

**BEFORE
ARBITRATOR HERMAN TOROSIAN**

In the Matter of the
Arbitration Between:

WISCONSIN STATE EMPLOYEES UNION
LOCAL 2748 AND ADAM WATKINS, ET AL.

Case No. 17715

and

STATE OF WISCONSIN

BRIEF OF WSEU LOCAL 2748

INTRODUCTION

This arbitration involves a number of grievances filed on behalf of employees who were denied certain educational leave benefits under the Agreement between AFSCME Council 24 Wisconsin State Employees Union and the State of Wisconsin. Each of the respective grievances were denied and appeals to arbitration were timely filed.

RELEVANT CONTRACT PROVISIONS

Article XI, Section 13 of the parties' Agreement (Union Exhibit 1) contains provisions for employees in the Professional Social Services (PSS) unit to pursue on-going education. That section is titled "Professional Development for Social Services Unit" and contains the following provisions relevant to this arbitration:

Section 11/13/4 (PSS) On-Going Education. In order to provide for career related professional advancement, the Employer shall provide for a system of ongoing education at the request of the employe on the following basis:

Section 11/13/5 (PSS) When enrolled in an educational program in the State Higher Education System, the employe may carry a seventy percent (70%) workload at seventy percent (70%) of pay and benefits. If an employe is enrolled in an educational program in the State Higher Education System and the employe is carrying seventy percent (70%) workload at seventy percent (70%) of pay and benefits, the Employer shall reimburse the employe for seventy-five percent (75%) of tuition and books.

Section 11/13/6 (PSS) When enrolled in an educational program in the State Higher Education System, an employe shall be granted the time, including a reasonable amount of travel time, to take career related educational courses up to but not exceeding fifteen (15) semester hours [not to exceed six (6) semester hours per semester or three (3) semester hours per summer session] for the duration of this Agreement. The Employer may at its discretion allow time off with or without pay for non-career related educational purposes.

Under these provisions, therefore, an employee has two options regarding taking career-related educational courses: 1) the employee can reduce his/her workload, pay and benefits to 70%, in which case the employee is entitled to reimbursement for 75% of his/her costs for tuition and books; or 2) the employee can receive time off for a limited number of credits (15 credits total, 6 credits per semester, 3 credits per summer).

The dispute has centered on what courses or programs of study are "career related" under the terms of the Agreement. The grievances of all eight grievants were denied by the Employer based on its assertion that the respective courses or degree programs were not career related.

Past arbitration decisions have not precisely defined th contractual language, but do provide guidance as to how the term "career related" should be interpreted. Arbitrator Zeidler, for example, has defined it as:

The term career related . . . is not limited just to the immediate job the employee holds, or to seeking a position one step higher; but also, in the opinion of the Arbitrator, includes moving from a non-degree status to a degree status *provided the work fits the agency in which the employee is involved.*

....
The Arbitrator...believes that courses taken for getting a degree, or a higher degree in a discipline *which is related to or found in the specific agency for which the employee works*, can be considered career related. Thus, if the course this employee was taking is useful to her in obtaining a degree in a discipline...which is found in the agency's work, then the course should be accepted. (emphasis added)

In the Matter of Penny Klinkner and Local 2748, WSEU vs. State of Wisconsin, Dept. of Health and Social Services, Case No. 632 (Dec. 16, 1976). (Union Exhibit 31)

Arbitrator Grenig noted that the language of the Agreement indicates that the parties:

...did not intend to limit "career related" to courses that aid employees in progressing to any class or class series within the bargaining unit within the agency or for lateral movement to a position in a counterpart pay range within the agency.

Lori Pierquet, WSEU, Local 2748 vs. State of Wisconsin, Dept. of Corrections, Case No.12800 (Feb. 26, 2000). (Union Exhibit 34)

Michael Sansone, WSEU, Local 2748 vs. State of Wisconsin, Dept. of Health and Family Services, Case No.15852 (Feb. 26, 2000). (Union Exhibit 33)

These past arbitration decisions, therefore, have established an interpretation of the term "career related" as referring to (at a minimum) courses or degree programs that are related to the employee's job, that qualify the employee for advancement within the agency or are related to the work performed by the agency. The courses and degree programs sought by the employees in this arbitration all meet these minimal criteria.

