

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF OAK CREEK

and

**OAK CREEK PROFESSIONAL POLICE ASSOCIATION LOCAL 228,
THE LABOR ASSOCIATION OF WISCONSIN, INC.**

Case 149
No. 69065
MA-14462

(Graduate Level Tuition Reimbursement Grievance)

Appearances:

Joel S. Aziere and Brian J. Waterman, Attorneys, Davis & Kuelthau, S.C., 300 North Corporate Drive, Suite 150, Brookfield, WI 53045, appeared on behalf of the City of Oak Creek.

Benjamin M. Barth, Labor Consultant, N116 W16033 Main Street, Germantown, WI 53022, appeared on behalf of Oak Creek Professional Police Association Local 228 and The Labor Association of Wisconsin, Inc.

ARBITRATION AWARD

The City of Oak Creek, herein the City, and the Oak Creek Professional Police Association Local 228, The Labor Association of Wisconsin, Inc., 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 concerning the denial by the City of a claim for reimbursement of an Association member's request to be reimbursed for certain graduate level course tuition payments. The parties jointly requested that Paul Gordon, Commissioner, serve as arbitrator. Hearing was held in the matter on September 8, 2009 in Oak Creek, Wisconsin. A transcript of the proceedings was made available to the parties, who filed briefs and reply briefs by January 12, 2010 when the record was closed.

ISSUES

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

Did the City violate Article 26 of the contract when it denied tuition reimbursement to Officer Robert Carter for graduate level courses?

If so, what is the correct remedy?

The City states the issues as:

Whether the City violated the terms of Article 26 of the collective bargaining agreement when it denied Officer Carter's tuition reimbursement request for graduate level courses being taken by Officer Carter in his pursuit of a second Graduate Level degree, after having paid for Officer Carter's first Graduate Level degree?

If so, what is the appropriate remedy?

The City's statement of the issues is adopted as that which most 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 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

Police Officer Robert Carter, herein Carter or Grievant, is a member of the bargaining unit and has been employed by the City since 1997. A Master's degree is not required for his position or for a promotion. Since at least 2001 Grievant has been reimbursed by the City for tuition and related expenses under Article 26 of the parties' collective bargaining agreement. Some of these reimbursements were for Grievant's undergraduate Bachelor degree in Criminal Justice Administration. And, some of those reimbursements were for Grievant's Master's degree in Public Service Administration. The subject of reimbursement under Article 26 for Grievant's Master's degree tuition was at issue in a previous arbitration between the parties in OAK CREEK PROFESSIONAL POLICE OFFICER'S ASSOCIATION WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION, MA-12780 (McGilligan, November 2005). There, the City had denied reimbursement for courses Grievant had taken to obtain his first Masters Degree. In that case the arbitration award concluded that the City violated Article 26 of the collective bargaining agreement when it denied tuition reimbursement to Grievant for graduate level courses. The City then made the requested reimbursement, and Grievant eventually obtained the Master's degree with the City reimbursing him for the graduate level tuition and related expenses leading to the degree.

After he had obtained his first Master's degree, Grievant submitted to the Chief of Police another tuition reimbursement application pursuant to Article 26 of the collective bargaining agreement. This application must be filled out and submitted to the Chief of Police prior to starting the course. The application was for a course titled Adult learning theory having a tuition cost of \$1,194.00, and was to be applied to a Graduate/Masters Degree. This would be Grievant's second Graduate/Masters level degree. Among other things, the application requires Grievant to list his overall academic goals and the program intended to follow, as well as his current academic standing. Grievant's responses stated:

A. My overall academic goal is to continue my education pursuing courses geared towards a master's of science degree in adult education and organizational learning from Northeastern University. My intent is to continue my education to further my possible advancement goals and ability to grow within the organization. I feel that this program will allow me to improve my ability to instruct other department members and take a more responsible position possibly in the future. The department will eventually be taking a more expansive role in conducting our own re-certification classes for personnel and continuing learning and ongoing training for personnel. My desire is to improve my ability as a department instructor and allow myself an opportunity for future growth and advancement within the department and or the city. I believe the classes in this program are directly related to the goal of continuous training and improvement which our department is currently involved and strives for.

