

* * * * *
 ELBRIDGE ANDERSON, JOHN FORREST, and
 ROBERT HOAGE,

 Grievants,

 v.

 JOHN C. WEAVER, President,
 University of Wisconsin,

 Respondent.

 Case No. 73-160
 * * * * *

OFFICIAL

OPINION AND ORDER

Before: JULIAN, Chairperson, SERPE, STEININGER, WILSON and DEWITT, Board Members.

I. Nature of the Case

Step one of a group grievance filed on May 10, 1973 claimed that Respondent was in violation of Section 165.85(4)(b), Wis. Stats., which requires that law enforcement officers complete a law enforcement training program. This step and the following two were denied. From the denial of the third step, dated September 18, 1973, Grievants filed the fourth step with this Board in accordance with the statewide grievance procedure.

II. Facts

Grievants were all permanent employees working at the University of Wisconsin-Stout. Their positions were classified as Security Officer I. Grievant Anderson began working as a Security Officer I in July, 1970. The other Grievants began prior to that time.

University of Wisconsin at Stout is located in the city of Menomonie, in the County of Dunn. Grievants Hoage, Forrest, and Anderson were deputized by the city of Menomonie in January, 1968, August, 1968, and July, 1970, respectively. Grievants Hoage and Anderson were deputized for a

new term by the County of Dunn in January, 1973. The original deputizations were administered in 1971 or 1972. The authorization for these deputizations came from the mayor and sheriff themselves. Neither the mayor nor the sheriff were requested by the University Board of Regents to deputize Grievants.

The Board of Regents never deputized Grievants. A memorandum dated August 1, 1973 and sent out from James Nowasky, Director of General Services for the University of Wisconsin at Stout, stated that fact and then indicated that the local deputization did not override the Board of Regents and, therefore, any powers of arrest previously assumed were thereby rescinded. (Respondent's Exhibit No. 1.)

Grievants as Security Officers wore regular dark blue policeman uniforms and were issued mace, handcuffs, a night stick, and a two-way radio. These were all provided for them by the University. There were no police officers at the University of Wisconsin at Stout, only security officers.

Mr. Nowasky worked with Grievants to see what could be done to change their position classifications to police officers. Since this could not be done without competition, he determined that the best he could do in order to safeguard their present position and yet ready them for any opportunity to become police officers was to try to arrange for an opportunity to take the law enforcement officer training program. The University would pay for the tuition for the course.

Grievant Anderson was the only one able to take advantage of the opportunity. He worked his regular shift at night (eleven o'clock at night to seven o'clock in the morning) and then attended the course during the day. The tuition was paid directly by the University. Grievant Anderson was not reimbursed for any expenses although he sought reimbursement for

meals. The other Grievants were unable to participate apparently because of scheduling problems.

III. Conclusions

The Personnel Board has jurisdiction over this appeal under Section 16.05(7), Wis. Stats., which provides that the Board may be designated as the final step in the state grievance procedure. This appeal was timely filed in accordance with the statewide grievance procedure (Administrative Practices Manual, Part: Personnel, Section: Administration, Subject: Non-contractual Employee Grievance Procedures.)

The Security Officer's Position
At U.W.-Stout Is A Law
Enforcement Officer Within
The Meaning Of Section 165.85(2)(c), Wis. Stats.

Grievants contend that their positions as Security Officers at U.W.-Stout fall within the definition of a law enforcement officer found in Section 165.85(2)(c), Wis. Stats., and, therefore, Respondent is required to send them to the requisite training program at state expense and on state time. Section 165.85(2)(c), Wis. Stats., defines a law enforcement officer as:

any person employed by the state or any political subdivision of the state for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances he is employed to enforce.
(Emphasis added.)

There is no question that Grievants work for the state, that is, the University of Wisconsin at Stout, nor that a part of the purpose of their employment is to detect and prevent crimes and to enforce laws and ordinances. However, Respondent contends that Grievants do not satisfy the final requirement, that is, they do not have the authority to make arrests. We do not find merit in this contention.

The Definition of a Security Officer, found in the Class Specification, states:

This is routine security work involving the protection of state property and the maintenance of security at state institutions. Employees in this class patrol an assigned area to protect property and persons from fire, theft, vandalism and other hazards. Work involves the exercising of some police powers, and includes giving directions to the general public, performing limited amounts of custodial tasks, and the enforcing of parking regulations. Work is performed in accordance with prescribed rules and procedures under close supervision. (Emphasis added.)

Under the Definition in the Class Specification of a Police Officer 1 it states:

This is police work in the enforcement of all state, and local laws and state agency rules and regulations. Employees in this class conduct such law enforcement activities as patrol duty and public assistance with responsibility for investigation of complaints and maintenance of law and order in and around state property as directed. Work is conducted with authority of full arrest powers. Employees in this class are distinguished from the Patrolman class by the emphasis on law enforcement activities rather than property security checks. Work is performed in accordance with established policies and procedures and reviewed through daily reports.

