

1268

ARBITRATION

BETWEEN

**OHIO DEPARTMENT OF REHABILITATION
AND CORRECTIONS, ADULT PAROLE AUTHORITY**

- AND -

**GRV. #28-05-950403-066-02-12
(Rick Harmon Grievance)**

**DISTRICT 1199, THE HEALTH CARE AND
SOCIAL SERVICE UNION, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO**

APPEARANCES:

For the Department:

Joseph Shaver
Chief, Bureau of Labor Relations

For the Union:

Harry W. Proctor
Administrative Organizer

OPINION AND AWARD

Frank A. Keenan
Arbitrator

STATEMENT OF THE CASE:

This case, well presented by the parties' advocates, was heard in Columbus, Ohio on March 17, 1998. It concerns a timely grievance filed by Employee Rick Harmon, herein the Grievant, on April 3, 1995. The Grievant was hired by the Department's Adult Parole Authority as a Parole Officer 1 on August 21, 1994. Shortly thereafter, he inquired as to when he might expect to be promoted to the position of Parole Officer 2. By memo dated March 27, 1995, the Grievant was advised that he would be "eligible to advance on the Career Ladder from a Parole Officer 1 to a Parole Officer 2 on August 21, 1997, and from a Parole 2 to a Parole Officer 3 on August 21, 2004." This response served to inform the Grievant that his Bachelors and Masters degrees were not recognized for Career Ladder purposes. In that regard, the parties' 1994-1997 Collective Bargaining Agreement, the Agreement governing this grievance, provides in a Memorandum of Understanding, in relevant part as follows:

"ADULT PAROLE AUTHORITY CAREER LADDER

The requirements for movement within the career ladder as established by the management for the Adult Parole Authority shall be as follows:

Parole Officer to Parole Officer 2

Graduate Degree + 1 years experience as a Parole Officer 1

Bachelors Degree + 2 years experience as a Parole Officer 1

Less than a Bachelors Degree + 3 years experience as a Parole Officer 1

The Parole Officer 1 must have passed Unarmed Self-Defense Certification.

Parole Officer 2 to Parole Officer 3

Graduate Degree + 3 years experience as a Parole Officer 2

Bachelors Degree + 5 years experience as a Parole Officer 2

Less than a Bachelors Degree + 7 years experience as a Parole Officer 2. ...
Degree requirements shall be represented by an accredited degree in
Corrections, Law Enforcement, Social Service, Communications or a related field.
...."

It was the uncontradicted testimony of advocate Shaver that he fully participated in the parties' 1989 negotiations as a member of the Employer's negotiation team. **Shaver testified that the Union had initially sought a career ladder concept in the 1986 negotiations, and the Employer was willing to incorporate such a concept in the 1989 negotiations.** According to Shaver, several hours were spent discussing the matter. Experience and education were the negotiated criteria for advancement on the career ladder. The Employer expressed at the bargaining table that it was not desirous of recognizing just any degree not related to parole and corrections work and that hence the parties agreed that the degrees to be recognized would be in Corrections, Law Enforcement, Social Service, and Communications. It was further uncontradicted testimony of Shaver that the parties discussed at the bargaining table and agreed that there might be other degrees out there which were related to the fields of Corrections Law Enforcement, Social Service, or Communications, and, if so, degrees in such related fields would also be recognized. In the administration of the Adult Parole Authority Career Ladder from and after 1989, various degree programs were recognized as being "related fields" to the four degree programs expressly spelled out in the Memorandum of Understanding between the parties. **Those degrees so recognized on an ad hoc basis gave rise to a list entitled "Related Degrees To the Corrections Field" tallied by the Personnel Office, which list came to be signed off on and approved by Jill Goldhart, Chief, Division of Parole and Community Services.** The list in effect as of the date of the instant grievance, was signed 3/9/94 by Goldhart, and reads in pertinent part as follows:

Administration of Justice
Communications
Criminal Justice
Criminology
Counseling
Education
English
Forensic Science
Government
Health and Human Services
History
Human Development
Law
Management
Penology
Political Science
Psychology
Public Administration
Social Service Technology
Social Work
Sociology
Urban Affairs Management

