

Herman Torosian
ARBITRATOR • MEDIATOR

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April 2, 2015

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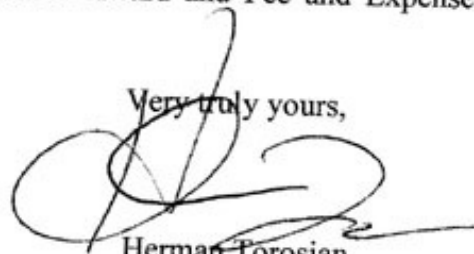
Mr. Jim A. Underhill, Director
Bureau of Labor Relations
Office of State Employment Relations
101 East Wilson Street, 4th Floor
P.O. Box 7855
Madison, WI 53707-7855

Re: State Engineering Association and
State of Wisconsin
Sections 8 and 9
Paid Time Off for Examinations and License
Reimbursement

Gentlemen:

Please find enclosed my Supplemental Award and Fee and Expense Statement in the above-entitled matter.

Very truly yours,



Herman Torosian
Arbitrator

HT/mb
Enclosures

DECISION and DISCUSSION:

As found by the Arbitrator, the Employer violated Sections 8 and 9 of the collective bargaining agreement. The parties, however, disagree over the appropriate remedy. In this regard, the dispute is not over what the remedy is for a violation of Sections 8 and 9,¹ but rather who is covered by the grievance and entitled to an award.

It is the Employer's position that only employees who were named Grievants are entitled to a remedy. There are 15 such Grievants. The Union contends that the instant grievance is a Union/Association grievance and, therefore, the remedy should be available to all affected employees in the unit. The Employer argues that there is no support for the Union's contention. At no time during discussions regarding this case was there ever any indication from the Union that all current staff in the classification and range at issue would be eligible for an award in this matter.

The Union claims otherwise and argues that the contract provides that grievances may be filed as individual(s), group or Association (Union). The grievance form provides for three types of grievances: Individual, Group and Union. The instant grievance has the box checked for "Union". Therefore, the instant grievance is clearly a Union grievance, and as such, all affected employees are entitled to a remedy. The Employer had the ability and chance to challenge the propriety of the "Union" designation. The Union argues that the Employer's position would

¹ The remedy for a Section 8 violation is to make the employees whole for loss of pay incurred for the purpose of taking the listed examinations and other professional examinations required by management and conducted by the State of Wisconsin when such examinations are given on the employee's regularly scheduled work time.

Under Section 9, employees are to be reimbursed and made whole for initial examination and licensing fees in connection with the listed licenses and other licenses required by management when such license becomes a condition of employment.

make it impossible to file a grievance on behalf of the entire bargaining unit without listing the names of every person in the bargaining unit on the grievance. In fact, the Union argues, in the past the parties have always applied the remedy in awards involving Association Grievances to those affected in the entire bargaining unit. The Union cites two such cases: State of Wisconsin and State Engineering Association, DER Case Nos. 015547/015631, 1998 (Krinsky), and State of Wisconsin and State Engineering Association, DER Case Nos. 15707, 15636 and 15637, 2001 (Weisberger).

In the instant case, three grievances were consolidated and presented to the Arbitrator for an expedited decision. One was marked as an "individual" grievance (Luebke) and the other two (Nguyen and Arendt) were marked as "Union." The difference between individual, group and Association/ Union grievances are obvious and defined in the parties' collective bargaining agreement. Specifically, the collective bargaining agreement defines an Association grievance as follows:

Section 9 Association Grievances

The statewide Association officers [not to exceed twenty-five (24) during the term of this Agreement] who are members of the bargaining unit shall have the right to file and process a grievance when any provision of this Agreement has been violated or when the Employer interpretation of the terms and provisions of this Agreement lead to a controversy with the Association over the application of the terms or provisions of this Agreement. Such grievances shall be designated as Association grievances at the initial step and shall comply with the time limits previously set forth in this Article. Upon receipt of an Association grievance decision, management shall inform all employing units in writing.

The Arbitrator finds the relevant language clear and unambiguous. The Union filed an Association/Union grievance as permitted under Section 9. The Employer at no time raised an objection. The Arbitrator lacks the authority to change the type of grievance filed by the Union, i.e., individual, group, or union, unless the filing is flawed. There is no such flaw. The fact that there were individual grievants named in the grievance does not change a Union grievance to an individual or group grievance when the form clearly states a "Union" grievance. Therefore, the Arbitrator is compelled to find that all those affected are entitled to the remedy awarded.

There is no question the significant lapse of time from the date of the grievances is troublesome to the Arbitrator. However, the long delay in processing these grievances, for whatever reason, was mutually acceptable. There was no issue with the timeliness of the grievances at any step of the process or at the arbitration hearing. The parties were willing to take the risk of the consequences of a long delayed arbitration of the grievances.

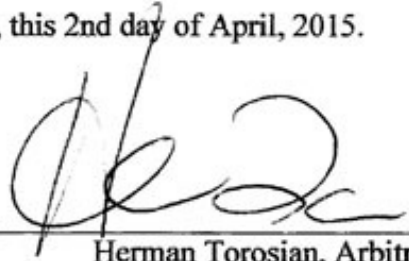
Based on the above facts and discussion thereon, the Arbitrator renders the following

AWARD

1. That the remedy, as discussed in Footnote 1, shall apply to all affected employees.
2. That it is upon the Union to identify the employees who are affected and entitled to the remedy. For the Union to do so, the Employer is obligated to provide reasonable requests for information.
3. That the Arbitrator retains jurisdiction to resolve any issues that may arise over

the interpretation and application and intent of the remedy awarded.

Dated at Madison, Wisconsin, this 2nd day of April, 2015.

A handwritten signature in black ink, appearing to read 'H. Torosian', written over a horizontal line.

Herman Torosian, Arbitrator

Herman Torosian
ARBITRATOR • MEDIATOR

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FEES AND EXPENSES

State Engineering Association
and
State of Wisconsin

Article 11, Sections 8 & 9

Supplemental Award

Preparation	4 hours @ \$1300/day (\$162.50/hr.)	650.00
Word Processing		17.00
Total		\$667.00
Amount due by Association		\$333.50
Amount due by Employer		\$333.50