The circumstances of each grievant is summarized in Table 1, attached to the end of this document.

The position of the union on behalf of each grievant is as follows:

Michelle Clements

Michelle Clements is employed as a Health Services Specialist in the Department of Health and Family Services, Bureau of Quality Assurance. (Tr., Vol. I, p. 50) Her duties involve inspections of nursing homes, which, according to her position description includes "evaluation of infection control practices."

(Union Exhibit 2)

In the Spring of 2002, Ms. Clements submitted to the Employer a request for time off with pay under Section 11/13/6 for the purpose of taking a course in microbiology during the Summer of 2002. Ms. Clements' request was denied by the employer on the grounds that the course was not career related. (Tr., Vol. I, p. 56-59)

Ms. Clements eventually enrolled in the course in the Fall of 2002 during evening (non-working) hours. She testified that the course was helpful to her current position, particularly in terms of evaluating infection control practices, and that it was a prerequisite for enrolling in a nursing degree program, which was her goal. (Tr., Vol. I, pp. 60-61) Ms. Clements also testified that her supervisors were supportive of her pursuit of a nursing degree and that they felt it would be helpful to her current position. (Tr., Vol. I, pp. 63-64) Ms. Clements indicated that earning a nursing degree would qualify her for Nurse Consultant positions within her bureau, positions that represent an advancement in pay over her current position. She also indicated that earning a nursing degree would enhance her ability to effectively communicate with nursing personnel in the nursing homes she regulates. (Tr., Vol. I, pp. 65-69; Union Exhibit 7)

In summary, the microbiology course is related not only to Ms. Clements' current position and to the work performed by the agency, it is also a prerequisite for her nursing degree, a degree that would enable her to advance her career within the agency. Therefore, Ms. Clements' request for time off with pay to take the microbiology course, as well as all other courses related to her pursuit of a nursing degree, should be granted by the Employer, if the criteria articulated by Arbitrator Zeidler are applied:

"...courses taken for getting a degree, or a higher degree in a discipline which is related to or found in the specific agency for which the employee works, can be considered career related. Thus, if the course this employee was taking is useful to her in obtaining a degree

in a discipline. . . which is found in the agency's work, then the course should be accepted.
In the Matter of Penny Klinkner, supra (Union Exhibit 31)

The microbiology course and well as the pursuit of a nursing degree are both clearly "career related" under the Agreement. Ms. Clements' grievance should be upheld.

Rose Silver Johnson

Rose Silver Johnson¹ is employed as a Disability Determination Specialist in the Department of Health and Family Services, Disability Determination Bureau. Her duties involve reviewing and evaluating applications of individuals who have applied for Social Security disability benefits. She is also licensed as a certified occupational therapy assistant, a license that must be renewed every two years, which requires her to earn 24 hours of continuing education units each two year period. (Tr., Vol. I, pp. 71-73)

In July of 2002, Ms. Johnson submitted to the Employer a request for time off with pay for the purpose of taking a CPR course, which would count toward her renewal requirements for her license. Ms. Johnson's request was approved by each supervisor up the chain until it reached the division administrator, who denied her request. (Tr., Vol. I, pp. 74-75; Union Exhibit 8)

Ms. Johnson did not take the course but testified that she plans to take it this year. She testified that taking refresher courses in CPR is helpful to her current position in that it helps keep her fresh on medical and anatomy terminology. (Tr., Vol. I, pp. 75-77)

The CPR course is related to Ms. Johnson's current position as well as to her licensure as a certified occupational therapy assistant. Ms. Johnson's grievance should be upheld and she should be granted the four hours time off with pay to take the CPR course, as per her request.

¹ Ms. Johnson's grievances were filed under the name Rose Silver. She has since married.

