

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

COALITION OF GRADUATE EMPLOYEES

And

OREGON STATE UNIVERSITY

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Appearances:

KATHRYN A. LOGAN, Senior Assistant Attorney General, appeared on behalf of OSU.

KAREN BARTHOLOMEW, Field Representative, appeared on behalf of the Union.

ARBITRATION AWARD

Coalition of Graduate Employees, (herein “Union”) and the Oregon State University (herein “OSU”) jointly selected the Undersigned from a panel of arbitrators provided by the Oregon Employment Relations Board as the impartial arbitrator to hear and decide the dispute specified below. The Undersigned held a hearing on November 23, 2009, in Corvallis, Oregon. The parties each filed post hearing briefs, the last of which was received on December 22, 2009.<sup>1</sup>

ISSUES

The parties were unable to state the issues. They agreed that I might state them. I state them as follows:<sup>2</sup>

1. Was the grievance timely filed?
2. Did OSU violate the collective bargaining agreement when it failed to remit the \$34 Summer School charge for the 2008 academic year?
3. What is the appropriate remedy?

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<sup>1</sup> The parties agreed that the grievance procedure of the 2006 to 2008, shall apply to this dispute. The parties agreed that I could reserve jurisdiction over the specification of the remedy if either party requests that I do so in writing, copy to the opposing party within sixty (60) days of the award. The parties stipulated that the tape recordings of the hearing were for the arbitrators own notes, won't be available to either party and will be erased after the award is rendered.

<sup>2</sup> See the discussion below concerning the statement of the issues.

RELEVANT AGREEMENT PROVISIONS

October 29, 2004 to June 30, 2008 Agreement<sup>3</sup>

“ . . .

ARTICLE 12 – Tuition Waiver

Section 1. Graduate assistants appointed at 0.2 FTE and above are exempt from the payment of tuition for up to 16 credits hours taken in any quarter at which the appointment applies. The current overload tuition will be assessed for such excess hours as set forth in the Oregon University System “Academic Year Fee Book.”

Section 2. In the administration of the above policy, graduate assistants shall be required as a term or condition of employment to enroll for and maintain a minimum of twelve (12) graduate credit hours toward the degree throughout the term. However, the Dean of the Graduate School may approve undergraduate credits in a relevant program of study as a meeting the twelve (12) credit minimum.. Nothing in this contract will preclude an academic advisor from recommending additional hours as appropriate for the student’s academic program.

Section 3. Notwithstanding Section 2, during a given summer term the Dean of the Graduate School may elect to allow graduate assistants to meet the criteria for tuition waiver when enrolled for a minimum of nine (9) credit hours toward the degree.

Section 4. Nothing in this Article shall be interpreted to restrict the Oregon University System in any manner in the exercise of their statutory duty to establish tuition.

. . .

ARTICLE – 18 – GRIEVANCE PROCEDURES

Section 1,

. . .

(c) Grievances shall be filed within twenty-one (21) calendar days of the date the grievant or Union knew or should have known of the facts giving rise to the alleged grievance.

Section 3. To advance a grievance to arbitration:

. . .

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<sup>3</sup> The parties agreed that Article 12 is substantively identical in the successor agreement.

(c) The arbitrator shall have authority to hear and rule on issues which arise over arbitrability. Such issues if raised must be heard prior to hearing the merits of the grievance advanced to arbitration. The parties may mutually agree to allow the arbitrator to take procedural issues under advisement and to proceed with the hearing on the merits. If the arbitrator rules the grievance is non-arbitrable, he/she shall not issue a ruling on the merits.

(d) If either party request that the post-hearing briefs be filed, the arbitrator shall set the date for submission of those briefs.

(e) The parties agree that the decision and award of the arbitrator shall be final and binding. The arbitrator shall have no authority to rule contrary to or change any of the terms of this Agreement.

....“

#### FACTS<sup>4</sup>

Oregon State University (herein “OSU” or “Employer”) is one of the seven higher education institutions which comprise the Oregon University System (herein confusingly referred to as “OUS”). OSU and the other state higher education institutions are funded in part by the State of Oregon. OSU and those institutions are governed on behalf of the State through the Oregon State Board of Higher Education (herein “Board”) which as part of its functions approves budgets, student tuition and fees charged to students. OSU is also funded partyl from tuition and fees collected from students. It has other sources of revenue which are not relevant to this dispute.

The Union is the certified representative of essentially all Graduate Teaching Assistants (herein “GTA”) and Graduate Research Assistants (herein “GRA”) of the Oregon State University. It has been the certified representative since about 2000.

The majority of employees in the bargaining unit are Graduate Teaching Assistants. They teach classes, run labs, grade papers, hood discussion sections, answer e-mail from students. Graduate Research Assistants assist in research projects. Employees may be in the unit as little as two years and as much as six years.