B. My current standing is that I will be starting the program in 2009. I currently have a bachelor's degree in Criminal Justice Administration as well as a master's degree in Public Service Administration of Justice as well as a graduate certificate degree in Law Enforcement Leadership and Management.

The application required a course description, which was:

The concept of lifelong learning has become an increasing reality as adults continually engage in learning activities, whether through their employer, institutions of higher education, or self-directed study. This course will examine the social and psychological aspects of adult development and learning, including the various motivations of adult learners. Students will also learn various methods of training and development, as well a specific instructional practices.

The course was to be at Northeastern University and was to start in early April 2009, ending in mid May, 2009.

The Chief of Police's approval is necessary for the tuition to be reimbursed. When the application was reviewed by the Chief it was denied on March 2, 2009. The Chief marked the

no box to the application question of: This course appears to be related to the applicant's present or reasonable promotional objective. The Chief also wrote in the comments part: 2nd Masters Program. At the hearing in this matter the Chief testified that the factors he considers in evaluating any tuition reimbursement request is the same, if it pertains to the job, the job relatedness of it, the reasonableness of the request and if it's administratively completed correctly. He also testified that as to Grievant's instant request, he denied it because there is no provision within the contract to pay for second and subsequent Master's programs.

Grievant and the Association filed a grievance over the denial of the application, contending that Article 3, Article 26 and any other applicable Article or Section of the contract was violated. The grievance contended that Article 26 read that graduate level courses can be reimbursed if there are funds available, and that as of March 13th there are funds available for this course to be reimbursed. It also contended the City's management rights were being exercised in an unreasonable manner. The Chief denied the grievance because there is no provision for a second and subsequent Master's program within the contract. He also considered whether or not the Master's degree sought by Grievant was related to his position. He had discussed this with Grievant before Grievant submitted the application because at that time he had mentioned to Grievant something to the effect that he did not think that's reasonable. The Chief's written denial of the grievance stated the decision as: There is no provision for the city to pay for a second and subsequent masters program. It stated the reason for decision: no provision in the contract. The Chief further elaborated at the hearing in this matter as to why he did not feel the application was reasonable. He felt it was not reasonable for the City to pay for a second and subsequent Master's degree program or for a doctorate, that: "I just don't believe that that is a community standard at all."

After that denial the Association advanced the grievance to the Personnel Committee, which denied the grievance. It set forth its reasons in a letter of April 14, 2009, which in summary indicated: Article 26 does not specifically provide for unlimited tuition reimbursement; it is unreasonable for tax payers to be responsible for unlimited life-long learning under the agreement; the request does not meet the reasonableness standard; Article 26 is written in terms of a program in the singular, not in the plural, and; a second masters degree is unnecessary to perform the essential functions expected of the position of a patrolman, which requires a minimum of a high school diploma or GED certificate followed by a minimum of 60 accredited college credits, and from the perspective of job relatedness, the Committee does not believe that a second master's degree, after the City has already paid for one, is job related or enhances the patrolman's ability to perform his job.

The Chief had also been involved in the contract negotiations that resulted in the then most recent collective bargaining agreement. During negotiations there was not any discussion with regard to unlimited compensation for degree programs under Article 26, and the City did not contemplate unlimited reimbursement for graduate level courses. In bargaining the City has never proposed language to limit the number of graduate level degrees an officer could request tuition reimbursement for.

POSITIONS OF THE PARTIES

Association

In summary, the Association argues that the issue has already been arbitrated by the parties. It is the same issue as the 2005 award by Arbitrator Dennis P. McGilligan, and the language in Article 26 of the collective bargaining agreement has not changed. The standard of reasonableness in the McGilligan award should be applied here. The City wants the parties to ignore the clear and unambiguous contract language and the previous award so the City can say the Chief has the only say if graduate level courses will be reimbursed. The prior arbitration award rejected the City's belief that it has the sole discretion to approve or deny graduate level courses, citing the prior award language. Nothing in Article 26 gives the City that right.

