

[Cite as *Swift v. Workforce Dev.*, 2006-Ohio-7181.]

IN THE COURT OF CLAIMS OF OHIO

JANET SWIFT	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2005-06431-AD
	:	
WORKFORCE DEVELOPMENT	:	<u>MEMORANDUM DECISION</u>
	:	
Defendant	:	

: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} Plaintiff, Janet Swift, has filed a claim against defendant, Workforce Development ("WD"), seeking to recover \$1,700.00 for tuition reimbursement. Plaintiff maintained she is entitled to receive tuition reimbursement from WD as a designated contract right under a collective bargaining agreement negotiated between the State of Ohio ("State") and plaintiff's representative union, the Ohio Civil Service Employees Association/American Federation of State, County and Municipal Employees Local 11 ("OCSEA/AFSCME LOCAL 11").

{¶ 2} In 1997, OCSEA/AFSCME LOCAL 11 ("union") negotiated a collective bargaining agreement ("contract") with the State covering the years 1997-2000. Article 37¹ of this contract

¹ Article 37.01 and .02(A) and (B) provide:
"ARTICLE 37 WORKFORCE DEVELOPMENT
"37.01 - Training and Development
"The Employer and the Union recognize the importance of employee training and development as an element of productivity and quality improvement. Employee training and development is regarded as an investment

created Workforce Development ("WD") which was intended as a joint partnership between the union and the State to provide education and training opportunities for OCSEA/AFSCME LOCAL 11 bargaining unit employees. One union employee benefit provided by WD under Article 37 of the contract was the Tuition Assistance Plan ("TAP"). Subsequent contracts after 1997 included the TAP under WD as provided by Article 37. Although Article 37 of the contract establishes broad guidelines for the Workforce Development Program, actual implementation of details, including rule making and policy decisions, were delegated to the WD Steering Committee. In 1999, the WD Steering Committee made a new feature available under TAP, the Vocational Training Program ("VTP"). VTP covered the cost of tuition, lab fees, and other training fees associated with vocational education. All

rather than a cost and the parties seek to expand as well as develop employee skills through training initiatives.

"37.02 - Workforce Development Fund

"A. Purpose

"The State shall maintain a Workforce Development Fund for the purpose of developing and supporting a comprehensive program of workforce training initiatives, including but not limited to the following:

- "1. Basic skills development;
- "2. Technical and computer skills training;
- "3. Tuition assistance, reimbursement and vouchers;
- "4. Workplace redesign and technological change;
- "5. Labor-Management relationships and problem-solving;
- "6. Agency-specific projects.

"B. Steering Committee

"A Steering Committee consisting of eight (8) members shall determine the goals, guidelines and operating principles of the Workforce Development Fund and to oversee the administration of the programs and the fund established by this Article. The Steering Committee shall include four (4) persons designated by the Employer and four (4) persons designated by the Union, including the OCSEA Executive Director and the Director of DAS or their designees who shall serve as co-chairs. The Steering Committee may select and hire staff, consultants and service providers by majority vote."

OCSEA/AFSCME LOCAL 11 union employees were eligible for this tuition reimbursement, including, as of July 1, 1999, union employees who were laid off and on the layoff/recall employment list. These laid off/recall employees were eligible for tuition reimbursement benefits for up to twenty-four months after being laid off. Cosmetology schools were invited to participate as an education provider in the VTP. Eligible union members were required by WD policy to submit requests for TAP by either filing a paper application or filing electronically. Applications for TAP were generally processed within fourteen days of receipt. Apparently, WD did not receive TAP applications by verbal communication, although career counseling was available through either phone or e-mail based interaction.

{¶ 3} Plaintiff asserted she applied with Workforce Development for tuition reimbursement to attend the Ohio State Beauty Academy. Plaintiff related, "I have applied verbally for acceptance with Workforce Development around Sept. 2002." Plaintiff insisted she was given assurances from personnel at WD that her tuition reimbursement request would be approved and she, therefore, relied on these assurances, starting course work in September, 2002. Plaintiff pointed out she then submitted a written application for TAP and was told by WD staff her application was approved. Plaintiff noted, "I sent all necessary paperwork in." Plaintiff stated at some subsequent date presumed in July, 2004, she was told her application for TAP was denied. Plaintiff submitted a copy of a written application for tuition reimbursement she filed at WD. This

