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| IN THE MATTER OF ARBITRATION<br><br>Between<br><br>STATE OF OHIO,<br>BUREAU OF WORKERS' COMPENSATION<br><br>The Employer<br><br>-and-<br><br>OHIO HEALTH CARE EMPLOYEES UNION<br>DISTRICT 1199, WV/KY/OH<br>NATIONAL UNION OF HOSPITAL<br>AND HEALTH CARE EMPLOYEES,<br>SEIU, AFL-CIO<br><br>The Union | OPINION AND AWARD<br><br>Delores Lashley<br>Tuition Reimbursement<br>Grievance<br><br>34-00-900312-13-02-12 |

## APPEARANCES

For the Employer:

Meril J. Price, Chief, Administrative Support Advocate — Co-Ad
Rachel Livengood, Arbitration Advocate - OCB — 2nd Co-Ad
Gretchen Green, Manager Labor Relations - BWC

For the Union:

Jeff Fogt, Organizer
Advocate
Tom Hotzosz, Union Delegate
Delores Lashley, Grievant
Eugene J. Paramore, Administrative Staff

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This case [1] concerns a claim for tuition reimbursement for $575.00 expended by the Grievant, Delores Lashley.

## I. FACTS

### A. Background Facts

#### 1. The Structure of the Agencies and the Union Representation.

The Industrial Commission of Ohio (hereafter referred to as "the Commission") is responsible for the adjudication of claims for workers compensation. The Ohio Bureau of Workers' Compensation (hereafter referred to as "the Bureau") is responsible for the processing of the claims. The Union represents some, but not all, of the employees at the Commission and the Bureau. Most of those employees not represented by the Union are represented by other

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[1] The State of Ohio (hereafter referred to as "the Employer" and Ohio Health Care Employees Union, District 1199, WV/KY/OH National Union of Hospital and Health Care Employees, SEIU, AFL-CIO (hereafter referred to as "the Union"), are parties to a collective bargaining agreement (Jt. Ex. 1) providing in Article 7 for settlement of disputes through a grievance and arbitration procedure. A dispute has arisen between the parties concerning a claim for tuition reimbursement, by the Grievant, Delores Lashley for $575.00 expended by her.

The Union's grievance (Jt. Ex. 2, #34-00-900312-13-02-12) concerning this matter was dated March 7, 1990 . It was submitted to arbitration before this arbitrator who serves on the parties' permanent arbitration panel. A hearing was held on October 23, 1990 in Conference Room B of the Employer's Office of Collective Bargaining in Columbus, Ohio. Both advocates made opening and closing statements and presented and cross-examined witnesses. It was stipulated by the parties that the grievance was both procedurally and substantively arbitrable; that the time limits in the grievance procedure had either been met or waived and that the arbitrator has been properly chosen and has jurisdiction to hear the case.

unions such as OSCEA, Local 11 of AFSCME.

The Union represents employees at agencies other than the Commission and the Bureau. The labor agreement involved in the present case, Jt. Ex. 1, covers those employees as well.

2. The Tuition Reimbursement Policies

At the time that the Union won bargaining rights there were differing practices among the agencies involved. Some had no tuition reimbursement programs. Others, such as the Commission and the Bureau, had their own programs. In general the response of the bargaining between the Employer and the Union has been to continue the practices of tuition reimbursement previously in effect at agencies which had programs. These are referred to by the parties as "agency funds". The parties also established a separate program of funds when agency funds "are no longer available or do not exist....". These funds are known as "1199" funds.

The Commission policies, e.g. Employer Exhibit 1 of May 1, 1989, contemplated release time and reimbursement for courses given during hours, assuming the course was not available during non-working hours. The Bureau policies, e.g. Employer Exhibit 4 of March 1, 1990, did not contemplate reimbursement for courses given during regular working hours even if the employee was willing to utilize vacation hours to take the courses.

3. The Transfer of Employees From the Commission to the Bureau

Pursuant to the terms of H.B. 222, some 1200 employees were transferred from the Commission to the Bureau effective February

11, 1990. The Grievant, who had been an employee of the Rehabilitation Division of the Commission since June 15, 1981, was one of them.

B. The Facts Leading to the Grievance

The Grievant is seeking a Masters Degree in Rehabilitation Counselling. The courses will help her in her present duties and will enable her to meet the standards for minimum qualifications established as of January 1, 1990.[2] The course at issue was given by Ohio University at its Athens, Ohio campus. The class met from 4:00 p.m. to 6:00 p.m.. The Grievant's regular working hours were 8:00 a.m. to 4:45 p.m.. The Grievant was not given release time to attend the classes but was able to nevertheless attend by a combination of scheduling her work in the Athens area for the days the class met; by working her lunch hour and by taking vacation time as needed. The course lasted from March 20 to June 13, 1990 and was concededly job related.

