

BEFORE THE ARBITRATOR

In the Matter of:

STATE OF OHIO

Case No. G87-2309

and

OHIO HEALTH CARE
EMPLOYEES UNION,
DISTRICT 1199

OPINION AND AWARD

This arbitration arises by reason of a grievance filed by the Union on September 4, 1987 alleging that the State violated the parties collective bargaining agreement when it denied release time and tuition reimbursement to which grievant felt she was entitled.

RELEVANT CONTRACT PROVISIONS

AND POLICIES AND PROCEDURES

ARTICLE 21 - CONTINUING EDUCATION

§21.01 Purpose

The employer recognizes that certain benefits accrue both to the State and the employees through participation in continuing education activities, including attendance at professional conferences and seminars and enrollment in post-secondary educational programs. The appointing authority or designee, working within the framework of budgetary constraints, will support these activities when deemed appropriate and beneficial to all concerned. If participation in such activities is voluntary, time spent in them shall not be considered time worked for overtime purposes.

When an employee attends a professional conference or seminar which is approved or sponsored by the agency, the employee shall receive his/her regular daily rate of pay for each day of attendance at such conference or seminar which falls on a regularly scheduled work day.

§21.02 Tuition Reimbursement, Seminar and Conference Fund

The employer/agencies are committed to the upgrading and maintenance of the educational and skill levels of bargaining unit members. Where possible, the agencies will continue the practice of tuition reimbursement in effect on the date of the ratification of this agreement. In addition the employer (OCB) shall establish a tuition reimbursement, seminar and conference fund of \$100,000 for both units in fiscal year 1988 and \$100,000 for both units in fiscal year 1989. The employer (OCB) and the union shall meet to agree to reasonable rules for the expenditure of the funds. The fund will pay for fees and expenses for attendance at seminars, workshops and conferences, and for tuition reimbursement.

Any remaining funds committed for a fiscal year shall carry over to the next fiscal year within the same biennium. Reimbursement for travel, food and lodging shall be consistent with Article 19 Travel of this agreement. Agencies may allocate additional funds within their agency for the purpose of providing reimbursement to their employees for approved attendance at seminars and conferences, or for tuition reimbursement. In agencies where such a fund exists agency employees must apply first for seminars, workshops and conferences and tuition reimbursement from that agency. When those funds are no longer available or do not exist the employees may apply for reimbursement from the tuition reimbursement, seminar and conference fund established by the employer (OCB).

...
Requests to attend seminars, workshops and conferences, or for tuition reimbursement shall not be unreasonably denied.

INDUSTRIAL COMMISSION
POLICY AND PROCEDURE MEMO NO. 3

OUT-SERVICE TRAINING

Out-service training is defined as short-term seminars, workshops or professional conferences or meetings conducted by institutions and organizations outside of the Industrial Commission, the Bureau of Workers' Compensation or the Department of Administrative Services. The content of these training activities should be related to the employee's current duties. Employees may attend no more than two (2) out-service training functions per fiscal year. This number does not include out-service programs which the Director/Manager requests an employee to attend as a work assignment. The employee must have completed his/her probationary period before attending out-service training unless the training has been assigned. Opportunity for out-service training is based on availability of funds.

INDUSTRIAL COMMISSION
POLICY AND PROCEDURE MEMO NO. 4

OUT-SERVICE EDUCATION

. . . .
An employee must have permanent employment status with the Industrial Commission and have one (1) year of continuous service with the agency to apply for educational assistance. An employee may apply for educational assistance for course work which is specifically related to his/her current duties and/or related to the duties of the position which is the next step in the natural progression of his/her current classification, and which will result in improved job performance. The only exception to this is education required by the Industrial Commission as an assignment. All applications for tuition reimbursement must be reviewed by the Education Review Committee. Opportunity for out-service education is based on availability of funds.

RELEASE TIME

Time off the job with pay may be authorized for out-service education. For employee-requested educational assistance, the maximum time off allowed is one-fourth of the employee's normally scheduled hours per week. Any time beyond the maximum must be specifically approved by the Director of Administrative Services. Release time should only be requested by an employee when course work is not available after working hours.

STATEMENT OF FACTS

The State of Ohio ("State") and Ohio Health Care Employees Union District 1199 ("Union") are parties to a collective bargaining agreement effective June 12, 1986 to June 11, 1989. This agreement covers the health care employees at facilities run by State commissions and departments that deal with health care.

Section 21.02 of the contract states that "where possible, the agencies will continue the practice of tuition reimbursement in effect on the date of the ratification of this agreement". It appears that at the ratification of this agreement, the Industrial Commission of Ohio had in existence two policies relating to tuition reimbursement, seminars and conferences:

Memo No. F3, titled Out-Service Training, which is defined as short-term seminars, workshops or professional conferences or meetings conducted by institutions and organizations outside of the Industrial Commission, the Bureau

of Workers' Compensation or the Department of Administrative Services. Those type of seminars only require that an employee must have completed his/or six month probationary period before attending such seminars, workshops or conferences.

Memo F4, titled Out-Service Education, which is defined as course work not under the direct sponsorship or control of the Industrial Commission. It is generally conducted by colleges, universities and, in some cases, by the Ohio Department of Administrative Services. In order to be entitled to this type of tuition and release time, a employee must be of permanent status and have one year of continuous service with the Industrial Commission.