The Association argues that the language in the collective bargaining agreement is clear and unambiguous. Article 26, Section B reads in pertinent part: "Graduate level courses can be reimbursed if there are funds available from this unit's allocation at the end of each calendar year." This is clear and unambiguous, and the City should be ordered to reimburse the courses that meet the three standards of reasonableness as outlined by Arbitrator McGilligan. The words in the above quoted sentence should be given their ordinary and popularly accepted meaning, citing arbitral authority. The Association is unsure why the City is interpreting the language differently now, and the decision by Arbitrator McGilligan stated the City was in violation of the agreement. Where contract language is clear and unequivocal the arbitrator should give it no other meaning other than that expressed, citing arbitral and judicial authorities. The clear language of Article 26, Section B does not support the City's position that it can deny an officer's request to be reimbursed for graduate level courses if the courses are job related, a grade of C or better was achieved and there are funds available at the end of the calendar year.

The Association also argues that the remedy requested by the Association is reasonable and appropriate. The Association is requesting the reimbursement spelled out in Article 26 of the contract. The City violated the contract and the previous arbitrator's award. The request for reimbursement is reasonable and appropriate – reimburse Officer Carter for all graduate level courses he has requested that satisfies the requirements of Article 26.

City

In summary, the City argues that the parties never intended for the City to pay for an officer's second graduate degree, particularly when unrelated to the officer's job duties. This is supported by the plain language of the collective bargaining agreement, and the Union argument would result in absurd and unreasonable consequences. The arbitrators' role is to determine the intent of the parties and render a decision consistent to what they intended, citing arbitral authority. The language of Article 26 demonstrates the parties never intended for the City to pay for an officer's second graduate degree. As to educational program, the language

is written in the singular, not plural. This is clear that the parties intended a single associate degree, a single undergraduate (Bachelor's) degree, and because the graduate degree reference is subject to the same criteria as the other degrees, a single graduate degree. Had the parties intended reimbursement for multiple degrees they would have used the word "programs".

The City argues that the parties did not intend for the City to reimburse for coursework at any level that is not job related. The agreement states that in order to be reimbursed the coursework must be job related. The prior McGilligan award determined that the City must use a reasonableness standard when determining if the program is job related. In this case neither the subject of the second Master's degree nor that of the specific coursework was related to his job. Unlike the Grievant's Bachelor's and first Master's degree, which were focused on criminal justice, the second Master's program is unrelated to his job duties as a police officer. If a Master's degree in Adult Education and Organizational Learning is related to police work, virtually any degree would be job related. The specific course, Adult Learning Theory, is unrelated to his job as a police officer. It was completely reasonable for the City to determine that both the subject matter of the Grievant's second Master's degree, as well as that of the particular course for which he requested reimbursement, were not related to his job. The City properly denied the request.

The City also argues that it would be absurd to accept that when the parties first negotiated the language of Article 26 they intended for taxpayers to pay for the unlimited educational pursuits of police officers. The contract should not be interpreted to lead to unreasonable results, citing arbitral authority. An unreasonable result would be the exact consequence of accepting the Union's position in this matter. Officers already enjoy substantial educational benefits, evidenced by the payment for Grievant's first two degrees at the cost to taxpayers of many thousands of dollars. Providing lifelong education under Article 26 would place an unreasonable burden on taxpayers. The general public would not tolerate a benefit to City employees so out of line with the standard in other communities. It is unreasonable to believe the parties intended the City to provide such an excessive benefit. The Union argument is unreasonable.

Association Reply

In summary, the Association replies that the City's argument about the intent for officers to be reimbursed for a single associate, bachelor's and graduate degree is interesting because the City's advocate was not at the bargaining table. The Association's advocate was at the table and the concept of limiting the number of degrees was never discussed. Most of the discussion was about the amount of money to make available for reimbursement. As to the City argument about program singular compared to programs plural, if the parties clearly intended employees to be limited to one degree, then that is what the contract should state. In fact, the contract does not limit employees to one associate's, one undergraduate or one graduate degree. Article 26, Section B refers to graduate levels courses, in the plural. Article 26 is clear and unambiguous. Officer Carter's graduate level course met the three standards of reasonableness outlined in the McGilligan award: the graduate level course must

be job related; a grade of C or higher must be attained, and; there must be funds available from the bargaining unit's allocate at the end of the year. The Association asks that the ordinary and popular meaning be given for the words in the contract. If the City wants to change the language they should bring the issue to the bargaining table.

