shall not roll over from one year to the next. Graduate level course can be reimbursed if there are funds available from this unit's allocation at the end of each calendar year.

C. Any approval or decision under this Article is subject to the approval of the Personnel Committee and subject to the grievance procedure.

D. Personal Development Program – Service Restrictions Employees who utilize the Education Incentive Development program shall repay the City for the cost of any class tuition if the employee does not remain employed with the City at least three (3) years. The repayment shall be based upon the timing of each individual class. The timing shall commence from the date of the completion of each class. Employees who leave other than for a duty or non-duty disability, before three (3) years shall repay the City based on the schedule below:

Less than 12 months	100%
Between 12-24 months	66%
Between 25-36 months	33%

BACKGROUND AND FACTS

Grievant is a Police Officer for the City and is in the bargaining unit covered by the collective bargaining agreement. The collective bargaining agreement provides for tuition and book payments under its Personal Development Program and that program has provided for the reimbursement to bargaining unit Officers over approximately 20 years. On June 5, 2008 Grievant submitted to the City a request form to be reimbursed for four undergraduate courses he planned to take pursuant to the City tuition reimbursement policy and the provisions

Of Article 26 of the collective bargaining agreement. His request was approved and he was notified of this by Memo of July 23, 2008 from the City Personnel Specialist. The Memo stated in pertinent part:

At their meeting of July 3, 2008, the Personnel Committee approved your request for reimbursement for “Managerial and Professional Ethics”, “Foundation of Christianity”, “World History Since 1900” and “Mathematical Applications” subject to available funding and successful completion of the course (grade of “C” or better).

Upon completion of the courses, please provide documentation of your grades and a copy of your receipts for payment so that you may be reimbursed promptly.

This Memo was similar to others used by the Personnel Specialist for over ten years. Prior to this the City has not paid tuition costs to Officers under Article 26 of the collective bargaining agreement until the Officers had provided receipts or proof that they had paid first. The City has not paid educational institutions directly for tuition or other expenses under Article 26 of the agreement.

Grievant attended two of the classes at Marian University between July 8 and August 20, 2008 and earned grades of A- and A. He intended to take the other two approved classes later in the fall. The tuition for the first two classes was \$900 per class and his book expense was approximately \$68.34. The University gave him the option to pay the tuition after completion of the courses. He did not pay the tuition to the University before taking the two courses.

On September 2, 2008, before paying the University, Grievant submitted a request to the City for reimbursement of the course tuition and book expense associated with these first two courses. As part of his request he included a statement from the University to him indicating the amount due for the two courses. He did not submit a receipt showing he had paid the University for the tuition. On the same day the City responded to him by email from the Personnel Specialist that

I received your documents, however the one for the cost of your classes is only a statement, not a receipt. In order to be reimbursed, you must first pay for the classes.

The City did not reimburse or pay Grievant for this tuition at that time, and did not pay the University for it at that time. Grievant maintained that he was entitled to reimbursement under the collective bargaining agreement.

On or about June 9, 2008 the Association Representative had contacted the City Administrator by email about an updated tuition reimbursement form. The pertinent part of the email was as follows:

I have been provided with the updated tuition reimbursement form, the old tuition reimbursement form (11/16/90) and an opinion letter from Bob Kufrin (4/29/99) indicating that employees will be reimbursed upon presentation of receipt of payment and proof that a grade C or higher was achieved.

One question has been brought to my attention regarding the updated tuition reimbursement form. Are employees required to show proof of payment prior to being reimbursed from the City? If so, could we reexamine that requirement. Some schools are allowing a deferred payment schedule to be set up so that you have up to 45 days after the class to submit payment.

The City Administrator replied by email on June 10, 2008 in pertinent part:

Why would we reimburse the employee before proof of payment?

The city simply wants to assure we are actually *reimbursing* an employee for actual costs associated with taking a class. I don't think that submission of proof of payment is asking too much to satisfy this benefit.

(emphasis supplied)

At the hearing in this matter the City Administrator testified to the effect that he was unaware of a deferred tuition method prior to the time that Grievant entered into the classes and prior to the time the City received Grievant's original request for reimbursement for the classes he had completed.