Ms. Goldhart, who has been Chief since 1988, testified that she has followed a two step process in determining which degree programs may properly be regarded to be in a field related to the Corrections, Law Enforcement, Social Service, and Communications fields; degrees which are determined to meet the education criteria for placement on the Adult Parole Authority Career Ladder. The first step or criteria consists of looking at the course work involved in attaining the degree. Chief Goldhart indicated that she looks at a course to determine if it is related to criminal justice or some aspect of the Parole Officer's job, such as communication skills; interviewing techniques; understanding human behavior; and, writing abilities. The second step or criteria was and is whether or not those courses which pass muster as related to criminal justice or some, specific aspect of the Parole Officer's job, constitute 50% or more of the credit hours necessary to

obtain the degree.

The record shows that in determining whether or not an employee's course work met the relatedness step one criteria, Ms. Goldhart relied principally on the employee's University transcripts, and the course titles thereon of the course work taken to attain the degree, as well as the number of credit hours awarded for such courses, and the total number of credit hours necessary to attain the degree. When asked whether she had ever asked for a syllabus on courses or course work, Ms. Goldhart related as to how in one case, where the individual was questioning her finding that a course was not "related," the individual provided her with the Undersigned's description of the course taken, and she reviewed that description. Ms. Goldhart also testified that in reviewing a course title as set forth in a transcript, she "gives the employees the benefit of the doubt."

The Grievant's transcript for his Bachelor's Degree (B.B.A.), a degree in Business Administration with emphasis in personnel management, requiring 95 credit hours, reflects the following courses, each at five (5) credit hours:

COURSE TITLE

INFORMATION SYSTEMS
PSYCHOLOGY FOR MANAGERS
LEGAL ASPECTS OF BUS.
MACROECONOMICS
MANAGERIAL MARKETING
ACCOUNTING A
ACCOUNTING B
MANAGEMENT FINANCE
MANAGEMENT SCIENCE
MICRO ECONOMICS
EFFECTIVE COMMUNICATION
BUSINESS FINANCE
EMPL. BENEFIT/SOC. INSUR.
L. RELAT. & COLLEC. BARGAIN.

TECH./L. NEGOTIATION
MANPOWER DEVELOPMENT
INTERVIEWING TECHNIQUES
ORGANIZATIONAL DEVELOP
INDUSTRIAL RELATIONS

The Grievant's transcript for his Master's degree (M.B.A.), a degree in Business Administration with emphasis in Marketing, and requiring 85 credit hours, reflects the following courses, each at five (5) credit hours:

COURSE TITLE

SEMINAR IN MARKETING
ADV. SALES MANAGEMENT
MARKETING RESEARCH
ADVERTIS. DECISION MAKING
INTERNAT. MARKETING
P.R./PRIN. & PRACTICE
RETAILING PRINCIPLES
COMMUNICAT. FOR MANAGERS
COMPUTERS & MGT. DEC. MAKING
MANAGEMENT ACCOUNTING
QUANT. METH/BUS. & ECON.
DESCRIP. STATISTICS
INFER. STAT. & DEC. THEORY
GOV, BUS, & THE PUBLIC
MANAGERIAL ECONOMICS
SEM. IN FINANCIAL MGT.
SEM. IN GENERAL MNGT.

Chief Goldhart testified that with respect to the Grievant's Bachelor's degree, she regarded the following courses as "related" to his job duties: information systems; psychology for managers; effective communications; labor relations and collective bargaining; technical/legal negotiations; interviewing techniques; and organizational development. Ms. Goldhart testified that with respect to the Grievant's Master's degree, she regarded the following courses as

“related” to his job duties: communications for managers; computers and management decision making; descriptive statistics; government business and the public; and seminar in general management. **The record fails to show that the Grievant ever offered to show Ms. Goldhart any University course syllabus or description describing any of the courses he had taken.**

Concerning the Grievant’s Bachelor’s degree course work, Ms. Goldhart found only 35 credit hours [seven (7) courses] to be “related” out of a total of 95 hours necessary to attain the degree, and since they represented less than 50% of the courses necessary to attain the degree, Chief Goldhart did not regard the Grievant’s Bachelor’s Degree as meeting the degree requirements for the Adult Parole Authority Career Ladder. Concerning the Grievant’s Master’s Degree course work, Ms. Goldhart found only 25 credit hours [five (5) courses] to be related out of a total of 85 hours necessary to attain the degree, and since they represented less than 50% of the courses necessary to attain the degree, Chief Goldhart did not regard the Grievant’s Master’s Degree as meeting the degree requirements for the Adult Parole Authority Career Ladder.