Jana Gosewehr

Jana Gosewehr is employed as a Disability Claims Examiner in the Department of Health and Family Services, Disability Determinations Bureau. Her duties include making determinations regarding individuals' eligibility for Social Security Disability benefits and for Medical Assistance. Those duties involve extensive contact with claimants, social workers and healthcare professionals. (Tr., Vol. I, pp. 81-82)

Ms. Gosewehr was granted admission to the University of Wisconsin-Madison graduate school for the purpose of pursuing a Master's degree in social work. She submitted to the Employer a request to reduce her hours to 70 percent and to be reimbursed for 75 percent of her tuition and books under Section 11/13/5 of the Agreement. Ms. Gosewehr's request was reviewed and approved by a number of individuals within the agency, but was eventually denied by the division administrator. (Tr., Vol. I, pp. 82-83, 88-89)

Ms. Gosewehr's initial request to the Employer was for three classes: The Field of Social Work, Interpersonal Skills and Human Behavior & Social Environment.² She testified that all three courses directly related to her current position and would enhance her ability to perform her job. She also testified that it was her goal to obtain a Masters degree in Social Work, which would allow her to pursue other career positions within the agency and within the bargaining unit. (Tr., Vol. I, pp. 83-87)

The specific courses Ms. Gosewehr sought permission to take, as well as her pursuit of a Masters degree in social work, are clearly "career-related" under the Agreement. They not only relate to her current

² See Union Exhibit 12, which includes course descriptions for the three courses.

position and are related to the work performed by the agency, they would also qualify her for career advancement in both the agency and in the Professional Social Services bargaining unit. Again, applying the language of Arbitrator Zeidler indicates that Ms. Gosewehr's request should have been granted by the Employer:

Thus, if the course this employee was taking is useful to her in obtaining a degree in a discipline. . . which is found in the agency's work, then the course should be accepted. *In the Matter of Penny Klinkner*, supra (Union Exhibit 31)

Ms. Gosewehr's grievance should be upheld.

Vicki Shanovich

Vicki Shanovich is employed as an Unemployment Compensation Benefits Specialist 3 in the Department of Workforce Development, Unemployment Compensation Division. Ms. Shanovich testified that she graduated from high school but had no post-secondary degrees. (Tr., Vol. I, pp. 91-92) Ms. Shanovich submitted requests to the Employer for time off with pay under Section 11/13/6 of the Agreement for the purpose of enrolling in classes during the first and second semesters of the 2001-02 academic year.³ The classes were offered at Madison Area Technical College (MATC) and were part of a management development program. Ms. Shanovich's requests were denied by the employer. (Tr., Vol. I, pp. 94-99)

Ms. Shanovich enrolled in the courses but took them on her own time after she worked out a flex schedule with the employer. She also took some of the courses in the program during evening (non-working) hours. (Tr., Vol. I, pp. 96-98) She testified that she wanted to get additional training and course

³ Ms. Shanovich actually submitted two grievances - one for each denial. For purposes of brevity in this discussion, they are being treated as one.

work as she believed that would be not only helpful but critical in advancing further within the division to either a lead worker position or a supervisor position. She also testified that she has applied for openings in those positions but that the positions were awarded to persons with more formal education than what she had. Ms. Shanovich also stated that a supervisor in the division, Carol Long, told her that a management degree could be seen as a benchmark in a hiring decision. (Tr., Vol. I, pp. 99-100, 107-108)

Ms. Shanovich's requests to pursue additional education and training clearly fit under "career related" as described by Arbitrator Zeidler:

The term career related. . . includes *moving from a non-degree status to a degree status* provided the work fits the agency in which the employee is involved. *In the Matter of Penny Klinkner*, supra (Union Exhibit 31) (emphasis added)

Ms. Shanovich's requests to the Employer clearly are "career related" under the Agreement. Her grievances should be upheld.

Maureen Schuck

Maureen Shuck is employed as a Probation and Parole Agent with the Department of Corrections. Her duties include counseling, according to her position description, and the position description lists counseling techniques and treatment techniques as necessary skills and abilities. (Tr., Vol. II, pp. 170-171; Union Exhibit 24) In the Fall of 2002, Ms. Schuck was completing her work on a Masters degree in Counseling through the University of Wisconsin-Whitewater. She submitted a request to the Employer for time off with pay under Section 11/13/6 for the purpose of doing an internship (practicum) in counseling, which was the final portion of her degree work. (Tr., Vol. II, pp. 164-165) Ms. Schuck's request was denied by the employer on the grounds that the course was not related to her job. (Tr., Vol. II, p. 167)