application, signed and dated by plaintiff (November 12, 2002) records a request for tuition reimbursement of \$1,700.00 for a course of study at the Ohio State Beauty Academy which began on September 4, 2002. On September 27, 2004, WD personnel sent a letter informing plaintiff her November 12, 2002, application for tuition reimbursement had been denied because the Ohio State Beauty Academy was not an approved training institution at the time plaintiff completed her course work there in the fall of 2002. The applications for tuition reimbursement were returned to plaintiff along with the denial letter. WD recorded the applications, "cannot be processed for courses held prior to approval of the training provider and/or after the end of the academic term." By the time plaintiff received the letter denying her applications she had terminated her employment relationship with the State.

{¶ 4} Plaintiff contended she is entitled to receive \$1,700.00, in tuition reimbursement for tuition she paid to the Ohio State Beauty Academy for courses completed from September 2002, to February, 2003. Plaintiff filed this complaint seeking to recover the \$1,700.00, claiming she was promised by WD staff her requests for tuition reimbursement would be approved. The filing fee was paid.

{¶ 5} Workforce Development denied any liability in this matter and denied any WD staff made verbal promises to plaintiff that her tuition for courses taken from September, 2002, to February, 2003, would be paid. WD stated its personnel, "follow the policies and procedures instituted by the WD Steering

Committee." WD explained tuition assistance payments cannot be approved or promised for courses taken from a training provider (such as the Ohio State Beauty Academy), who has not filed a Memorandum of Understanding ("MOU"), with the State. It has been further explained that WD staff do not have the authority to promise tuition assistance payments on either a prospective or delayed basis when proper criteria for disbursement of such funds has not been met. WD maintained plaintiff's tuition assistance request representing the basis of this current claim was denied because she had, "taken unapproved courses that were conducted by a training provider not under a proper MOU."

{¶ 6} WD contended none of its personnel made any verbal promises to plaintiff that her application for tuition assistance would be approved. WD submitted a statement from WD employee Fran M. Ryan regarding her conversations with plaintiff about the tuition assistance process. Ryan related she recalled having initial conversations with plaintiff about how the Ohio State Beauty Academy could be officially recognized as a training provider under the Workforce Development Program. Ryan stated, "I indicated that the representative of the school would need to contact our office so a discussion might be held regarding the qualifications to become a participant in the program and to determine which MOU would be appropriate for them to complete." Subsequently, a representative of the Ohio State Beauty Academy, Cheryl, did contact Ryan and a MOU was mailed to Cheryl's attention. According to Ryan, the Ohio State Beauty Academy then filed an incorrect MOU and another MOU document was

submitted, but this document was deemed incomplete. Ryan noted she worked with the Beauty Academy representative for over a year to have the Ohio State Beauty Academy formally approved as a training provider under WD guidelines. Approximate dates of Ryan's contacts with the Beauty Academy were not recorded in her statement. Ryan pointed out she was told by WD manager, Valerie Handy, "that once the MOU (from the Beauty Academy) had been approved we would process the applications and the school would be paid for the instructions received by (plaintiff)." After extended requests for submission and contacts with all involved parties, Ryan recalled the MOU of the Beauty Academy was finally approved.

{¶ 7} Once this MOU was approved, Ryan related she contacted plaintiff and, "requested her to submit her applications for the vouchers since the program the school was participating in was a voucher only program." Ryan further related she received incomplete applications from plaintiff with incomplete information, which prompted an attempted phone contact with plaintiff to discuss details for submitting complete applications. Ryan recollected she was delayed in reaching plaintiff at her place of employment (she had apparently ended her employment relationship) or at her home (she was apparently on vacation). Upon ultimately contacting plaintiff, Ryan stated plaintiff's completed applications for tuition reimbursement were forwarded to WD. These applications, Ryan observed, "were dated way before the actual contact was made with me concerning the school being a participant."

{¶ 8} Ryan pointed out she worked with the representative of the Ohio State Beauty Academy and plaintiff for about one year attempting to have the MOU approved. Ryan maintained she was never informed plaintiff's training began in 2002. Ryan insisted in conversing with plaintiff, "I stated I could not guarantee any type of provision being made for classes already attended due to the fact the MOU had to be in place prior to an employee participating in the training program." Ryan further insisted there had been no records of the Ohio State Beauty Academy attempting to participate in the WD program prior to her involvement in the situation. Ryan denied verbally promising anything about approval of fund disbursement to either plaintiff or the Ohio State Beauty Academy.

