

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

DODGE COUNTY

and

DODGE COUNTY PROFESSIONAL  
EMPLOYEES UNION, LOCAL 1323-A,  
AFSCME, AFL-CIO

Case 190  
No. 50793  
MA-8385

Appearances:

Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202-3101 by **Mr. Roger E. Walsh**, Attorney at Law, appearing on behalf of Dodge County.

Wisconsin Council 40, AFSCME, AFL-CIO, Post Office Box 944, Waukesha, WI 53187 by **Mr. Sam Froiland**, Staff Representative, appearing on behalf of Local 1323-A.

**Arbitration Award**

Dodge County (hereinafter referred to as the County) and Local 1323-A, AFSCME, AFL-CIO (hereinafter referred to as the Union) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute over a change in training reimbursement policies. The undersigned was designated. A hearing was held on June 24, 1994 in Juneau, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. The parties submitted post-hearing briefs, and the County submitted a reply brief which was received on September 15, 1994, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the relevant provisions of the contract and the record as a whole, the undersigned makes the following Award.

**I. Issue**

The parties stipulated that the following issue was to be decided herein:

"Does the Human Services Board policy dated October 22, 1993 to take effect on January 1, 1994 on training for employees violate the collective bargaining agreement? If so, what is the appropriate remedy?"

**II. Relevant Contract Language**

**ARTICLE XVII  
REIMBURSEMENT OF EXPENSES INCURRED  
BY COUNTY EMPLOYEES**

**17.1 Car Travel**

17.11 The current mileage reimbursement rate shall be the rate as approved by the Dodge County Board of Supervisors. In the event the Dodge County Board of Supervisors increase the mileage reimbursement rate, the new rate will be implemented for members of the bargaining unit on the effective date of the approval.

17.12 When traveling by plane, train or bus; a purchase order and tax exemption certificate must first be secured from the Purchasing Agent of the County as the County does not pay Federal Tax.

17.13 Car parking and toll charges will be allowed.

17.14 The Employer must exhibit proof of automobile insurance premiums for those Employees who must use their cars for County business.

**17.2 Meals and Lodging**

17.21 Actual and reasonable expense will be allowed for meals outside Dodge County and receipt must be furnished for every meal over three dollars (\$3.00), not to exceed sixteen dollars (\$16.00) per day; no individual meal to cost over nine dollars (\$9.00).

17.22 Actual and reasonable expense will be allowed for lodging for County board members, County officers, elected officials, department heads, employees and members of County commissions and committees, not to exceed \$55.00, except in the event that County personnel are lodging at the convention site, in which case the full cost of lodging will be paid by Dodge County on the basis of a purchase order obtained in advance.

**17.3 Certification and Licensing Fees**

17.31 The County will pay fifty (50%) percent of the annual cost for eligible Professional employees.

- 17.4 Conference registration and banquet expenses will be allowed.
- 17.5 Committee approval shall be required before any Employee may attend a meeting or function outside of Wisconsin for which expenses will be claimed.
- 17.6 All travel expense vouchers shall be submitted to the Accounting Department before being submitted to the Audit Committee. Failure to follow rules will result in denial of expenses.

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### **APPENDIX "F"**

### **PROGRESSION REQUIREMENTS FOR SOCIAL WORKERS**

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- \* If for any reason the Employee is denied any of the five (5) training days each year, the Employee shall be credited with the days denied up to a maximum of five (5) days per year.

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### **III. Background**

The County operates a Human Services and Health Department consisting of four operational divisions: Social Service, Unified Board, Nursing and the Commission on Aging. The Union represents professional employees of the County, including Department employees in the Social Service division and the Unified Board. Prior to the establishment of a comprehensive Human Services and Health Department, there were separate agencies for each operational area.