The Association argues the City brief is the first time the City presented the argument that the subject matter of Grievant's second Master's degree is not job related. The Chief denied the request because in his opinion there was no provision for the City to pay for a second and subsequent Master's program. The City presented no evidence or reasonable explanation to show why it takes the position that the degree is not job related. The City claim cannot be cross examined by making the argument after the hearing now for the first time. If the City felt that way they should have denied the request for that reason. The Chief didn't and the City failed to present that argument at the hearing. In fact, the reverse is true. If the issue were raised at the hearing, the Grievant could show that the degree fits well within the parameters of Grievant's job duties: Grievant is a use of force trainer; he is responsible for training the emergency response unit; the Department has a Training and Policy Coordinator which he could then apply for, and; the degree will help him perform in numerous police positions and help his current work performance. And, as the McGilligan award noted, the parties' own agreed upon contract language provides the standard of reasonableness. The City wants the parties to ignore the clear and unambiguous contract language and the prior arbitration decision to say the City has the only say if a graduate level course will be reimbursed. Arbitrator McGilligan disagreed with the City when it made its same argument in 2005. Just because the City does not like the outcome of the McGilligan award does not mean they can ignore it.

The Association also argues that, as to the taxpayer funding for unlimited education contention of the City, the contract caps the amount to be used on reimbursement and the parties came up with the parameters and restrictions on how officers would be able to be reimbursed. There must be money in the fund set up by the City. The funding is agreed to so that \$285 per year per full time employee is placed into this account, and is not rolled over. Article 26 B specifically mentions how graduate level courses can be reimbursed, which is if money is available. Associate and undergraduate level courses have first priority. If money is then available, and the criteria are met pursuant to the McGilligan decision, graduate courses can be reimbursed. There is no unlimited access of taxpayer money for educational pursuits of police officers. The City argument is an example of half-truths and distortions exhibited by the City.

City Reply

In summary, the City replies that it agrees that the Union is confused, as it has completely failed to recognize the clear distinction between the issue addressed in the 2005 arbitration decision and the current issue. The 2005 decision addressed the issue of whether the City had complete discretion regarding reimbursement of graduate level courses. That

award provides that the City's discretion is subject to a reasonableness standard. The issue in the instant case, which the Union brief did not address, is whether the specific request for reimbursement for a second Master's degree unrelated to the job position was reasonable under that standard. Grievant's request for tuition reimbursement for his second Masters degree was not reasonable. Neither the subject of the degree (Adult Education and Organizational Learning) nor the specific course (Adult Learning Theory) was related to his job as a police officer. A second Masters degree of any type is unrelated to the job of a police officer or any other position with the City. It would be absurd to accept the negotiated language as intending for taxpayers to pay for unlimited lifelong educational pursuits of police officers, an unreasonable economic burden on taxpayers which the general public would not tolerate.

The City requests that the grievance be denied.

DISCUSSION

The issue to be decided centers on the City's denial of Grievant's request to be reimbursed for a course that leads to his second graduate level degree after the City had reimbursed him for courses he took that resulted in his first Master's degree. The City paid the tuition and related fees and expenses for the first Master's degree, and takes the position that it is a reasonable application of Article 26 of the collective bargaining agreement, pursuant to the previous arbitration award, to not approve payment for a second or subsequent graduate level or Master's degree. The City also contends that the second or subsequent graduate level degree is not reasonably job related and the intent of Article 26 is not to provide taxpayer funded unlimited educational pursuits for police officers. The Association contends that nothing in the language of Article 26 limits reimbursement for courses for a second graduate level or Master's degree, and the standard of reasonableness in applying Article 26 as required in the previous arbitration award has not been met by the City.

The City and the Association have agreed in Article 26 Section B of their collective bargaining agreement that the City would reimburse Association members for tuition and related expenses for job related associate and undergraduate programs if such course is approved by the Chief. Graduate level courses can be reimbursed if there are funds available from the bargaining unit's account, which is funded at \$285 per year per full time employee with no yearly rollover. The Personal Development Program provides in pertinent part:

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 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.

