

FEDERAL MEDIATION AND CONCILIATION SERVICE

IN THE MATTER OF THE
VOLUNTARY ARBITRATION
BETWEEN

Case: **Glazer 4**

SHERIFF'S OFFICE,
Employer,

(Training Reimbursement)

Union,

* * * * *
ARBITRATION OPINION AND AWARD
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APPEARANCES

STIPULATED ISSUE

DID THE SHERIFF VIOLATE SECTION 13.2(B) OF THE
CBA WHEN HE FAILED TO MAINTAIN AND PAY FOR
THE PEACE OFFICER CERTIFICATION REQUIREMENTS
OF DEPUTY NANCY AND DEPUTY STEVE AFTER THEY WERE REINSTATED PURSUANT TO
SECTION 9.10 OF THE CBA? IF SO, WHAT IS THE APPROPRIATE REMEDY?

Deputies Nancy and Steve request payment for a refresher
course they were required to take following their return from a disability
retirement. The grievance is dated October 18, 2004. The Sheriff maintains that
the contract did not require him to pay for the course. The relevant contract
language found in Article 13.2(B) states:

The Employer shall maintain current peace officer training
certification requirements of members in the classifications of
Deputy (POTC), Corporal (POTC), Sergeant, Lieutenant and
Captain. This shall be maintained at Employer Expense. Any
requirements missed by the member due to his/her neglect shall be
maintained at the member's expense.

An arbitration hearing was held on October 27, 2005. Stipulated facts were
submitted.

Additionally, there was testimony from CB, Union negotiator; SM,
Grievance representative and PG, Director of Management Services and Human
Resources. After a comprehensive presentation, the parties closed orally.

BACKGROUND

Deputy Nancy received her Ohio Police Officer Basic Training in 1989; Deputy Steve received his in 1995. Thereafter, both Grievants took a medical disability retirement under PERS in 2003. Prior to their medical retirements, both Grievants were classified as Deputy POTC and worked in the patrol bureau as certified officers.

Pursuant to R.C. 145.362, a PERS disability retiree stays on a leave of absence from his/her job for five years. If PERS determines that the individual is no longer disabled during that period, the employer is required to reinstate the person to their previous position and salary or to a similar one. Further, Ohio Administrative Code Section 123: 1-33-03 and Section 123: 1-33-04 provide that an employee has reinstatement rights for five years following the granting of PERS disability benefits.

Also, the contract in Section 9.10 provides for a return from a disability retirement as follows:

When a member is authorized by the Ohio Public Employees Retirement System to return to duty, such member will be temporarily assigned to a vacant position in the classification that the member had when he or she qualified for disability retirement. While the member is on the temporary assignment, he or she must bid on a posted vacancy. The employer may post the assignment even though it is temporarily occupied. In the event that there is no vacant position in the classification when the member is eligible to return, such member shall be given a temporary assignment until a vacancy in that classification is posted.

In 2004, Deputies Nancy and Steve were notified that they were no longer considered to be disabled by PERS, and they applied for reinstatement. Nancy was reinstated on September 20, 2004 as a Deputy POTC; this occurred for Steve on November 1, 2004. Both were initially assigned to the jail, but they eventually bid on a patrol job, where they acted as certified police officers in the Deputy POTC classification.

The issue in this case arose because OPOTC and OAC 109:2-1-12(D) require a 76 hour refresher course for a deputy, such as the Grievants, who are off the job for more than a year, but less than four, for a disability retirement. This refresher course must be taken within a year following reinstatement. The deputies have a temporary certification during that one year period. Nancy was required to take the course by September 20, 2005 and Steve was required to take the course by November 1, 2004. Failure to take the course during that one year period would have caused the Grievants to lose the ability to act as certified officers. They would have then been required to obtain new Ohio Peace Officer Basic Training Certification.

The Grievants took the refresher course from June 20 to July 1, 2005. They were denied their request to be reimbursed for the \$560 cost of the course as well as for the 80 hours they lost from their time banks, that was required for them to attend the classes. That is the remedy that is sought in this case.

PG, the director of management services, testified that it was the Department's position that the Grievant's were no longer employees when they went on a disability retirement for over a year. It is noted that they were not paid and did not pay union dues during that time. PG therefore contends that the Grievants were not covered by Article 13.2(B). He adds that the Sheriff pays for the certification of people, who keep themselves current. PG contends that the Grievants were negligent within the meaning of Article 13.2(B) when they failed to maintain their certification during their disability retirement that lasted over a year.

PG further points out that Deputies T and W previously returned from a disability retirement, and the Department did not pay for a refresher course for them. T went to a non-POTC status and W paid for the course himself. Deputy M, the Grievance chair, indicated that the Union was unaware of W's and T's situations.

Deputy M states that the Grievants were on the street as patrol officers before they took the refresher course. He adds that deputies must have a valid certification to work as patrol officers.

Deputy M also contends that the Grievants maintained their continuous service when they returned to work after a disability retirement. He references Paragraph 4 of the Definitions Article of the contract, which says:

Continuous Service. Continuous Service means the uninterrupted service of a member of the bargaining unit where no "full break" has occurred. It shall include service time that has been adjusted for a "partial break in service". ..