There is no contention that both of these policies were not in effect at the time of the execution of the current collective bargaining agreement, although the most current versions introduced into evidence were dated October 24, 1986.

The grievant, Frances Ralls, was originally employed as a Vocational Rehabilitation Counselor 2 by the Ohio Department of Mental Health for seven years at Lewis Center, a mental hospital in Cincinnati. At Lewis Center, grievant qualified for certain tuition and release time benefits

as referred to in the cited provisions of the collective bargaining agreement. In January, 1987, grievant applied for a position with the Industrial Commission of Ohio, a different state agency. At the time that grievant was interviewed, she indicated she had enrolled for a Masters Degree program at the University of Cincinnati in rehabilitation counseling and was attending classes on release time from Lewis Center. She was allegedly encouraged to continue that program.

On March 1, 1987, grievant transferred to the Industrial Commission of Ohio where she was employed as a rehabilitation consultant. At this time grievant was attending the University of Cincinnati in the spring quarter and used her vacation time as release time to continue her Masters Degree program.

On June 20, 1987, the grievant formally applied for tuition and release time from the Industrial Commission for the ensuing fall semester. In August this request was denied by the Industrial Commission on the basis that its policy requires one year of service with the Industrial Commission before tuition and release time can be approved. Accordingly, grievant filed the instant grievance for release time retroactive to March 5, 1987.

Subsequent to the filing of the grievance, some time in November, grievant became aware of the fact that a fellow employee, Pat Niehaus, a nurse, had been granted tuition and release time to attend a 16 week seminar in human physiology review without meeting the one year requirement.

POSITIONS OF THE PARTIES

Union Argument

The Union contends that under Article 21, management has an obligation not to unreasonably deny any request for release from work and tuition reimbursement. The Union argues the Company did not deny grievant's application on a reasonable basis, but rather in an arbitrary or improper manner. For the denial to have been reasonable, the standard of one continuous year of service with the Industrial Commission has to be applied consistently, equitably and equally, and since Pat Niehaus was permitted tuition and release time for a seminar, the treatment was disparate and thereby unreasonable.

State Argument

Grievant transferred into the Industrial Commission from a department which had a different policy for requesting release time. The new policy that she was under did not deal with her seven years of State service. She was not

qualified under this new department's policy. Her request was denied on the basis of an established policy which was uniformly applied.

DISCUSSION

In the instant case, the Union relies on that portion of Section 21.02 of the contract that states that tuition and release time for attendance at seminars, workshops and conferences or for tuition reimbursement "shall not be unreasonably denied". Its main contention is that it was unreasonable to deny grievant's request because of the disparate treatment afforded to the grievant by allowing fellow employee Niehaus to attend a seminar without the one year requirement. It is clear that a rule or policy must be "even handedly" applied for it to be reasonable. Bard Manufacturing Co., 83 LA 749 at 751 (Feldman, 1984); Lloyd Ketcham Oldsmobile, 77 LA 953 at 955 (Hilgert, 1981). It is somewhat doubtful that one instance of disparate treatment and many, many instances of equal treatment would render any rule unreasonable. However, in view of the following discussion, the Arbitrator need not reach this question.

The policy of the Industrial Commission of Ohio for continuing education differs in relation 1) to the attendance at seminars, workshops and conferences and 2) to continuing

college education for a Masters Degree. The testimony is uncontradicted that no employee has ever received tuition or release time without one year of service for continuing education leading to a college degree. The issue, therefore, is whether or not granting release time² to Niehaus, a nurse, to attend a human physiology review course for 16 weeks, one night a week, without one year of service, evidenced disparate treatment in refusing the grievant tuition and release time to complete her Masters Degree because she lacked one year of service.

The Industrial Commission's policy on continuing education makes a definite distinction between two types of educational programs. In the one instance, the seminar and conference does not lead to any college degree, is not sponsored by a college or university, is for a specified period of time of relatively short duration, is directly job related to the employee's work, and does not result in college credit. In the case of Niehaus, who was a nurse, the course amounted to a 16 week review of physiology directly related to her job. In the case of grievant, the course

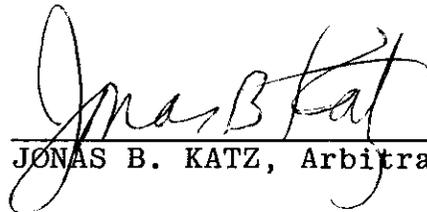
² Grievant's tuition was subsequently paid by OCB from a supplemental fund as set forth in Section 21.02 of the contract and is, therefore, not involved in the relief requested in this case.

was a continuing university program for college credits toward obtaining a degree. Such a difference is not, in the Arbitrator's opinion, unreasonable.

It, therefore, follows, that the granting of release time to Niehaus to attend the 16 week seminar is not evidence of disparate treatment of the grievant in refusing her release time to continue her college sponsored program leading to a Masters Degree. There being no other evidence that any other person similarly situated to the grievant was permitted release time prior to completing the one year of service with the Commission, there is no disparate treatment and, accordingly, the refusal to grant grievant's request based on the established Commission policy was not "unreasonably denied".

AWARD

For all the reasons above discussed, this grievance is denied.



JONAS B. KATZ, Arbitrator

Issued at Cincinnati, Hamilton County,
Ohio, this 26th day of April, 1989.