Article 26 was the subject of a previous arbitration between the parties when Grievant's request to be reimbursed for tuition for course work leading to his first Master's degree was denied by the City. OAK CREEK PROFESSIONAL POLICE OFFICER'S ASSOCIATION WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION, MA-12780 (McGilligan, November 2005). Both parties contend that that award sets the standard in applying Article 26, and both contend theirs is the proper application of that standard. In the McGilligan award the issue decided on the merits was:

Did the City violate Article 26 of the collective bargaining agreement when it denied tuition reimbursement to Officer R.C. for graduate level courses?

Arbitrator McGilligan decided the City had violated Article 26. In doing so he determined that under Article 26 the City did not have the sole discretion to deny the request for graduate level courses reimbursement. He also considered the purpose of the disputed contractual provision (“ . . . [T]he purpose of the Article is to broadly encourage ‘Personal Development’ at both the graduate and undergraduate levels not promotion or advancement on the salary schedule.”) as a basis for its interpretation. He reasoned that the contractual authority to approve or deny the course work and reimbursement for graduate level courses is set forth in Article 26 which provides the standard for the City to follow in approving or disapproving graduate level course reimbursement. He applied the doctrine of reasonableness to further reason that the implied covenant of good faith and fair dealing prevents any party to a collective bargaining agreement from doing anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, and it applies equally to management and labor. He then concluded that the agreed upon contract language provides the standard of reasonableness.

In the instant case, the parties own agreed upon contract language provides the standard of reasonableness. To qualify for graduate level course approval and reimbursement, the Grievant's graduate level courses must be job related, a grade of C or higher must be attained and there must be funds

available from the bargaining unit's allocation at the end of the calendar year. An officer who takes a graduate level course that meets these criteria will be reimbursed for that course. The Chief and the City are responsible for making all of the determinations but in a reasonable manner. Such an interpretation gives effect to all words and clauses of Article 26. (citation omitted)

pp. 12, 13

Arbitrator McGilligan went on to find that the graduate level course work involved therein (Research, Program Planning and Evaluation in Criminal Justice and Nature of Cities) was reasonably related to his job and that the Chief acted unreasonably when he denied the course approval to the Grievant.

In the instant case there are no fact issues as to obtaining a grade C or higher or if there were funds in the account to use to reimburse the tuition, fees and books. The issue is if it is reasonable, and job related, for the City to reimburse tuition and related expenses for this graduate level course in a program that leads to a second graduate level degree after the City had made reimbursement for a first graduate/Master's level degree of the Grievant. The McGilligan award does apply Article 26 Section B to a request to be reimbursed for a graduate level course. That is what is narrowly being requested by Grievant here. There is precedential value in that award. The parties' collective bargaining agreement provides for final and binding arbitration of certain disputes. To give binding effect to that language, arbitration awards interpreting and applying provisions of the collective bargaining agreement are entitled to be relied on by the parties as a determination of their respective rights and obligations, and as a guide in future application of the same provisions in the same or similar circumstances. See, e.g., CITY OF WAUSAU, MA-14262 (Gordon, February 2010); SAUK COUNTY, MA-13190 (Gordon, March 2007). As such, the prior award will be given weight and consideration in applying the same Article 26 Section B. The standard in interpreting and applying Article 26 Section B in that case now must be applied in two different respects. First, as alluded to above, it is to be applied to the narrow request for reimbursement of a graduate level course. Secondly, it needs to be applied in the broader issue raised by the City in the context of this being a course that leads to a second graduate level degree after the Article 26 Personal Development Program had paid for Grievant's first graduate level degree. In both instances the McGilligan award requiring the application of the standard already contained in Article 26 itself must be applied, and the determinations of the Chief and City in applying that contractual standard must also be in a reasonable manner.

In the more narrow sense, Article 26 is written in terms of associate, undergraduate and graduate level programs, courses and classes. It is not strictly written in terms of a degree at any level, although use of the word "program" implies leading to a degree of some level or other. Specifically, it is an approve course that is reimbursed for. The issues become, are the courses requested by Grievant job related, and did the Chief and City make a reasonable determination of whether the courses were job related.