Ms. Schuck enrolled in the course despite the Employer's denial, and worked it in around her work

schedule. (Tr., Vol. II, p. 168) She testified that her course work in pursuing her Masters degree was very helpful to her current position in a number of ways. (Tr., Vol. II, pp. 169-170, 173-175) She also referenced the fact that she works with a lot of high school age kids in her work. (Tr., Vol. II, pp. 170, 173-175)

In addition, a witness for the Union, Julie Basel, who is also a probation and parole agent, testified that she was granted time off with pay by the Employer for the purpose of attending a number of courses while she was pursuing a Masters degree in Counseling, and that one of the courses was a practicum in counseling. Ms. Basel also testified that her degree in Counseling is very helpful and valuable to her job on a daily basis. (Tr., Vol. II, pp. 178-179) Another witness for the Union, Kristen Aschenbrenner, who is also a probation and parole agent, testified that she also has been granted time off with pay by the Employer for the purpose of attending a number of courses in pursuit of her Masters degree in Counseling and Psychology, which she is scheduled to receive in December 2003. (Tr., Vol. II, pp. 189-190) Ms. Aschenbrenner testified that the course work involved in her Masters degree program is very helpful and valuable to her job as a probation and parole agent. (Tr., Vol. II, pp. 190-191)

A third witness for the Union, Rachelle Weber, who was a probation and parole agent from 1992-2002, testified that she also was granted time off with pay by the Employer for the purpose of attending a number of courses (including a practicum) in pursuit of her Masters degree in Counseling, which she received from UW-Whitewater. (Tr., Vol. II, pp. 149-152) Ms. Weber testified that the course work involved in her Masters degree in Counseling was very helpful and valuable to her job as a probation and parole agent. (Tr., Vol. II, pp. 154-155) A fourth witness for the Union, Kimberly Ellis, who is a probation and parole agent, testified that she also has been granted time off with pay by the Employer for the purpose

of attending a number of courses (including a practicum that involved counseling at an elementary school) in pursuit of her Masters degree in Guidance and Counseling, which she is scheduled to receive from UW-Stout in May 2004. (Tr., Vol. II, pp. 278-280) The testimony of these witnesses makes it clear that the Employer has had a consistent past practice of allowing the contract provision to be used by probation and parole agents who pursue graduate degrees in counseling. Ms. Schuck should not be arbitrarily singled out for disparate treatment.

Based on the testimony of Grievant Schuck and of the four witnesses who testified on her behalf, it is clear that Ms. Schuck's courses towards her Masters degree in Counseling fall under the term "career related" in the Agreement. Again, as Arbitrator Zeidler stated:

...courses taken for getting a degree, or a higher degree in a discipline which is related to or found in the specific agency for which the employee works, can be considered career related. *In the Matter of Penny Klinkner*, supra (Union Exhibit 31)

Ms. Schuck's grievance should be upheld.

Michelle LaCount

Michelle LaCount is employed as a Probation and Parole Agent in the Department of Corrections. In the Fall of 2001, she began attending law school at Marquette University Law School. Ms. LaCount submitted to the Employer a request for time off with pay under Section 11/13/6 for the purpose of taking a course in legal writing and a criminal law course. Her request was denied by the Employer. She has submitted subsequent similar requests for each semester up to and including the Spring semester of 2003, and none of her requests have been granted. (Tr., Vol. II, pp. 221-227)

Ms. LaCount testified that her law school education has been very helpful and useful in her current position in innumerable ways and has substantially enhanced her ability to deal with the legal system. (Tr.,

Vol. II, pp. 228-229) She also testified that the Employer has utilized her as a legal resource in a number of ways. (Tr., Vol. II, pp. 230-231) Ms. LaCount prepared an extensive analysis as to how her law school education is related to numerous specific job duties contained in the position description for her current job as a probation and parole agent. (Tr., Vol. II, pp. 231-233; Union Exhibit 27K) She also stated that she hopes to use her law degree with the Department of Corrections, possibly with the office of legal counsel or as an administrative law judge. (Tr., Vol. II, p. 233)