On September 10, 2008 Grievant filed a grievance contending that the City refusal to pay the tuition was a violation of Article 3 and Article 26 of the collective bargaining agreement.¹ The grievance was denied which led to this arbitration.

Further facts appear as are in the Discussion.

¹ During the pendency of the grievance Grievant paid the tuition to the University and the City reimbursed him for the payment in October, 2008. The books remained with the Police Department.

POSITIONS OF THE PARTIES

Association

In summary, the Association argues that the City violated Article 3 and Article 26 of the collective bargaining agreement. The meaning of “reimbursement” can include payment to a University. The City’s memo denying the grievance read in part: “*The committee reviewed the dictionary definition of ‘reimburse’ and found it defined as ‘to refund; to pay back; to give the equivalent of’*”. Grievant’s request to have the City make payment to the University is a request to “give the equivalent of”, therefore within the definition of reimburse which the Committee cited as grounds to deny the grievance. And the City’s evidence of the definition of reimburse was an Internet print out of a Google search. The Association is concerned about the evidentiary value of this and asks it be given little, if any weight. Some of the Internet sites include Wikipedia.org; Wikidictionary.org; changehealthcare.com; applegatechiropractic.com; Citibank.com; skainfo.com, and; quasarsail.com. None are considered reliable sources to seek a definitive definition of a word. The Association relies on the trusted and reliable *Black’s Law Dictionary, Eighth Edition, 2004*.

reimbursement, n 1. Repayment. 2. Indemnification. – reimburse, vb.

Therefore, reimburse is akin to “repayment”. The definition of repayment is to pay back; refund; restore or return (Ibid). Per Article 26 of the CBA, the City undoubtedly has a duty to reimburse Grievant for tuition.

The Association argues the reluctance on the part of the City to pay directly to the University does not make any sense. Once it agreed to the reimbursement, why not pay directly to the University and eliminate the step that requires the officer to pay out of his own pocket and then request reimbursement? This saves time and doesn’t require the office to use his own money. It would be different if the officer had to pay tuition prior to taking the class, but this is a deferred payment after the class is completed.

The Association also argues that the express terms of the agreement support the Association’s position. The City insinuates this should be a bargained change. The Association sees no point in bargaining the change as the current language requires the City to “make payment” if the officer meets the requirements of Article 26. The Association put the City on notice that a new twist in tuition reimbursement was on the horizon by the June 9th email. For the City to imply at the hearing that it was unaware of the deferred tuition issue is misleading and not factual.

The Association argues that the language in Article 26 is clear: “The City **will make payment** upon presentation of proof that a Grade C or higher was achieved” (**emphasis added**).

The Association also argues that the remedy requested is reasonable and is appropriate. The Association is asking that the current language within the four corners of the contract allows employees to request the City to directly pay colleges and/or universities without the

requirement of the employees to show proof of payment in cases where a deferred plan is offered by universities. The contract does not require proof of payment, only proof of completion of the course to be reimbursed.

City

In summary, the City argues that the language of the collective bargaining agreement is clear and unambiguous, and requires the City to pay only after the officer has incurred costs prior to reimbursement. The best evidence of the intent of the parties is the words they used themselves in their collective bargaining agreement. The relevant contract language states that under the circumstances described, an officer will be “reimbursed” for certain educational expenses. Citing arbitral authority, reimbursement is described as its ordinary and usual meaning to refer to an employee recouping some kind of expense the employee has undertaken. The same conclusion has been reached in a case where an employee received a scholarship for educational expenses and wanted to be reimbursed, but was properly denied because the language there did not guarantee payment regardless of whether the employee actually incurred the expense and the employee had not incurred the cost of the tuition. Here, Grievant did not incur the cost of the tuition when he sought reimbursement and there was nothing to reimburse him for at that time. Reimbursement requires the person to be reimbursed actually incur some cost. This was the basis for the City denial of the grievance. The City considered the definition of reimburse and the City was under no obligation to pay.