Her application for reimbursement of the $575.00 from agency funds went forward. Funds were available. Nevertheless the application was:

> "disapproved by the Training Committee because we don't approve release time. Tuition will be reimbursed if class is rescheduled after working hours. In that event,

[2] These are not presently applicable to her because she is "grandfathered", but they would be applicable to her if she left the employ and thereafter returned.

please reapply." (Jt. Ex. 2)[3]

This action[4] was thereafter made the subject of a grievance dated March 7, 1990, which was appealed through the grievance procedure to arbitration.

II. APPLICABLE CONTRACT PROVISIONS

ARTICLE 23 - CONTINUING EDUCATION

Section 23.01 Purpose

The Employer and the Union recognizes that certain benefits accrue both to the State and the employee through participation in continuing education activities, including attendance at professional conferences and seminars and enrollment in post-secondary educational programs, and the importance of maintaining licensure and certification and the increased requirement for obtaining CEU's in many disciplines. ....

Section 23.02 Tuition Reimbursement, Seminars and Conferences 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. The Employer will continue the tuition reimbursement, seminar and conference fund. The fund will make available $100,000 in fiscal years 1990, 1991, and 1992 for fees and expenses for attendance at seminars, workshops, conferences and for tuition reimbursement.....

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

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[3] The Grievant was granted reimbursement for the tuition from 1199 funds. But, the Grievant finds this reimbursement unsatisfactory because of certain caps imposed on reimbursements under the 1199 program. In any event, it is the actions of the Bureau with respect to the agency funds which is the subject of the present grievance.

[4] The Grievant was eventually paid for her tuition from the 1199 fund.

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.....

The department of Mental Health will reimburse bargaining unit members for continuing education/seminars of benefit to both the employees and to the agency to a maximum of $50,000 in each fiscal year of the Agreement. Requests to attend seminars, workshops and conferences, or for tuition reimbursement shall not be unreasonably denied. ....

Section 23.04 **Time Off for Classes**

An employee may be allowed time off from his/her position at regular rate for the purpose of taking job related educational courses or training, at an approved educational institution. The maximum time off under this arrangement may not exceed one fourth of the employee's normally scheduled hours per week. Any time beyond this amount shall be without pay, unless specifically approved by the agency.

III. STIPULATED ISSUE

Did management violate Article 23 of the 1199 contract by denying tuition reimbursement? If so, what should the remedy be?

IV. POSITIONS OF THE PARTIES

Position of the Union

The Union interprets Section 23.02, Fifth Paragraph, as requiring the agency to provide reimbursement to its employees for attendance at work-related courses. It is only when "those funds are no longer available" that the agency is excused from further payments and the employee instead directed to 1199 funds. It is undisputed in the present case that agency funds were available when the Grievant was denied reimbursement. Any doubt on the subject is removed by the terms of House Bill 222 which require that "such personnel shall be transferred with the same seniority and benefits as in effect prior to the transfer". Here the Grievant

was entitled under Commission policy to obtain reimbursement for courses taken during working hours, so long as the course was not otherwise offered. When the transfer took place the Grievant was entitled to carry the same benefits with her, regardless of the claimed policy of the Bureau. Any such policy as applied to the Grievant is a violation of both H.B. 222 and the terms of Article 23.

Position of the Employer

The provisions of Article 23 concerning agency funds are not self executing. They provide only that an agency "may" allocate additional funds within the agency. Even when there is an allocation, the funds are only for "approved .... tuition reimbursement" (emphasis added). Here the Grievant was an employee of the Bureau, not the Commission at all times relevant. The policies of the Bureau have for many years provided for the non-reimbursability of tuition for courses meeting during the regular working hours of the Bureau. The Bureau was entitled to establish this policy and the Union has failed totally to show that it violates any provisions of Article 23 or that the Grievant should somehow be governed by the policies of her former agency, the Commission.

V. DISCUSSION

A. Introduction

The present grievance concerns only the Bureau's action in denying the Grievant reimbursement of the $575.00 from its agency

fund. The parties' made clear in the presentation of their cases that the present case does not present any issues concerning "time off" or "release time".[5] Accordingly there will be no discussion by the arbitrator of time off or release time issues. All subsequent discussion will concern only the question of reimbursement from the agency fund.

At issue is the provision in the Bureau Policy and Procedure Manual (Employer Ex. 4) that:

> "NOTE: Tuition reimbursement will only be granted for courses offered in the evenings or on the weekends as release time from work will not be granted

(hereafter referred to as the "evenings and weekends" policy).

The Union raises essentially two arguments concerning this policy. The first is that the policy is on its face invalid as being in conflict with the fifth paragraph of Section 23.02. The second is that the policy, even if otherwise valid, cannot be applied to the Grievant because she is protected by the terms of H.B. 222. We turn to each question in turn.

B. The Validity of the "Evenings and Weekends" Policy Under Section 23.02.

Section 23.02 of the parties' agreement governs agency funds for tuition reimbursement. The terms are not comprehensive. As the arbitrator reads the fifth paragraph of that section, there are essentially only the following four provisions:

1. The agency may allocate funds for the program. This

[5] "Time off" is the terminology used in Section 23.04. "Release time" is the terminology used in the Commission policy (Employer Ex. 1)

indicates that the funding is discretionary with the agency rather than mandatory.