Union witness Robert Pultz testified that he attended law school while employed as a Probation and Parole Agent with the Department of Corrections. His law school education allowed him to advance within the agency, as he is now an attorney with the Department. (Tr., Vol. II, pp. 136-138) He stated that his law school education was very valuable in his work as a probation and parole agent, and that the agency would frequently use him as a resource specifically because of his legal training. (Tr., Vol. II, pp. 140-144) He testified that after he received his law degree, the Department began using him to do extensive legal work, even though he was still technically employed as a probation and parole agent.⁴ (Tr., Vol. II, pp. 142-143)

Ms. LaCount's law school education is clearly "career related" under the Agreement. It not only relates to her current job and the agency's work in innumerable ways, it also qualifies her for advancement to other career positions with the agency. Arbitrator Zeidler's analysis is directly on point with Ms. LaCount's situation:

⁴ Mr. Pultz testified that he made a request to utilize the contract provisions for time off to attend law school, but that his request was denied because law school was not "career related", an absurdly hypocritical position of the Employer, in that they clearly used his degree for their own benefit at discounted pay rates.

The term career related. . . is not limited just to the immediate job the employee holds, or to seeking a position one step higher; but also, in the opinion of the Arbitrator, includes moving from a non-degree status to a degree status provided the work fits the agency in which the employee is involved.

...
The Arbitrator. . . believes that courses taken for getting a degree, or a higher degree in a discipline which is related to or found in the specific agency for which the employee works, can be considered career related. Thus, if the course this employee was taking is useful to her in obtaining a degree in a discipline. . . which is found in the agency's work, then the course should be accepted.

In the Matter of Penny Klinkner, supra (Union Exhibit 31)

Moreover, Arbitrator Grenig's interpretation of the term "career related" clearly would encompass Ms.

LaCount's situation as well:

[The parties] did not intend to limit "career related" to courses that aid employees in progressing to any class or class series within the bargaining unit within the agency or for lateral movement to a position in a counterpart pay range within the agency.

Lori Pierquet, WSEU, Local 2748, supra (Union Exhibit 34); and Michael Sansone, WSEU, Local 2748, supra (Union Exhibit 33)

Ms. LaCount's grievance should be upheld.

Adam Watkins⁵

Adam Watkins was employed as a Probation and Parole Agent in the Department of Corrections from July 1998 - July 2001. He was accepted for admission to law school for the Fall of 2001 by both the University of Wisconsin and the University of Minnesota. In early 2001, he submitted to the Employer a request under Section 11/13/5 to reduce his workload to 70 percent and to receive 75 percent reimbursement of tuition and books. His request was denied by the Employer and he was told that law school was not career related to his position. (Tr., Vol. II, pp. 246-248)

⁵ Mr. Watkins' grievance is a Union grievance, in that he is no longer a member of the union.

Because Mr. Watkins' request was denied, he felt that the only way he could attend law school would be to resign his position with the Employer. He resigned, effective at the end of the Summer of 2001, and then enrolled in law school at the University of Minnesota in the Fall of 2001. He attended full-time there for a year, and has been on voluntary leave since then. (Tr., Vol. II, pp. 251-253) He has applied for several probation and parole agent positions since he resigned, but has not been hired for any of them. (Tr., Vol. II, pp. 253-254) Mr. Watkins testified that he sees a strong connection between his studies in law and the duties of a probation and parole agent. (Tr., Vol. II, pp. 254-255)

The testimony of Grievant LaCount and of Union witness Robert Pultz (cited above) make it clear that a law school education is related to numerous specific job duties contained in the position description for the job of probation and parole agent.

Like Ms. LaCount, Mr. Watkins' law school education is clearly "career related" to the position of probation and parole agent under the Agreement. As previously stated, it not only relates to the job in innumerable ways and is related to the work performed by the agency, it also qualifies him for advancement to other career positions with the agency. (Again, see Arbitrators Zeidler's and Grenig's analyses above under Michelle LaCount's section)

Mr. Watkins' grievance should be upheld, he should be ordered reinstated to a probation and parole agent position with the Employer, and he should be granted his rights under Section 11/13/5 of the Agreement.