Each year OSU departments submit their requests for fees and tuition. The same are compiled by the Office of Budget and Fiscal Planning and are forwarded to the Board which are subject to their approval and adoption pursuant to ORS Sec. 351.070. The requests for the summer session are compiled annually in essentially the same way by the Summer Session

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<sup>4</sup> More facts are stated in the “Discussion” section of this award.

Office into a summer session fee book or planning guide. For many years before the Union was organized, Oregon State University has charged students who take classes in the summer session what it terms a “front-end load fee” which in 2008 was \$34. This fee has been approved by the Board in prior years and was approved for the year 2008. For the convenience of the Board, this fee has always been incorporated in the first credit hour of tuition for summer session. Although the charges for summer session are the same per credit, the first credit hour is \$34 more without explanation in the fee books for 2008 and prior years. The reason it appears this way is solely to save space and for the convenience of the Board. Students who sign up for summer session receive a bill in early July. In 2008, it was mailed on July 5. The bill is due by August 1. The \$34 fee is listed on this bill as a separate line item called “Summer Session Base. “

Brian Dietel is a graduate student employed in a position in the bargaining unit. On July 31, 2008, he e-mailed Union Organizer Dennis Dugan to inquire whether the \$34 was covered by the tuition waiver specified in the collective bargaining agreement. Organizer Dugan forwarded the questions to Union Vice President for Collective Bargaining Rob Hess. Vice President Hess made a telephone call to Associate Director of Employer and Labor Relations Jeri Hemmer who represented OSU for collective bargaining. She responded by telephone on August 5, 2008, and told him that the fee had been in place for at least five years and was not subject to remission. She refused to label it as “tuition” or a “fee.” On August 26, 2008, Vice President Hess filed the grievance which is the subject of this dispute. The Employer contends that this grievance was not timely filed, but it was in all other respects properly processed to arbitration. There was a substantial delay before arbitration which occurred by mutual agreement of the parties.

The Union has apparently filed a grievance on the same subject for 2009.

Vice President Hess himself has been a graduate student at OSU since 2003. He has been a teaching assistant in the bargaining since about 2006. He first became active in the Union in 2007 as its Secretary-Treasurer and then became Vice President for collective bargaining in 2008.

The “Academic Year Fee Book” for 2008-2009 provides an explanation of the concept of “tuition” and “fees.” The Book itself is adopted as a rule of the Board although the Board itself does not distinguish between the terms “fees” and “tuition.” Instead it lumps all of those together as “fees.” It provides in relevant part:

#### TUTION AND FEE POLICIES FOR 2008-09

##### A. Tuition Structure and Assessment

“ . . . . Tuition revenue supports the administrative and instruction costs of each OUS institution. . . . There are three basic tuition and fee structures at OUS institutions: The academic year, summer session and continuing education programs.

....

## Summer Session

As with the academic year tuition supports the direct instruction and administrative costs of each institution's summer session program. For summer session programs, tuition may be assessed on a per-credit hour basis or aligned to the preceding academic years' structure. . . . (see Summer Session Fee book for specific summer fees and policies.)

....

## C. Fees

Fees fall into five distinct categories: Mandatory Enrollment Fees, Universal Resource Fees, Programmatic Resource Fees, One-Time Fee and Other Student Fees. . . .

...

[The Fee Book describes fees normally charged at OUS institutions with some detailed explanations. It does not describe the disputed fee.]

OSU runs on a quarter school year system. It has three regular quarters, fall, winter and spring. The summer session is a fourth, supplementary quarter. About a quarter of the bargaining unit works in the summer session. Full-time students who go to summer sessions often take less than a full-time class load. Attendance in the summer session is voluntary for students. GRA and GTA's are required to register for the summer session.

The Board requires that summer sessions at the seven institutions be "self supporting" in general. Essentially, this means that it is the intent of the Board that general program revenue not be used to fund summer sessions.

In this regard, OSU established a summer school office. The summer school office is staffed by two full time employees. The employees in this office administer the summer school program and also promote the summer school program to students. OSU has since at least 1995 funded the administrative operation of its summer school office and other parts of the summer school program through a "fee" of a nominal amount charged to every student who enrolls in the summer school program and takes any credits. Similar fees are charged in some, but not all, of the other institutions. At OSU the disputed fee is co-mingled in the general fund with tuition for the summer session. The fee is used to fund the administrative costs of the summer school office including the salaries and benefits of its two full-time employees, the costs of promoting the summer school program, some scholarships and may also be used to fund instruction.

Negotiations for the 2008-2012 collective bargaining agreement were on-going at the time this grievance was filed, but no change occurred to the language of the disputed provisions.