The bargaining unit did not include employees of the Unified Board until they were accreted in 1991. Employees at the Unified Board operated under a training policy which limited annual training cost reimbursements to \$200. Employees of the Social Services division, on the other hand, were compensated for training expenses beyond the \$200 cap and allowed up to five work days for training per year. 1/ Management of the Social Services Department had the

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1/ The five days per year was not a guarantee of training time, and the Department had from time to time refused to allow the full allotment of time. This figure had been eight days per year until the late 1980's when the Department of Social

discretion to disapprove training requests because of the cost or location of individual programs, and did so in several instances. In addition, Department policy required the approval of the Department Director if a given program

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Services amended its training policies. No grievance was filed over the amendment.

carried a cost in excess of \$60. These differing policies remained in place after the accretion.

In negotiations over the 1992-93 collective bargaining agreement each parties made proposals to set standardized training benefits for all unit members. The Union proposed \$300.00 per year for registration fees, 5 work days for attendance, and reimbursement for mileage, meals and lodging. The County, for its part, proposed a \$225.00 cap on tuition and fees for training sessions approved by the department head, and five work days per year for attendance at such sessions. The County's proposal did not allow for reimbursement of mileage, meals or lodging. The parties were unable to agree on a change in that section of the contract and the existing language was carried over into the 1992-93 agreement.

On October 22, 1993, Director David Titus circulated a memo to all staff announcing a change in policy effective on January 1st:

TO: Human Service Managers, Supervisors and Staff in  
the Professional Union

FROM: Human Services Board

RE: A Uniform Training Policy within the Human  
Service Department's Professional Employees Union

DATE: October 22, 1993

EFFECTIVE: January 1, 1994

PROBLEM / ISSUE TO BE ADDRESSED

Within the Human Service Department's professional services there may have been two separate training policies in existence. These policies were developed by the Old Unified Services Board as well as for the old Social Services Board. To try and get some uniformity into the training area, the Dodge County Human Services Board has reviewed both of these policies and has decided to implement one single training guideline for the Department's professional staff.

DEPARTMENT POLICY

The Human Services Board believes that ongoing training is necessary for professional staff to remain up to date and current in their field. To assure that professional staff have the opportunity to attend trainings of their choice throughout the year, the Human

Service Board has allocated \$200 in training funds to each of the Department's professional staff. These funds will be available at the discretion of the employee and included in the \$200 will be any and all costs associated with the training session. The \$200 figure covers room, meals, registration and transportation.

Throughout the year there are various mandated training opportunities. These mandated trainings are usually program specific and can involve any number of Department staff. Those required trainings will not be considered as part of the employee's \$200 annual training budget.

#### IMPLEMENTATION PROCEDURES

Attached is a form that is used to request training monies. This form is to be filled out by the employee and routed to their supervisor and Division Manager for approval. With the proper approvals in place, the employee is then authorized to attend the desired training. A copy of this form will be forwarded to the support staff on the 4th floor at our Center Street office for employees at that location and for employees at the Home Road location, a copy should be routed to Kay Bilke. A training account will be monitored for each of the staff. The account would provide an accurate record of the funds expended during the year and enable employees to tell where they stand in relation to their yearly training allocation. Any requests for training that exceeds the Board approved figure would not be covered by Human Services but, with the approval of the supervisor and the Division Manager, the employee would be free to use up to five (5) days per year of training. It is possible that the five (5) training days would exceed the \$200 figure and, as indicated previously, any costs over and above that figure would not be reimbursed.

On January 6, 1994, after the new policy was implemented, the instant grievance was filed:

Management has put together a new training policy which only allows \$200.00 per year per person to cover all cost of training. This is contrary to our current contract which allows 5 days of training with all expenses paid by the County. Management has violated our contract making this change in our contract outside of negotiations.

The matter was not resolved in the lower steps of the grievance procedure, and was referred to arbitration for resolution. Additional facts, as necessary, will be set forth below.

#### **IV. Arguments of the Parties**

##### **A. The Position of the Union**

The Union takes the position that the County has unilaterally and impermissibly changed one of the two existing training policies, and has reduced the fringe benefits of employees in the former Social Services Department. The practice of reimbursing more than \$200 per year in training expenses for these employees has existed for some fourteen years, through numerous contracts, and is not subject to unilateral termination.