The McGilligan award already established that graduate level courses may qualify for reimbursement and Grievant's request would meet that part of the standard if job related. Grievant supplied evidence of that to the Chief in his application and in this grievance arbitration through Jt. Exhibit 4, the Tuition Reimbursement Application.¹ The evidence supplied by the City on the point is that a degree is not necessary for the performance of the duties of a patrol officer. For the City, that is little, if any, evidence on the issue. A patrol officer for the City needs to have a High School diploma, or GED certificate, and 60 hours of accredited college credits. No further degree is necessary to perform the job. Yet, Article 26 obviously provides for courses beyond that entry level requirement. Thus, the mere fact that the additional course work or even a degree available through Article 26 is not a job requirement does not mean that it is not job related. Contrasting with this is the information contained in the Application here wherein Grievant detailed a relationship between the course and the work performed in the police department. The course title is Adult learning theory, and is described as

The concept of lifelong learning has become an increasing reality as adults continually engage in learning activities, whether through their employer, instructions of higher education, or self-directed study. This course will examine the social and psychological aspects of adult development and learning, including the various motivations of adult learners. Students will also learn various methods of training and development, as well as specific instructional practices.

Among other things, Grievant stated in the application that:

I feel that this program will allow me to improve my ability to instruct other department members and take a more responsible position possibly in the future. The department will eventually be taking a more expansive role in conducting our own re-certification classes for personnel and continuing learning and ongoing training for personnel. My desire is to improve my ability as a department instructor and allow myself an opportunity for future growth and advancement within the department or the city. I believe the classes in this program are directly related to the goal of continuous training and improvement which our department is currently involved and strives for.

Basically, Grievant has shown a relationship between the course and the on-going training and learning associated with the operations of the City Police Department. This is the evidence of job relatedness. The undersigned is persuaded that on its face this course is related to Grievant's job. The City has not demonstrated otherwise. The City argues that, unlike a degree in criminal justice, a degree in Adult Education and Organizational Learning is not

¹ This award does not consider the arguments and purported fact contentions made in the Association's Reply Brief on p. 5 therein. Those matters were not testified to at the hearing and no evidence was admitted as to those things. There was no ability to cross examine on those points. They are not part of the evidentiary record.

related to police work, and if so then virtually any degree would need to be considered job related. The City makes this general argument, but provides no proof or evidence to support its contentions. The City did address job relatedness in the Personnel Committee's denial of the grievance. It merely stated:

From the perspective of job relatedness, the Committee does not believe that a second master's degree, after the City has already paid for one, is job related or enhances the patrolman's ability to perform his job.

This denial and reasoning from the City did not address any aspect of the actual job duties or functions of the police department or the nature of the course work. Similarly, at the hearing in this matter the City did not present any testimony or other evidence as to job relatedness, other than the conclusion that a second master's degree was unnecessary and unreasonable. The conclusion that a second Master's degree is unnecessary to perform the functions of a patrol officer does not address whether it is job related. The undersigned is persuaded that the City denial of this reimbursement request, on the narrow issue of reimbursement for a graduate level course, is unreasonable.

The issue now moves to the larger context in which the City based its denial, that of this being Grievant's second Master's degree course work after the City had paid for his first Master's degree. The City contends that it is unreasonable for the taxpayers to fund a second degree and the denial of the request was, thus, reasonable.

The starting place in interpreting the collective bargaining agreement on this issue is the language of Article 26 Section B itself. As the Association points out, there is no language, or inference, that a single graduate degree is available, or that the language limits the benefit to only one graduate degree. The Association is correct. There is no language limit the number of courses or number of degrees in Article 26. There are only the three requirements of job relatedness, Grade C or higher, and funds in the account. To place a limit on that availability would be to add language, such as "one", "only one", or "a "single" graduate degree, to the collective bargaining agreement. An arbitrator cannot add to, subtract from, or modify language in the agreement. On its face, Article 26 is not limited to a single Master's degree or courses leading to a single graduate degree. In as much as this course has been demonstrated to be job related as discussed above, and there are no issues presented here of Grade C or of funds in the account, the denial of the request violates Article 26 generally.