The City argues that it is under no obligation to pay the University directly. Reimbursement does not mean to pay a third party on behalf of another. Article 26, Section A, states that any officer who enrolls will be reimbursed. The City is required to reimburse an officer who incurs tuition expenses, but not to pay some other entity on behalf of the officer. The Association urges a reading of only a single sentence in Article 26. However, in interpreting collective bargaining agreement language the provisions must be read together giving meaning to all and rendering none of them meaningless, citing arbitral authority. The two sentences in Article 26, Section A at issue must be read together. The word payment refers to reimbursement. It follows that in order to confirm that the officer is entitled to reimbursement, i.e. recouping for a cost already incurred, the City is entitled to proof that the officer did incur the cost for which he or she seeks reimbursement. In a prior case concerning Article 26, Section A, of this collective bargaining agreement the arbitrator indicated that the reimbursement and payment language is to be read together. Here, because Grievant did not provide proof he had incurred any tuition expenses, he was not entitled to reimbursement payment. And the City is under no obligation to make direct payment to the educational institution as such payment would be beyond the scope of the agreement.

The City also argues that the past practice of the parties requires proof of payment. Assuming *arguendo* that the language is not clear and unambiguous, past practice indicates that it was never their intent to make payments as the Grievant and Association now suggest. The

City's Personnel Specialist testified that during her 13 years with the City the City has always required documentation of incurred tuition costs before granting reimbursement under the collective bargaining agreement. The City has never paid a third party educational institution directly. When an officer requests initial course approval the City's practice has been to send a memorandum informing the officer that upon completion of the course the officer will be required to provide a receipt indicating they paid the tuition expense sought to be reimbursed. The City Finance Director testified that for over 20 years the City practice was to require proof of expenses incurred by the officer, and an officer's tuition has never been paid directly to a third party educational institution. The reason for the practice is that the collective bargaining agreement is a contract with the City and the individual union employee. There is no contract with a third party such as the University. The public policy for reimbursement rather than third party payments is because the City must be able to justify any and all payments. This also avoids administrative difficulty of the City having to deal with numerous third parties. The practice has been in existence essentially the same time as the language in the collective bargaining agreement. The Association has not once challenged the practice or attempted to change the language in any negotiation session. The clear past practice, which evidences the parties' intent, requires the reimbursement of an officer, and no other party, only upon proof that the officer has incurred the costs for which he or she seeks reimbursement.

DISCUSSION

The issue in this case is if the collective bargaining agreement, expressly or impliedly, requires the City to pay tuition expenses directly to the educational institution Grievant attended or to him directly presumably to be used by him to pay the outstanding amount due the institution for the tuition, or whether he must demonstrate payment of those expenses first and then he is paid back for that. There is no language in the collective bargaining agreement which specifically addresses the payment of tuition fees by the City directly to an educational institution. The issue centers around the word "reimburse" as used in Article 26, Section A. The Section states:

Article 26 Personal Development Program

A. Requirements: Any officer who enrolls in an educational (associate or undergraduate) program which is job related will, if such course is approved by the Chief, be reimbursed for 100% of the cost of registration, tuition fees, and course books required. The City will make payment upon presentation of proof that a Grade C or higher was achieved. Upon completion of the course, books purchased will become the property of the Police Department. Such completion and reimbursement for course work shall not guarantee subsequent upgrading of the employee who took the course.

There is no question that the Grievant had City approval for the two University courses that were job related, were approved by the Chief, that he completed the courses and earned a grade C or higher. (He actually earned an A and an A-) He did not pay, or have paid on his behalf, the tuition for the courses before requesting that the City reimburse him for the tuition. During the grievance and arbitration process the Association argues that the agreement's language requires he be paid or reimbursed first, or that the University be paid directly. The City argues that the agreement's language requires the payments be made to the officer so that he is reimbursed only after he has first paid the tuition to the University, which has also been the practice, and that City payment to a third party such as an educational institution is not required.