The Grievant testified that he believed that his degrees were related to the fields of Corrections, Law Enforcement, Social Service, and Communications, and to his daily job duties. The Grievant testified that he utilized in his work the skills he obtained from his course work and in attaining his degrees. Thus, he pointed out, there is a new Agency emphasis on “Community Corrections,” requiring greater visibility in the Community, and interaction with other social service agencies. These Agency goals and requirements require communication and he acquired communication skills in his degree course work. Additionally, marketing skills obtained while attaining his degrees also assist him in accomplishing the communications necessary with other social service agencies that don’t understand the mission of the Adult Parole Authority, asserted

the Grievant. Prioritizing is also a necessary skill in discharging the duties of his job, asserted the Grievant, and that skill was also learned while attaining his degrees.

Upon being informed by the March 27, 1995 memo that in effect his degrees would not be recognized for Career Ladder purposes, the Grievant filed the instant grievance on April 3, 1995, challenging the propriety of the Agency's failure to recognize his degrees for Career Ladder purposes; seeking reversal of the Agency's determination; and, seeking to be "made whole" for any losses stemming from the Agency's purportedly erroneous determination.

It is the Union's contention that the Grievant's degrees meet the degree requirements for advancement on the Adult Parole Authority Career Ladder. The Grievant's academic credentials are related to those degrees which the Agency acknowledges meet the degree requirements provided for in the parties' Memorandum of Understanding.

The Union asserts that, to the extent that the Agency relies on a "list" of degrees in certain fields asserted to be "related" to the fields spelled out in the parties' Adult Parole Authority Career Ladder Memorandum of Understanding, such reliance is misplaced, since there is no list set forth in the Memorandum of Understanding nor is there any reference therein to such a list, nor was such a list, being created by Management alone, a product of the parties' mutual understanding.

The Union asks rhetorically, unless Management reviews a syllabus or course description coming from the University, how can Management truly evaluate whether or not a course required for a degree is "related" to the Grievant's job duties. And here, there is no evidence that any such course descriptions were reviewed. Acknowledging that the Agency has not been arbitrary or capricious, nonetheless the Agency has improperly allowed the Grievant to improperly

“slip through the cracks,” asserts the Union.

It is the Union’s position that both of the Grievant’s degrees are related to the type of work that he does. Accordingly, argues the Union, the Grievant should receive all lost wages and benefits for the time of not being in the position of a Parole Officer 2.

The Agency takes the position that the degree requirements provision of the parties’ Adult Parole Authority Career Ladder Memorandum of Understanding leaves Management the discretion to determine whether a degree in other than Corrections, Law Enforcement, Social Service, or Communications, is nonetheless a “related field,” warranting recognition as meeting the Memorandum’s degree requirements for advancement on the Career Ladder. The Agency asserts that its two step process of asserting “relatedness” is a reasonable one, and well within the legitimate parameters of its discretion. The Agency emphasizes that the negotiations history amply demonstrates that the parties did not intend to accept just any degree as fulfilling the degree requirements for advancement on the Career Ladder; but rather there had to be some relationship to the Parole Officer’s job and the mission of the Agency.

The Agency asserts that unless it can be determined that Management abused its discretion or applied its discretion in an arbitrary and capricious manner, the decision of Management must stand. And no such abuse of discretion has been shown, asserts the Agency. To the contrary, argues the Agency, Chief Goldhart’s testimony demonstrates that she exercised her managerial discretion fairly and objectively to make a reasonable application of the language of the Contract. Accordingly, the Agency urges the Arbitrator to find that Management’s decision regarding the Grievant’s placement on the Career Ladder was not violative of the Agreement, and that the grievance should therefore be denied.

ISSUE:

The parties have stipulated that the issue is:

“Was the Grievant’s placement on the Career Ladder of the Adult Parole Authority done in violation of the terms of the Collective Bargaining Agreement between the State of Ohio and the Ohio Health Care and Social Service Union, District 1199, S.E.I.U.? And, if so, what shall the remedy be?”