2. The funds are to be available for approved attendance at seminars and conferences or for tuition reimbursement. This indicates that it is not all seminars, conferences and tuition which is to be reimbursed, but those approved by the agency.

3. Employees must apply for reimbursement before attending the seminar or taking the course for which tuition reimbursement is sought.

4. When agency funds are no longer available or do not exist, the employee may apply for 1199 funds.

In the present case the Bureau maintains a fund, funds were available and the Grievant applied. Thus the key element is the second one, i.e. that of the approved attendance.

It is clear that the agency does not have absolute discretion in granting or withholding its approval. If it proceeds on a case-by-case basis it runs the risk that any particular denial will be deemed unreasonable when viewed against the reimbursements given in other cases. If it instead establishes policies and procedures, the policies and procedures must not violate the terms of the parties' agreement and the agency must follow the policies and procedures.

The Bureau has chosen to establish policies and procedures. The one dated March 1, 1990 (Employer Ex. 1) expressly contained the "evenings and weekends" condition to reimbursement. There are other conditions to reimbursement, such as that the courses be "job-related". There is no claim that the "job-related" requirement violates Section 23.02 and the arbitrator is similarly unable to find any provision in Section 23.02 which indicates that

the "evenings and weekends" requirement violates the terms of that section. It must be kept in mind that arbitrators have no jurisdiction to dispense their "own brand of industrial justice". Thus the arbitrator's own opinion as to the wisdom of the "evenings and weekends" policy is irrelevant. It is enough that there is no provision in the parties' agreement invalidating the requirement.

C. Is the Grievant Protected From the Application of the "Evenings and Weekends" Policy By the Provisions of H.B. 222?

Section 3 of H.B. 222 amended R.C. Sec. 4121 (C) to provide as follows:

> (C) The administrator shall reorganize the work of the bureau, its sections, departments, and offices to the extent necessary to achieve the most efficient performance of its functions and to that end may establish, change, or abolish positions and assign and reassign duties and responsibilities of every employee of the bureau. All persons employed by the commission in positions which, after the effective date of this amendment, are supervised and directed by the administrator under this section are transferred to the bureau in their respective classifications but subject to reassignment as the administrator may determine to be in the interest of efficient administration. The civil service status of any person employed by the commission is not affected by this section. Personnel employed by the bureau or the commission who are subject to Chapter 4117 of the Revised Code shall retain all of their rights and benefits conferred pursuant to that chapter as it presently exists or is hereafter amended and nothing in this chapter or chapter 4123 of the revised code shall be construed as eliminating or interfering with chapter 4117 of the revised code or the rights and benefits conferred under that chapter to public employees or to any bargaining unit." (emphasis added) (Union Ex. 1)

A summary of H.B. 222 was submitted by the Union at the arbitration hearing along with a copy of the relevant portions of

the bill itself (Union Ex. 1). The author of the summary indicated that H.B. 222 provided that "Such personnel shall be transferred with the same seniority and benefits as in effect prior to the transfer" and "Any union benefits or protection shall not be abrogated by changes in the system".

In any event, reference must be had to the explicit language of H.B. 222 rather than the language of any commentator's summary. That language, quoted in the paragraph before last, confers only two rights upon the employees transferred. The first is that the civil service status of those transferred is not to be affected. No complaint is made by the Grievant that her civil service status was affected. The second is that those transferred are to retain all their rights and benefits under Chapter 4117, i.e. the Ohio Public Employee Collective Bargaining Act (hereafter referred to as "the OPECBA".

The OPECBA gives public employees in Ohio broad rights to join unions, obtain representation rights, engage in collective bargaining and make and enforce collective bargaining agreements. The arbitrator is not cited to any specific provisions of OPECBA concerning tuition reimbursements or to "evenings and weekends" policies as to such reimbursements. Any protection of the Grievant must come from the general provisions of OPECBA.

It must be remembered that at the time of her transfer the Grievant was serving under a collective bargaining agreement which, as discussed at pages 7 to 8 above, left the establishment, level of funding, and approval criteria for tuition reimbursements to the

individual agencies. The agreement provisions were the same at both the Commission and the Bureau. What was different was the policies of the two agencies under the same collective bargaining agreement. The arbitrator cannot conclude that the application of the Bureau's policies to the Grievant constituted a violation of any general right she enjoyed under OPECBA through her Union to make and enforce collective bargaining agreements. The Grievant was thus not protected from the application of the "evenings and weekends" policy by the provisions of H.B. 222.

C. Conclusion

On the basis of the above discussion, the arbitrator concludes that the "evenings and weekends" policy is not on its face invalid as being in conflict with the fifth paragraph of Section 23.02 and that the Grievant is not protected from the application of the policy by the provisions of H.B. 222.

VI. AWARD

Grievance denied.

Jerry A. Fullmer, Arbitrator

Made and entered this
6th day of November, 1990
at Cleveland, Ohio