The word "reimbursed" is not defined in the parties' collective bargaining agreement. In interpreting the collective bargaining agreement an arbitrator is ultimately looking for the intent of the parties. In interpreting a word, such as "reimbursed", "reimburse", or "reimbursement", arbitrators give words their ordinary and popularly accepted meaning in the absence of a variant contract definition, or extrinsic evidence indicating that they were used in a different sense or that the parties intended some special colloquial meaning. See, *Elkouri & Elkouri*, HOW ARBITRATION WORKS, (6th Ed), p. 448. Here, there is no different sense or special colloquial meaning that has been used by the parties or advanced by either party here. And "reimburse" is not a trade or technical term used in the collective bargaining agreement. It is its ordinary and popularly accepted meaning which is sought.

This ordinary meaning sometimes needs no resort to further definition and arbitrators sometimes apply their understanding of words or phrases without citing any authority. See, *Id.*, p. 449. Such is the situation with the word "reimbursement" as interpreted in MANITOWOC COUNTY, WERC, MA-7024 (Honeyman, 11/12/92):

The word "reimbursement" is not ordinarily applied to a salary increment; its ordinary and usual meaning refers to an employe recouping some kind of expense the employe has undertaken.

The undersigned would take a similar view of the ordinary, popular, or usual meaning, that "reimbursed" is made when the person being reimbursed has already made some type of payment. The person is recouping, or getting back, the expense they have already paid.²

² The City also cites a similar result in the case of EAST TROY COMMUNITY SCHOOL DISTRICT, WERC MA-6686 (Shaw, 1/8/1992), where reimbursement and reimburse were found not to have been intended by the parties to guarantee payment by the District of an amount equal to the cost of tuition regardless of whether the teacher actually incurred the cost. In that case the tuition had been paid by a third party grant without obligation to repay by the Grievant, and the Grievant sought reimbursement for the tuition under the terms of the collective bargaining agreement therein.

In interpreting the meaning of a word or term, arbitrators have used definitions from reliable dictionaries. Here, the Association urges the use of *Black's Law Dictionary* as a reliable source, and criticized the definitions provided in the City's Google search hearing exhibit. The City did cite in its denial letter during the grievance process an unnamed dictionary definition of "reimburse" as "to refund; to pay back; to give the equivalent of". There is nothing argued or shown to be unreliable in this definition. And, the Association argues that Grievant's request to have the City make payment to the University is a request "to give the equivalent of" and is therefore within that definition of reimburse. The undersigned is not persuaded that the Association's argument is a usual or ordinary meaning of "reimburse". The definition does not say the equivalent of to pay someone else on someone's behalf. It is also not consistent with the first two definitions of refund or pay back, which both imply a prior payment having been made. And, the Grievant's argument really just begs the question: to give the equivalent of what? The "what" at issue here is payment for the tuition fee, a payment which had not yet been made and which did not yet exist. Certainly Grievant had incurred a debt, but he had not yet paid that debt. The definition used by the City is entirely consistent with its position and the definition is inconsistent with the Grievant's position.

The Association does argue for the use of the definition in *Black's Law Dictionary*, which the undersigned does regard as a reliable dictionary. The entry is:

reimbursement, n 1. Repayment. 2. Indemnification. – reimburse, vb.

The Association goes on to argue that "[t]herefore, reimburse is akin to 'repayment'. The definition of repayment is to payback; refund; restore or return (Ibid)." Even using this definition the Association's argument does not prevail. To pay back implies something is already paid – here it has not been already paid. To refund implies to return funds already paid – this had not already been done. To restore implies providing something that has already been depleted or taken – nothing had been paid yet so there is nothing to restore. Return would be to give back – here nothing had been given in the first place. The Association's argument does not show how the *Black's Law Dictionary* definition means what Grievant wants. On the contrary, it supports the City's position.

The Association criticizes the definitions offered by the City at the hearing which are the results of a Google internet search for: define: reimburse. The exhibit contained 22 results which defined either reimburse, reimbursement or reimbursements. Those will not be set out at length herein. The point of the Association argument is that they are not reliable definitions given there various sources. The undersigned has reviewed each of them. Each definition and example supports the City position, and these are similar to the two definitions analyzed above. None support the Association position. The import of this is that these 22 definitions all reflect an ordinary and popularly accepted meaning of reimburse or reimbursement. And, in this case, that would include the word used in the collective bargaining agreement: "reimbursed".