{¶ 9} WD asserted all policy and operating procedures involving implementation of Workforce Development programs are initiated and approved under the authority of the WD Steering Committee. All policies for operation of WD, including the Vocational Training Program are recorded in the Workforce Development Policy Manual ("Manual"). Specifically, in regard to the instant claim, plaintiff was required to apply in writing for funding for a particular training provider, course, and term. After the written application is approved, the applicant is issued a voucher constituting payment approval to the training provider. When class courses are completed, a packet including, the voucher, along with an invoice and course grading information, is forwarded and payment is then completed from the WD fund. In order to receive a tuition voucher an application

must be on file in the WD office. WD procedure requires applications to be in writing and the completed form can be filed on paper or electronically. "Verbal applications are not accepted," pursuant to WD policy and procedure. The application and approved process is controlled by the Manual. The Manual addresses participation in a Vocational Training program providing courses must be pre-approved by WD management staff and, "[o]nly programs issuing credentials from training providers will be pre-approved." Also, the Manual notes, "[c]ourses must meet the criteria established by Workforce Development to participate in this program." WD's Tuition Assistance Plan Directory contained illustrated steps concerning how to file for tuition assistance. Plaintiff apparently did not follow the application process steps in a timely manner. WD denied any application is filed or approved verbally, despite plaintiff's assertions she verbally filed a tuition assistance application and she received verbal assurances the application was approved.

{¶ 10} According to WD records, plaintiff began taking courses at the Ohio State Beauty Academy in September, 2002, before any written application for a tuition assistance voucher was submitted and before the Beauty Academy submitted a completed MOU. WD maintained an MOU information packet was not requested by the Beauty Academy until February, 2003, and the completed MOU packet was submitted in July, 2003. This MOU packet was admittedly the wrong type of MOU packet and therefore, "determined to be in error." Consequently, a second

packet was required, a Vocational Training Program MOU packet. This second packet was sent to the Beauty Academy on January 14, 2004, and returned to WD on June 17, 2004. Finally, the WD Steering Committee approved the Ohio State Beauty Academy as a Vocational Training Program training provider on July 30, 2004. Upon being notified the Beauty Academy was a recognized training provider, plaintiff submitted tuition assistance applications for fifteen courses she had taken from September, 2002, to February, 2003.

{¶ 11} Once correct applications for Vocational Training Provider tuition assistance were filed, WD related the applications were submitted for processing. WD explained, the particular applications for tuition assistance that plaintiff requested were ultimately denied because the Ohio State Beauty Academy, "was not an approved training provider during the time that the courses were taken." WD related, the fact plaintiff left State employment in August, 2004, had no bearing on the decision to deny her tuition assistance requests. WD asserted the decision to deny plaintiff's application was based solely on the fact she had taken courses at the Ohio State Beauty Academy before the institution was recognized by WD as an approved training provider.

{¶ 12} Plaintiff submitted a cassette tape of two telephone messages apparently left at her residence answering machine, by a caller identifying herself as Fran Ryan from Workforce Development. The dates of these phone messages have not been determined. In the actual messages, Ryan asks plaintiff to

return her phone call to talk about submitted applications. Also, Ryan mentions the applications being submitted on the wrong form and needing to be redone. Additionally, Ryan appears to state a contract has been approved. After reviewing the submitted cassette tape, the trier of fact finds the phone messages recorded on the tape carry little weight and have no probative value regarding the issue before the court that plaintiff was promised she would receive tuition assistance before she completed any courses at the Beauty Academy.