The City argues that the provision is written in terms of a program, singular, rather than programs, plural. But the applied for course and potential degree is still a single program. The City has paid for courses leading to Grievant's undergraduate degree. That is a program and a degree. It has also paid for courses leading to his Master's degree. That is a program and a degree. The City has reimbursed Grievant for courses for at least two different degrees in at least two different programs. The availability of reimbursement for courses in more than one graduate degree program is not limited by the use of the word program in the singular in Article 26. Nothing in the Article limits it to a single program or a single degree.

This leads to the next inquiry, whether bargaining history sheds any light on the intent of the parties as to the meaning of Article 26. Even though the parties have not argued that there is ambiguity in the collective bargaining agreement so that resort to bargaining history to determine intent is called for, both did point out some bargaining history. There is little evidence of bargaining history. The City notes that there was no discussion as to unlimited compensation for degree programs, and the City did not contemplate unlimited reimbursement for graduate level courses. It argues that payment for courses such as this is not the intent of Article 26. The Association points out that in bargaining the City has never proposed language to limit the number of graduate level degrees an officer could request tuition reimbursement for. This limited bargaining history is not particularly helpful in trying to determine if the parties placed any special meaning on anything in Article 26. If the City intended there to be a limit on the number of degrees or programs in Article 26, it never expressed that. The agreed upon language does not express or reflect that. The language actually agreed to by the parties is generally the best evidence of what they intended. The language used by the parties clearly contemplates on-going access to courses and programs at three different levels. It clearly contemplates that there would be ongoing costs associated with providing this benefit. It can be anticipated that degrees at the associate, undergraduate and graduate level would be attained by taking courses. There is nothing in the language that requires a degree be obtained from taking any courses. Similarly, there is nothing in the language which limits the attainment of one or more degrees from the courses taken. The McGilligan award also addressed the purpose of Article 26, which he found was to broadly encourage “Personal Development” at both the graduate and undergraduate levels not promotion or advancement on this salary schedule. *Id.* p.13. This suggests literally a broad reading of Article 26, which favors the Association. Even considering bargaining history, the language does not have limits on the number of degrees or programs.

We finally arrive at the apex of the City’s arguments, that reimbursing for a second Master’s degree after paying for a first one is simply unreasonable. Therefore, argues the City, the denial of this reimbursement request was a reasonable determination under the McGilligan award standard. The City’s first argument is that Article 26 does not specifically provide for unlimited tuition reimbursement. This argument has been dealt with above and resolved against the City.

The City next argues that it is unreasonable to believe that the City of Oak Creek tax payers should be financially responsible for unlimited life-long learning under the terms of this agreement, using the “reasonableness” standard of the prior award. This argument is answered by the terms of the Personal Development Program in Article 26 itself. The financial responsibility, and cost to the tax payers, is controlled by Article 26 Section B, where a \$285 per year per full time employee is allocated into an account for the entire unit’s use. The unused funds shall not roll over from one year to the next. Thus, the maximum financial exposure of the City, and tax payers, is limited by that agreed upon funding formula. Costs to the City are not in excess of what it has already agreed to pay. Thus, contrary to the argument of the City, the benefit is not excessive. Article 26 provides a benefit to the bargaining unit employees much like many other articles in the collective bargaining agreement. The

argument that there is an ongoing cost to fund the benefits is not a reasonable argument for not complying with the provisions of a collective bargaining agreement where the City has agreed to fund certain benefits at a certain level. Reimbursement for graduate level courses is only available if the account is not used in full for associate or undergraduate level courses. The funds are allocated to the account annually up to this amount. They are allocated whether they are used or not through out the year. The City's liability is limited, or capped, at this maximum amount regardless of what level of course or program it is used for. Contrary to the argument of the City, this is not an unlimited life-long financial responsibility for the City. It is an overall contractual obligation to allocate a negotiate amount to a Personal Development Program. The cost of the benefit of a second or subsequent degree while there are funds available in this finite account is not a reasonable basis to deny the request.

The City argues that Article 26 is written in terms of a program in the singular, as opposed to programs in the plural, evidencing the intent that there be reimbursement for a single associate, undergraduate and graduate degree. This argument has been dealt with above and rejected.