The right of employees to maintain their existing training benefits has been long recognized. In 1991, a mediated grievance settlement restored the right of employees to individual motel rooms at conferences. While the contract does not specifically prevent the County from such tinkering with training benefits, the settlement of the grievance demonstrates that the parties treat existing practices as binding. The same result should obtain in this case. The contract clearly provides that: "Conference registration and banquet expenses will be allowed." The contract does not allow for a \$200 cap on expenses, and no reasonable inference may be drawn from the history of negotiations or administration allowing such a cap.

The fact that the contract does not allow a unilateral cap on training expenses is shown by the County's unsuccessful attempt in 1992-93 to bargain a \$225 cap on conference and training expenses. Had the County possessed the right to simply decree an annual cap on expenses, the bargaining proposal would have been unnecessary. The Union notes that similar attempts to negotiate a resolution to this grievance have been unsuccessful. The arbitrator should not grant the County a right which it has been unable to secure in bargaining.

Further evidence of the lack of any cap on expenses is shown by the fact that, where the parties intended caps, they have been able to express that intention in clear contract language. The collective bargaining agreement has specific dollar limits on daily meals and lodging expenses for employees at training sessions. Had the parties likewise intended to place an overall cap on annual expenses, they would have expressed that intent explicitly.

The County has the right to control training costs without violating the contract. The Union recognizes the County's right to refuse reimbursement for expenses which are unrelated to an employee's professional field, or which are exorbitant. The Union also concedes the validity of the policy requiring approval by the director for costs in excess of \$60. The Union's willingness to cooperate with the County in controlling training costs does not, however, extend to an unreasonable, arbitrary and invalid policy capping annual training expenses at a level below that proposed and rejected in bargaining.

For all of these reasons, the Union asks that the grievance be granted, and that the County be directed to rescind the training reimbursement policy.

## B. The Position of the County

The County takes the position that the contract was not violated and that the grievance must be denied. Nothing in the contract requires time off with pay for non-mandated training. In fact, the contract, in Appendix F, contemplates that training time may be denied. Thus it is entirely up to the County to decide whether any non-mandatory training at all will be allowed. The new policy simply reflects that discretion, in that the County has chosen not to allow non-mandatory training with costs in excess of \$200 unless the employee elects to pay the excess costs him or herself.

The County has made changes in its reimbursement and training time policies in the past, under the current language, unilaterally and without objection by the Union. The entire policy was revamped in 1989. At about that time, the amount of training time annually available to Social Service Department was reduced from eight days to five. These changes were an exercise of the continuing right of the County to make policy under the contract language.

The County points to proposals by the Union in the 1992-93 and the 1994-96 negotiations, which would have required the County to pay training time and expenses. The making of such proposals acknowledges the lack of any guarantees under the existing language, and the County's rejection of those proposals preserved its right to act unilaterally in deciding whether employee training requests would be approved. The County's decision to make a clear policy specifying the circumstances under which training request would be rejected is not subject to challenge, because it is not restricted by the contract.

The County has not attempted to change its commitments under the contract. Where training is approved, the County continues to pay expenses as dictated by Article XVII. However, nothing in that Article or any other provision of the contract requires the County to approve requests for non-mandatory training in the first instance. Since the contract does not grant the right to receive any non-mandatory training, the County's policy limiting training costs is not a violation of the contract. Given that the arbitrator's jurisdiction extends only to the provisions of the contract, the County asserts that the grievance must be denied.

## V. Discussion

The contract contemplates that employees will receive both mandatory and non-mandatory training each year, and that the County will pay for such training. This case goes to the non-mandatory training, and the County's claimed ability to place a dollar cap on each employee's access to such training. The language of Article 17 does not specifically address the permissible annual cost of training opportunities. Instead it specifies the reimbursement levels for work-related lodging, meals and mileage, and says simply that "Conference registration and banquet expenses will be allowed." This language is ambiguous as to the amount of expenses that will be allowed. While it is possible to read it as requiring payment of all expenses, both parties admit that the County has historically retained the right to veto conferences and seminars when it judged them to be more expensive than they were worth, and both concede that the Director's approval has been required for those costing over \$60. The right to approve necessarily carries with it the right to disapprove, and the issue here is the extent of the County's right to disapprove.