Clearly, a person whose position is classified as Police Officer 1 is a law enforcement officer and must take the required training. But the Security Officer classification also involves police work as can be seen from the above definition. Depending on circumstances, a Security Officer could be performing sufficient police work such that he would fall within the definition of a law enforcement officer.

It is agreed by the parties that Grievants have arrest powers. (See May 3, 1974 Hearing Transcript, p. 87.) However, those powers come from the County, not from the University. Respondent contends that unless the arrest powers actually come from the employer, the employee cannot fit the definition of a law enforcement officer. We do not entirely agree with this contention. We hold that the University has in effect used Grievants as the total law enforcement effort on the U.W.-Stout campus.

The University dressed Grievants as police officers. They wore a policeman's uniform, carried mace, a night stick, handcuffs, and a two-way radio with which they could contact the University Security Office and the county Sheriff's office.

In 1970 when Grievant Anderson began working for U.W.-Stout, the following job summary was used in his Position Description:

As a duly sworn peace officer, it is his duty to uphold and enforce the laws of the State of Wisconsin. Enforce all rules and regulations of Stout State University and the policies set by the Board of Regents of the State of Wisconsin. For the protection of life and property. Besides specific duties below, will perform related duties as required by the supervisor. (Grievants' Exhibit No. 2.)

In October, 1972 George A. Langmack, City Manager, City of Menomonie, Wisconsin, wrote a letter to James Hubing, Wisconsin Department of Justice, Training and Standards Board. This letter described the Grievants as campus police officers who carried out "the full peace officer duties within the campus limits." (Grievants' Exhibit No. 12.) Although Mr. Langmack admitted that he wrote this letter without personal knowledge of the underlying facts, he did write it on the request of the University through Leonard Oas, Security Supervisor. The purpose of the letter was to provide an explanation of Grievants' positions so that they would be able to take the law enforcement training course at the University's expense.

Finally, in April, 1974 Mr. Oas filled out a questionnaire sent to him by Donald G. Holl, Coordinator, Payments for Municipal Services Program, Department of Administration. This questionnaire requested information on the amount of law enforcement services provided by the local (city or county) law enforcement agencies. Mr. Oas indicated that 100 percent of the day-to-day law enforcement effort was handled by the security staff.

Therefore, we conclude that Grievants are in effect the law enforcement officers of U.W.-Stout. The University relies on them to enforce the

rules and regulations of the University and the statutes of the State. Grievants are authorized to detect crime and can at the very least detain a person whom they find to be breaking the law. They are equipped with a night stick and a pair of handcuffs to effectively take such person into custody. In addition, Grievants have been deputized by the county. This deputization obviously cannot be rescinded by an authority other than the one which granted it.

Respondent Is Not Required
To Pay For The Law Enforcement
Training Course Or Any
Expenses Incurred Therefor.

Neither Grievant Forrest nor Grievant Hoage are required by Section 165.85(4)(b), Wis. Stats. (1971) to take the law enforcement training course. They were hired before July, 1970 and are, therefore, specifically exempt from the requirement. Of course, this does not mean that they are prohibited from taking the course.

Grievant Anderson is covered by this subsection. However, it is silent on the questions of who is required to pay for the course and the expenses incurred therefor and on whose time the course should be taken. Section 165.85(5)(b) does authorize the Law Enforcement Standards Board to make reimbursements to political subdivisions for the salaries, tuitions, and living and travel expenses of officers who are sent to approved schools. However, the definition of political subdivisions does not include state agencies or the University. See Section 165.85(2)(d). However, even this subsection does not require that the political subdivision employer provide funds for the required training. It only provides a means for reimbursement if the employer does pay. Therefore, we conclude that Section 165.85 does not require that Respondent pay for the tuition and other expenses of the law enforcement training course or for the salary of Appellant while he was taking the course.

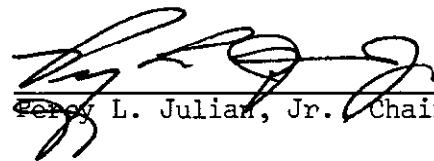
Further, Appellant has failed to present either evidence or argument which would convince us that Respondent is otherwise responsible for reimbursing him for his living expenses and salary for the period of the course. Therefore, we conclude that there was no obligation for Respondent to pay Appellant a salary for the hours he was attending the course or to reimburse him for living or travel expenses incurred while taking the course.

ORDER

IT IS HEREBY ORDERED that the action of Respondent is affirmed.

Dated February 23, 1976.

STATE PERSONNEL BOARD



Percy L. Julian, Jr. Chairperson