#### POSITIONS OF THE PARTIES

##### UNION:

The \$34.00 fee is tuition. The OSU 2008 summer session billing statements listed the charge as "Summer Session Base" and shows the fee as embedded in the first credit hour of tuition. No reference is made in the fee book and that this is an additional "fee." OSU uses the term "fee" to refer to both tuition and fees. It is the nature of how the money is used that differentiates their allocation. The "Academic Fee Book," the "2008" Summer Session Fee Book," and the "2009 Summer Session Fee Book" state specifically that tuition supports the direct instruction and administrative cost of each institution. All fee books clearly state that tuition supports direct instruction and administrative costs. The \$34 fee is used to support instruction and administrative costs.

The Employer's witnesses testified that the \$34 Tuition Base charge covered summer school administrative costs, salaries, scholarship and cultural activities because the summer session does not receive the same level of state support and must be self-sustaining. By OSU's own definition, this is clearly a tuition charge.

Fees that the parties agree are not covered in tuition fee remission are set in a straight forward way and cover items other than those for which the "fee" in dispute is charged. OSU has misrepresented this "fee" by embedding it in "tuition." The \$34 fee has never been clearly represented to students as anything other than tuition. Students do not become aware of the \$34 fee as a "fee" when they enroll in the summer session. Some of the exhibits presented by the Employer show what the students actually see. However, many of the documents submitted by the Employer were generated internally and were never seen by the students.

The "2009 Summer Session Fee Book" added a footnote that was never approved by the Board as a "fee." The document which was submitted to the Board for approval did not have the footnote denominating the embedded \$34 fee as a "fee." Instead, the footnote was added in response to this grievance.

The grievance was timely filed by the Union. The Union became aware of the issue on July 31, 2008. The Union contacted the Employer on August 5, 2008, and was not given a satisfactory response. The grievance was filed within 21 days on August 5, 2008. The Employer has tried to argue that the Union became aware of the grievance on July 5, 2008, when statements were sent out. This argument is without merit for two reasons. First, not every student reads their statement when they are sent out. They may read them as late as when they are due, August 1, 2009. Second, the collective bargaining agreement sets the start of the initial filing deadline from when the Union knew or should have known of the facts. The earliest this

could start is when Dennis Dugan and Jerri Hemmer spoke on the phone which was August 5, 2008 . The Employer's argument that the Employer has charged this fee since 1989 and, therefore, the Union has accepted it, is without merit because the basis of the charge was not reasonably accessible to the Union or the employee. It was hidden in the tuition table and not mentioned anywhere on the public list of fees. The Union requests an order finding that the disputed fee is "tuition" subject to remission in perpetuity and that the employee-students who have been paid the fee be reimbursed.

EMPLOYER;

The grievance is untimely and should be dismissed on that basis. The agreement provides that a grievance must be filed within twenty-one calendar days of the date the grievant knew or should have known of the facts giving rise to the alleged grievance. There are several points in time at which the grievant and/or the Union knew that the \$34 fee was not being waived. The first was during the summer of 2006 when Mr. Hess was charged the fee, rather than having the expense waived as tuition. He knew about and paid the fee then. The second was the similar situation into the 2007 summer session. He was a Union officer then. The third is when he paid the bill in that summer session.

Although he was not an officer in the Union, he was a bargaining unit member at that time. There are also two times in the 2008 summer session when the Union knew, or should have known. The first was when graduate students received their bills (about July 5) and the second is when they paid them (August 1, 2008). The grievants had actual knowledge as of July 31, 2008, when Mr. Dugan received an e mail questioning the charge. Mr. Dugan received suspected a contract violation then or he would not have contacted Ms. Hemmer on August 4, 2008 about the charge. The Union, therefore, should have filed a grievance on or before August 21, 2009. Accordingly, the grievance should be dismissed as untimely.

The Union has failed to establish by a preponderance of the evidence that the Employer violated the agreement. The Union has presented two arguments in favor of their position. First, that since the fee is included in the first hour of tuition, it must be tuition. Second, the Board approved the \$34 as tuition and not as a fee.

The Union's arguments are without merit because the Board does not distinguish between tuition and fees. Under ORS 351.070(3)(d) and (e), the Board may 'prescribe incidental fees' and may collect "optional fees." Thus, by statute the term "fees" includes both tuition and other fees. The statutory language explains the use of the term "Fee Book" by the Oregon University System for the two books adopted by rule. It also explains why the Oregon University System was not concerned about establishing another column for the OSU Sumer Session Tuition Base Fee. All that the Board is legally required to do is approve the fees through the rule making process.