The principles applied in interpreting ambiguous language fall into four general categories:

1. Those which look to the normal usage of language; 2/
2. Those which look to the conduct of the parties in negotiating and administering the contract; 3/
3. Those which look to the identity of the parties; 4/
4. Those which look to the effect of one permissible interpretation as compared to the

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2/ See headings entitled "Normal and Technical Usage", "Agreement to be Construed As A Whole", "To Express One Thing Is To Exclude Another", "Doctrine of 'Ejusdem Generis'", "Specific Versus General Language" and "Construction In Light Of Context" in Chapter Nine of Elkouri and Elkouri, HOW ARBITRATION WORKS, 4th Ed. (BNA, 1985), (hereinafter cited as "Elkouri") at pps. 342-365.

3/ See headings entitled "Precontract Negotiations", "Custom and Past Practice of the Parties", "Prior Settlements as Aid to Interpretation", and "Interpretation Against Party Selecting the Language" in Chapter Nine of Elkouri; See also Chapter Twelve of Elkouri "Custom and Past Practice" at pps 437-456.

4/ See headings entitled "Experience and Training of Negotiators" and "Industry Practice" in Chapter Nine of Elkouri.

effect of another permissible interpretation. 5/

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5/ See headings entitled "Construction in Light of Law", "Avoidance of Harsh, Absurd, or Nonsensical Results", "Avoidance of a Forfeiture" and "Reason and Equity" in Chapter Nine of Elkouri.

Of these, the second category is applicable to this dispute. The parties each assert that bargaining history and past practice support their respective positions.

Bargaining history is inconclusive. Both parties note that the other made proposals in bargaining on the topic of training costs and failed to obtain them. The proposals made in the 1992-93 negotiations reflect that fact that everyone knew that there were two different practices with respect to training costs. The Union's proposal of \$300 plus expenses per employee would have improved the position of Unified Board employees, while nominally reducing the benefit enjoyed by Social Service Department workers. The County's \$225 per employee, without expenses, would have accomplished the same end, albeit at a more modest cost. The decision to retain the existing language indicates that neither party achieved any change in the status quo ante.

The administration of the contract solidly favors the Union. It is clear that there has never been a flat dollar limit on training for Social Service Department employees for so long as this language has existed in the contract. The County has had the ability to refuse training on the basis of cost, but only after an evaluation of individual requests, not on the basis of the annual amount spent to train each individual. This is not a meaningless difference. The County has effectively had the ability to restrain its overall expenditures for training and education, but it has done so by factoring in the merits of each request with its overall budget situation. The end result of this may have been that agency-wide expenditures have been distributed unevenly, with some employees receiving over \$200 per annum and others less than \$200.

The County's argument that it has merely defined the circumstances under which it will exercise its right to approve or disapprove training time is ingenious, but is rather clearly an after the fact justification of the policy. The policy says nothing about training time. Instead it speaks to annual training costs. The County's argument may suggest an alternate means of accomplishing the same end but it is not the means chosen by the Human Services Board.

The clear past practice of the parties indicates that Article 17 does not allow the County to set an arbitrary per-employee dollar cap on annual training costs for Social Services workers. The County's right to control costs has traditionally been exercised after a case-by-case comparison of the value of the requested training and its cost. This practice represents the best evidence of the parties' intent in negotiating the ambiguous language of

Article 17, and the County is not free to abandon a good faith evaluation of each training request in favor of an arbitrary cap.

On the basis of the foregoing, and the record as a whole, I have made the following

**AWARD**

The Human Services Board policy dated October 22, 1993 to take effect on January 1, 1994 on training for employees violates the collective bargaining agreement. The appropriate remedy is to reinstate the former policy of making a good faith, case-by-case evaluation of each request for training on the basis of the cost, value to the employee and Department, and time required for the training, with automatic review by the Director for all requests costing over \$60.

Signed this 3rd day of January, 1995 at Racine, Wisconsin:

Daniel Nielsen /s/

Daniel Nielsen, Arbitrator