Teresa Mollet

Teresa Mollet is employed as a Probation and Parole Agent in the Department of Corrections. She graduated from high school in 1988 and received an Associate's Degree in Corrections from Moraine Park

Technical College in Fond du Lac in 1997. She then began work on a Bachelor of Science degree in Administration of Justice through Marian College in Fond du Lac and was scheduled to graduate this past May. (Tr., Vol. II, pp. 263-265)

In the Spring of 2002, she submitted to the Employer a request under Section 11/13/5 to reduce her workload to 70 percent and to receive 75 percent reimbursement of tuition and books. Her request was denied by the Employer and she was told, at least with respect to the course Biology-Life Sciences that it was not a career related course. (Tr., Vol. II, pp. 266-268) She filed another such request for the Spring semester of 2003, which was also denied. That course was Intro to Physical Science. (Tr., Vol. II, pp. 270-271)

Ms. Mollet testified that the courses were required in order to complete her Bachelors degree. She also testified that she felt that she needs a Bachelors degree in order to move up within the Department of Corrections and that almost everyone she knows who works as a probation and parole agent has a Bachelors degree. (Tr., Vol. II, pp. 270-272)

A witness for the Union, Chantell Jewell, who is employed as a Probation and Parole Agent by the Employer, testified that the Employer allowed her to use the "time off with pay" provision of the Agreement (Section 11/13/6) to take numerous classes in pursuit of her Bachelor of Science degree in Criminal Justice. Many of those classes, according to Ms. Jewell, were simply general courses needed for the degree, such as Biology, English, etc. (Tr., Vol. II, pp. 201-204)

While the specific courses Ms. Mollet was taking may not be specifically related to her current job duties, like the case of Union witness Jewell, the courses were necessary for Ms. Mollet's Bachelors degree, which will enhance her ability to advance within the agency. At the risk of beating a dead horse,

as Arbitrator Zeidler noted:

The term career related . . . is not limited just to the immediate job the employee holds, or to seeking a position one step higher; but also, in the opinion of the Arbitrator, includes moving from a non-degree status to a degree status provided the work fits the agency in which the employee is involved.

Thus, if the course this employee was taking is useful to her in obtaining a degree in a discipline . . . which is found in the agency's work, then the course should be accepted. *In the Matter of Penny Klinkner, supra* (Union Exhibit 31)

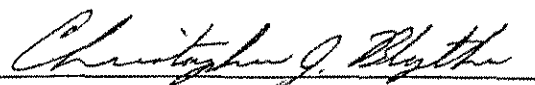
A Bachelors degree in Administration of Criminal Justice clearly involves a discipline that is found in the Department of Corrections' work. Ms. Mollet's course work towards obtaining that degree is therefore "career related" under the Agreement. Her grievance should be upheld.

CONCLUSION

As noted herein, all of the courses or degree programs the grievants were pursuing fit within the definition of "career related" as it has been described by past arbitrations. In all cases the courses themselves are directly related to the grievant's position or are related to the work performed by the agency, or the degree program of which the courses were a part would qualify the grievant for advancement within the agency. These circumstances fit the definition of "career related" as articulated by previous arbitrators. The grievances should be upheld.

Respectfully submitted this 1st day of August 2003.

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TABLE 1

Name	Position/Agency	Course/Degree Program Sought	Course/Degree Program Related to Current Job or Advancement w/in the Agency?
Michelle Clements	Health Services Specialist - DHFS	Microbiology/Nursing Degree	Yes
Rose Silver Johnson	Disability Determination Specialist - DHFS	CPR Refresher Course	Yes
Jana Gosewehr	Disability Claims Examiner - DHFS	Master's in Social Work	Yes
Vicki Shanovich	Unemployment Comp. Benefits Spec. - DWD	Management Development Program	Yes
Maureen Schuck	P&P Agent/DOC	Counseling Practicum/Master's in Counseling	Yes
Michelle LaCount	P&P Agent/DOC	Legal Writing, Criminal Law/Law School	Yes
Adam Watkins	P&P Agent/DOC	Law School	Yes
Teresa Mollet	P&P Agent/DOC	Biology, Intro to Phys. Science/Admin. of Crim. Justice	Yes