A. Full Break in Service. Full break in Service shall be defined as a resignation or other separation from service with the Sheriff which does not carry with it the right to reinstatement. When a "full break in service" occurs, a member's date of continuous service shall be the date that person returned to active duty.

B. Partial Break in Service. Partial Break in Service shall include...separation in service which carries with it the right to reinstatement (e.g. disability retirement...)
A deputy can work in the jail without certification, according to Morris.

CB was on the bargaining team when Article 13.2(B) was first introduced into the 1993-1995 contract as a Lodge proposal. She said that under paragraph (A) an employee would pay for the initial certification, but the Sheriff would then pay for the updates under paragraph (B).

CB testified that it was discussed at the bargaining table that an employee returning from a disability retirement would have his refresher course paid for by the Sheriff.

CB indicated that the present language on negligent conduct was added as an exception to the Employer-pay requirement of paragraph (B) in the 1995-1999 contract. The deputy said that the negligence language was meant to cover such things as when a deputy failed to show up for the course: in that circumstance, the employee would have to pay for a later course. CB adds that it was made clear at the table that a returning disabled retiree is

not a new hire under (A), and that the Sheriff would have to pay for a refresher course. Paragraph (A) states:

The classification of Deputy (NON-POTC) shall be utilized for all newly hired bargaining unit members. Members classified as a Deputy (NON-POTC) and/or members classified as Corporal...shall be provided the voluntary option, at their own expense and time to attain a peace officer training certification upon written approval of the Sheriff...Newly hired deputies already peace officer training certified shall be assigned to the Deputy (POTC) classification upon written approval of the Sheriff.

POSITION OF THE UNION

It is asserted that the Grievants took a refresher course after they were reappointed following the end of their disability leave, and that under 13.2(B) the Sheriff was responsible for the cost and the time. Further, it is denied that the Grievants were negligent, so as to fall within the exception to the requirement that the Sheriff pay for the refresher courses. It is emphasized that the Grievants maintained their seniority when they returned to work. Also, the bargaining history is said to support the Union's position.

POSITION OF THE EMPLOYER

It is argued that the Grievants were no longer employees when their certification lapsed after the year that they were on a disability retirement. The Sheriff argues that 13.2(B) applies only to members, and that since the Grievants weren't members, the Sheriff was not required to pay for the refresher course. Further, the Sheriff argues that the Grievants were negligent in not maintaining their certification, and consequently the contract required them to pay for the refresher course.

DISCUSSION

The Grievants meet the initial requirements for an employer-paid refresher course pursuant to the plain meaning of paragraph 2(B) of Article 13. The Grievants had current certification that had to be refreshed, and the State of Ohio and the Sheriff permitted them to operate, and they did operate, as certified police officers (POTC) on patrol at the time that they sought to take the refresher course. They were not new employees taking the certification course for first time, which is the situation where the employee is required to pay in paragraph (A). Importantly, pursuant to the definition section of the contract, the Grievants retained their continuous service when they returned

from their disability retirement. They also retained their seniority. Consequently, the elements of member status in the classification of Deputy(POTC) , and a current peace officer training certificate were met.

This conclusion requires, under paragraph (B), that the Employer pay for the refresher course and the time. The contract clearly states that when the above predicates are met, "This (certification) shall be maintained at Employer expense." The only exception is where the employee fails to take the refresher course due to his/her neglect.

The parties to a contract are presumed to use the ordinary, dictionary definition of words. The Random House Dictionary of the English Language defines neglect as: to omit, through indifference or carelessness; to fail to carry out or perform; an act or instance of neglecting

The Grievants were not indifferent or careless when they didn't take a refresher course during their disability retirement. There is no evidence to suggest that they would have even been allowed to take the course while they were retired, or that the Employer would have paid for it

without knowing if the Grievants would ever return to work. Moreover, the Grievants would not be negligent in not taking a refresher course, if they didn't know that they would be eventually returned to work.

Also, the word neglect is not defined in the contract, and its precise application to this case can be seen as being ambiguous. Therefore, it is appropriate to use the bargaining history to explain the intent of the parties when they used the word. The unrebutted testimony of the union negotiator was that neglect was intended to apply to situations, such as where a deputy missed a test; the testimony, however, also indicated that neglect was not intended to apply to individuals, such as the Grievants, who returned from a disability retirement and sought to take a refresher course. Therefore, the neglect exception does not apply in this case.

Because the Grievants satisfy the elements for an employer-paid refresher course in paragraph (B), and because they did not neglect to take the certification, the grievance should be granted. This conclusion is also consistent with the bargaining history, which clearly shows that the parties intended for the employer to pay for the refresher course when a deputy returned from a disability retirement. There is some evidence of a practice to the contrary, but there is only one case where a deputy paid for a refresher course himself following a disability retirement. This one case would not meet the requirements of a past practice. In any event, the plain meaning of paragraph (B) requires that the grievance be granted.

AWARD

For the foregoing reasons, the grievance is granted. The Grievants shall be reimbursed \$560 each for the cost of the refresher course, and they each shall have 80 hours credited to their time banks.

Mark J. Glazer
Arbitrator

November 16, 2005