{¶ 13} At first glance, it appears plaintiff's dispute over tuition assistance payments may have been covered and subject to the terms of the collective bargaining agreement between OCSEA/AFSCME LOCAL 11 and the state. Article 25 of the collective bargaining agreement contains a detailed grievance procedure culminating in final and binding arbitration of complaints and disputes between union members and the state. Conversely, under the facts of this claim, plaintiff may not be subject to the terms of the collective bargaining agreement since she had terminated her state employment by the time she received notification her tuition assistance request was denied. This tuition assistance denial may, or may not, have been grievable, but once plaintiff ended her employment with the state it appears collective bargaining terms did not apply. Given the (1) nature of WD as a joint union/state venture, (2) plus the final denial of a tuition assistance request was received after plaintiff was no longer subject to rights under the collective bargaining agreement due to terminating her

employment, (3) and the fact disputes regarding disbursement of tuition assistance from WD are not specifically or generally addressed in the union contract grievance procedure, the court concludes the instant action falls outside the definition of a grievance in Section 25 of the collective bargaining agreement. Generally, this court does not have jurisdiction over alleged violations of collective bargaining agreements.² *Moore v. Youngstown State University* (1989), 63 Ohio App. 3d 238, 578 N.E. 2d 536. However, for the above stated reasons, the court concludes the collective bargaining agreement Section 25 grievance and arbitration procedure does not apply. WD has no internal rule or policy for appeal of a decision to deny tuition assistance to an eligible party. Therefore, with no contract procedure available, no apparent statutory directive, and no WD internal mechanism at hand to provide an administrative remedy, jurisdiction over the disputed issue rests with this court.

{¶ 14} Essentially, plaintiff has contended she is entitled to recover tuition expenses under promissory estoppel. As a general authority promissory estoppel cannot be utilized as a basis for recovery against the state. *Sun Refining & Marketing*

² R.C. Chapter 4117 establishes a framework for resolving public sector labor disputes by creating procedures and remedies to enforce those rights. R.C. 4117.10(A) provides that a collective bargaining agreement between a public employer and the bargaining unit "controls all matters related to the terms and conditions of employment and, further, when the collective bargaining agreement provides for binding arbitration, R.C. 4117.10(A) recognizes that arbitration provides the exclusive remedy for violations of an employee's employment rights." *Gudin v. Western Reserve Psychiatric Hosp.* (June 14, 2001), Franklin App. No. 00AP-912; See *Oglesby v. City of Columbus* (Feb. 8, 2001), Franklin App. No. 00AP-544.

Co. v. Brennan (1987), 31 Ohio St. 3d 306, 511 N.E. 2d 112. However, exceptions to this general principle do apply. Any exception, however, applies on a limited basis under rare circumstances. The Tenth District Court of Appeals in *Pilot Oil Corp. v. Ohio Dept. of Transp.* (1995), 102 Ohio App. 3d 278, at 283, 656 N.E. 2d 1379 at 1382-1383, cited such circumstances exist for applying promissory estoppel against the state where:

{¶ 15} "(1) the state uses its discretion in the interpretation of a law or rule, (2) the state's interpretation is not violative of legislation passed by the General Assembly of Ohio, and (3) the elements of promissory estoppel are otherwise met." Under the conditions described, "promissory estoppel may be employed to bar the state from asserting a contrary interpretation where the state had full opportunity to make an informed decision and, in fact, did make an informed decision."

{¶ 16} The test set forth for promissory estoppel is whether the defendant should have reasonably expected its representation to be relied upon by the promisee and, if so, whether the expected action or forbearance actually resulted in and was detrimental to the promisee. *Mers v. Dispatching Printing Co.* (1985), 19 Ohio St. 3d 100, 483 N.E. 2d 150. This test involves four prongs. First, there must be a promise to the promisee. Second, the promisee must have relied on the promise. Third, the reliance must be justifiable. Fourth, the reliance must cause a detriment to the promisee. The court finds, by a preponderance of the evidence, no WD staff with

authority to approve tuition assistance made a promise to plaintiff that her tuition for September, 2002, to February, 2003, or any other term would be paid. Plaintiff failed to show WD made any promises to reimburse her tuition debt before she incurred the debt. None of the elements of promissory estoppel have been met. Consequently, this claim is denied.

IN THE COURT OF CLAIMS OF OHIO

JANET SWIFT	:	
Plaintiff	:	
v.	:	CASE NO. 2005-06431-AD
WORKFORCE DEVELOPMENT	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

: : : : : : : : : : : : : : :

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Janet Swift
503 N. 6th Street
P.O. Box 459
Kalida, Ohio 45853

Plaintiff, Pro se

Tracy M. Gruel
Assistant Attorney General
Court of Claims Defense Section

Attorney for Defendant

150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

RDK/laa

5/17

Filed 6/1/06

Sent to S.C. reporter 3/1/07