The City next argues that a second Master's degree is unnecessary to perform the essential functions expected for the position of a patrolman. The job description details the education and experience needed in part as a minimum of high school diploma or GED certificate, followed by a minimum of 60 accredited college credits. The City position is that the position of patrolman does not require the level of education received in the pursuit of a second master's degree. However, this argument runs counter to the parties having expressly included an educational benefit in their collective bargaining agreement which provides for courses and programs beyond that needed to perform the expected position of patrolman. To be able to accept the benefit at all the employee must first be an officer for the City and meet the minimum educational requirements needed to perform the essential functions of the position. To then deny the office the benefits provided in Article 26 because it is not necessary for the performance of their duties would be to deny access to the very benefit the Article is designed to provide. This destroys or injures the right of a party to receive the fruits of the contract, much as the foundational reasoning in the McGilligan award. *Id.* p.12. The very same reasoning applies to a second Masters degree. If a first degree is not needed to perform the job and that is not a reason to deny the benefit, then the fact that a subsequent degree is not needed either is not a reasonable basis to deny the benefit. In the prior case Arbitrator McGilligan went even further in determining that the argument that because the course is not needed to be promoted not only runs counter to the expressed purpose of the Article, but is irrelevant to the question of whether Grievant satisfied the contractual elements sufficient for tuition reimbursement. *Id.* p. 13. The same reasoning applies here in the larger sense that this is course work towards a second Master's degree. One or any other number of Master's degrees, or other courses or programs as mentioned in the Article, are not necessary to perform the essential functions of the position. That cannot be reasonable basis to deny the request for reimbursement.

The City argues that a second Masters degree, after the City has already paid for one, is not job related or enhances the patrolman's ability to perform his job. The matter of job relatedness has already been determined against the City. The fact that the City has already paid for a Master's degree is not a reason that the instant request is not job related. It is not reasonable to say that the second degree is not job related nor enhances the ability to perform the job simply because the City has paid for a first Master's degree.

The City has also argues that providing lifelong education under Article 26 would place an unreasonable burden on taxpayers. The general public would not tolerate a benefit to City employees so out of line with the standard in other communities. However, the standard to be applied in this case is exactly what the City has actually otherwise argued, that of reasonableness in the application of the McGilligan award as contained in Article 26 itself. That is the standard of reasonableness the City of Oak Creek has negotiated with the Association, not a standard which may or may not exist in other communities and in other collective bargaining agreements. The Chief felt that a second Master's degree or a doctorate just was not the community standard at all. But, the standard is what the parties negotiated in Article 26. The City seems to put emphasis on the concept of "lifelong learning", and the City's resistance to pay for that. However, Article 26 does not have any age or time limits in it. Denial of the request on that basis is not founded in Article 26 but, runs counter to it, and is not reasonable.

The City's arguments do not appear to fit well within the standard required by the McGilligan award. The City argues that reimbursement for a second Master's degree (in effect, two Master's degrees) is not reasonable. What the McGilligan award requires is that the three determinations in the standard of reasonableness contained in Article 26 itself be made by the Chief and City in a reasonable manner. Again, those are the job relatedness, Grade C or higher, and funds availability. The fact that this is a second Master's degree, as opposed to a first, is not a factor in any of these three questions. The City is attempting to impose an additional determination which neither the language of Article 26, the standard contained therein, nor the McGilligan award contains. It might be "reasonable" for the City to take the position that it will reimburse for only one Master's or graduate degree, but that is not what the language of Article 26 says or what the McGilligan award requires in applying the standard in Article 26. The City's position on reasonableness in this context is for the bargaining table.

The City did not make a reasonable determination when it denied Grievant's tuition reimbursement request for graduate level courses leading to his second graduate level degree after it had paid for his first graduate level degree. Based on this, the City violated the terms of Article 26 of the collective bargaining agreement.

Accordingly, base upon the evidence and arguments presented in this case, I issue the following

AWARD

1. The grievance is sustained.
2. As a Remedy, the City will approve the reimbursement request if Grievant obtains a grade of C or higher and if there are funds available from the unit's allocation as of the end of the calendar year.

Dated at Madison, Wisconsin this 6th day of April, 2010.

Paul Gordon /s/

Paul Gordon, Arbitrator

rb
7558