DISCUSSION & OPINION:

The parties, in their Memorandum of Understanding dealing with the Adult Parole Authority Career Ladder, have, for the educational component of the Career Ladder, clearly required the attainment of degrees (and not just certain course work) in certain defined fields, to wit, Corrections, Law Enforcement, Social Services, and Communications. Implicit in the determination that degrees in such fields are deserving of recognition is the judgment that the course work necessary to attain degrees in these fields creates skills and experience which assist one in performing the duties of a Parole Officer. At the same time, the parties recognized that perhaps other degree programs would also furnish these skills. Thus, they expressly provided that “an accredited degree in ... a related field,” would also be recognized and meet the degree requirement component of the Career Ladder formula. A maxim in labor arbitration holds that “Management acts, and the Union reacts.” Applying the maxim here, in allowing for a degree in a “related field,” as also meeting the degree requirement of the Career Ladder, the parties indicated that they expected Management to make an initial determination as to whether a certain degree was in a “related field” or not, and if a Grievant and the Union disagreed with that determination, they could react by filing a grievance. In other words, as the Employer contends, the Employer

has , as a matter of contract right, some discretion in determining what is related and what is not. In this regard, it is now well established in arbitration that good faith and fair dealing are required in the exercise and implementation of any contractual right. And, as the Elkouris have observed in their learned arbitration treatise, How Arbitration Works (5th Edition) at Page 514, in discussing the standard of the rule of reason in interpreting collective bargaining agreements, “where a contract allows for discretion on the part of the Employer, its exercise may not be arbitrary, capricious, discriminatory or unreasonable,” citing Michigan Employment Sec. Comm’n, 84 LA 473 (Fieger, 1985); Hussman Corp., 54 LA 23 (Maniscalco, 1984); Chillicothe Tel. Co., 84 LA 1 (Gibson, 1984).

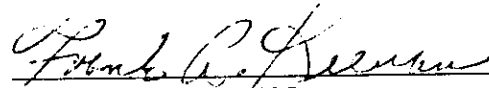
As has been seen, the Union concedes that the Agency’s determination is not arbitrary or capricious. Nor is there any evidence that the Agency’s determination was discriminatory. Thus, while the record shows that in one instance an employee took the initiative and secured the University’s syllabus, requested that Ms. Goldhart review it, and that she did so, there is no evidence that such a request was made here. Additionally, there is no evidence to the effect that in the past Ms. Goldhart, on her own initiative, sought a University syllabus and thereafter considered it. Therefore, the focus of the case is whether the Agency’s determination was unreasonable. In this regard, the Agency follows a two step process. Firstly, it reaches a determination with respect to the job relatedness of each course. Here, the Union challenges the methodology of looking virtually only to the course title as reflected on the academic transcript; urging in effect that fair dealing requires scrutiny of the educational institution’s syllabus or course description. There may be some basis for such scrutiny in other fact patterns, but here, the course titles on the transcripts are essentially self-evident. Looking at the course titles on the Bachelor’s

transcript, one could arguably quarrel with the determination to exclude and not recognize industrial relations and manpower development. Even were one to do so, however, there would still be less than 50% of the Bachelor's course work found to be related. Reviewing the Master's transcript, I'm constrained to concur with Ms. Goldhart's judgment. Nothing in the course titles suggest an arguably related course which she overlooked. Thus, again, less than 50% of the Master's course work is Parole Officer job-related. The case thus comes down to the reasonableness of the Agency's standard that 50% or more of the course work to attain the degree must be related. This standard strikes me as generous and, in any event, as not unreasonable. Accordingly, it must be found that the answer to the issue posed is in the negative: the Agency's placement of the Grievant on the Career Ladder was not in violation of the terms of the parties' Collective Bargaining Agreement.¹ It follows that the grievance must be denied.

AWARD:

For the reasons more fully set forth above in the Discussion & Opinion, the grievance is denied.

Dated: April 7, 1998


FRANK A. KEENAN
Arbitrator

¹ The Union is correct of course when it in effect asserts that reliance on an unnegotiated "list" of "related field" degrees, coupled with the fact that the degrees in question here were not on that list, would not be a proper basis for the determinations challenged here. However, the record fails to show that such was the basis for the determinations of unrelatedness made here.