The Association also argues that the collective bargaining agreement requires that payment under that part of Article 26 A. which states:

The City will make payment upon presentation of proof that a Grade C or higher was achieved.

The Grievant did present proof that he achieved a Grade C or higher. The Association argues that this is all that is necessary for the City to be required to make payment. However, as argued by the City, this sentence cannot be read alone. The entire Article must be read, which includes the prior sentence containing the word reimburse. The two sentences must be read together. The payment is the reimbursement. That was defined above. If payment did not refer to reimbursement then the preceding sentence, and the word "reimburse" would be meaningless. Agreements cannot be interpreted to render any part meaningless. As the City notes, this Article in the parties' collective bargaining agreement has been previously interpreted, and that interpretation reflects the principle that effect must be given to all words and clauses of Article 26. CITY OF OAK CREEK, WERC, MA-12780 (McGilligan, 11/14/2005). In that particular case the specific issue of what payment was due was different, but the principle of contract interpretation at issue here was applied. That same application here favors the City's position.

At the hearing the City Administrator testified to the effect that he was unaware of a deferred tuition method prior to the time that Grievant entered into the classes and prior to the time the City received Grievant's original request for reimbursement for the classes he had completed. The Association points out that in its email to the City Administrator of June 9th the subject of deferred tuition payments being offered by some educational institutions was brought up in a question addressing reimbursement. The Association argues, therefore, that for the City to imply at the hearing that it was unaware of the deferred tuition issue is simply misleading and not factual. The undersigned agrees that in a general sense the testimony was not factual. But in this specific case, the Association email did not mention Marian University or the Grievant. Even if the Association is correct, and it is in the sense that the general topic was brought to the attention of the City Administrator, the City Administrator's email response was the same as the City's position in this grievance - that proof of payment prior to being reimbursed was required. Nothing said in the email itself is relied upon by the Association in interpreting the language in Article 26. Nor is the City Administrator's accuracy, or memory, on this point dispositive. Whether he did nor did not know that some educational institutions were allowing deferred payments does not effect an interpretation of contract language, especially here where he had not agreed with the concept in the first place.

The June 9th emails have more probative value in demonstrating the parties did not intend that the City would pay educational institutions directly. The email indicates that deferred tuition payments are a new development. As a new development this would not have been in the contemplation of the parties when Article 26 was agreed to. Therefore it is not likely that reimbursement would be intended by the parties to include direct payment from the City to an educational institution.

The Association argues that the City's reluctance to pay directly to the University does not make any sense, and that the remedy it seeks (direct payment to colleges or universities without the requirement of employees to show proof of payment in cases where deferred payment is offered) is reasonable and appropriate. The Association may have a very good argument about this at the bargaining table, but that is not what the current language in the agreement provides.

The language is clear and unambiguous. There is no need to resort to past practice or bargaining history to interpret it. The Association has not presented any evidence or argument that the parties have any past practice of applying Article 26 in any fashion that would alter this meaning of "reimbursed." The very scant evidence of any bargaining history is from the brief email exchange in early June where the Association suggested the parties re-examine the requirement of showing proof of payment prior to being reimbursed from the City. This does not suggest any different meaning was attached to the language and recognized by the parties as a reflection of their mutual intent. The parties used the word "reimbursed" in their agreement. They did not use words like "credit", "advance", or "pay directly to an educational institution." An arbitrator cannot add words to an agreement. The collective bargaining agreement requires that the officer be reimbursed, not a third party who is not privy to the agreement.

Applying Article 26 to the facts of this case shows that at the time of Grievant's request for payment he had not first paid the University and he did not submit proof to the City of his payment. Without having paid the tuition first, he was not in a position to be reimbursed under the collective bargaining agreement. The City did not violate the express or implied terms of the collective bargaining agreement when it refused to make payment to Marian College, or to Grievant, after Grievant showed proof that a grade C or higher was achieved in the approved course he completed.

Accordingly, based on the evidence and arguments of the parties, I make the following

AWARD

1. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 15th day of June, 2009.

Paul Gordon /s/

Paul Gordon, Arbitrator