The Board adopted the \$34 fee in its 2008 and 2009 Summer Session Fee Book. The Fee Book reflects that the \$34 summer session fee was assessed first, and then made the base to which the credit hours of tuition charges were added which is also reflected in the description of the fee on the student billing statements. This interpretation is supported by the 2009 fee book where the Oregon University System allowed OSU to add an explanatory footnote. The Board adopted the 2009 fee book including the footnote. The footnote can be viewed as relating back to 2008. Therefore, the Board adopted the \$34 as a “fee” as explained by the footnote.

Because the term “fee” is used broadly by the Board and the Oregon University System, their definitions are of little help. Instead, what is important is how Oregon State University treat the \$34 expense. Since 1989, Oregon State University has consistently treated the \$34 as a “fee.” The fee has been charged to undergraduate and graduate students alike. It has been listed for years as a non-tuition-waiver expense on student bills for year.

The Union is attempting to gain through arbitration what it could have sought in bargaining, but chose not to. Contract negotiations were on-going during the time of this dispute. The Union had every opportunity to add language to the contract to include the waiver of the \$34 fee in tuition. It did not do so as evidenced by the 2008-12 contract.

Even if the grievance is upheld, the remedy should be limited to the 21 days before the filing of the grievance. Similarly, the Union is barred from recovering for summer 2009, because it failed to advance the grievance it filed on July 29, 2009 and the footnote in the Summer Session Fee Book clearly designate the \$34 fee as not covered by the tuition waiver clause. The Employer asks that the grievance be dismissed in its entirety.

## DISCUSSION

### 1. Statement of the Issues

The difference between the parties as to the statement of issues involves the scope of the remedy. The Union seeks a remedy involving reimbursement of all affected students going back well beyond the filing of this grievance and affecting students in the 2009 summer session. It also seeks a prospective remedy requiring the Employer to remit the disputed fee in perpetuity. The grievance which was presented was the 2008 grievance. There was some evidence as to what happened in 2009. I conclude that the sole grievance before me is the 2008 grievance and the dispute as to a remedy for a prior and successor years is solely one of the appropriate remedy for the violation which allegedly occurred in 2008 based upon the assumption that prior and successive years necessarily must have the same result. I have stated the issues accordingly. I note that the parties waived the requirement in the grievance procedure that issues about arbitrability be heard and decided before the merits.

## 2. Timeliness

The Employer's argument that the grievance is untimely because it was not filed in previous years is without merit. First, the fee is set and charged on annual basis. Thus, while the funds generated by the disputed fee have been used for similar purposes in the past, the evidence is unclear as to the specific way it has been used. In any event, it is a reoccurring event. The second reason is by far more important. The fee involved has always been a small amount. The Employer's actions have obfuscated the existence of the disputed fee by incorporating it in the summer session fee schedule in a manner in which it would not necessarily be recognized. There is no evidence that the purpose of the fee was ever sufficiently explained so as to give rise to any reason to question it. The amount of the fee is close to another fee which is a legitimate fee. The fee is not charged at all of the institutions. This is also truly a situation in which a student might well presume that this was a legitimate fee. I am satisfied that this is not a situation in which the Union or employees should necessarily have recognized this issue in prior years. For both reasons, I conclude that a grievance relating to the 2008 fee is one which is appropriate.

The Employer has also alternatively argued that even if a grievance were appropriate for the 2008 summer session fee, it was still not timely. This argument is also without merit. The grievance procedure requires that the ". . . grievance shall be filed within twenty-one (21) calendar days of the date the Grievant or Union knew or should have known of the facts giving rise to the alleged grievance . . ." In order to file a grievance, the grievant or the Union has to know two facts. First it has to know that the disputed fee was charged. Second, it has to have a reasonable knowledge of facts which would show that the disputed fee was "tuition." The grieving student should know of the disputed charge by August 1 of each year when he or she is required to look at his tuition bill. In 2008, the disputed fee was listed in the tuition schedule in a manner which obfuscates its existence. It is listed on a student's bill. The bill is first due on August 1. It is reasonable that students would not look at their bill until they pay it. Therefore, August 1 of each session is the first time that an employee "should know of that the fee is charged. Additionally, there is an independent reason why the grievance does not arise until August 1 of each summer. That is because the contract cannot be violated until the employee is required to pay the fee. Prior to that time, the fee exists, but can be rescinded by the Employer at any time. Therefore, no contract violation occurs until the employee is required to pay the amount due.

The better view of the grievance procedure is that another fact that the grieving employee or Union needs to know is that the fee was used for administrative expenses and academic instruction in the summer session. Any other view would require the filing of needless grievances. The nature of this fee was not clear in the 2008 fee book and was, in fact, obfuscated. In order to have a reasonable basis to file this grievance, the grieving employee or the Union would have had to make an inquiry. Unit employee Dietel did so by turning to his Union by e-mail on July 31, 2008. Union Organizer Dugan took reasonable steps to inquire

about it by contacting the Employer's representatives on Tuesday, August 5, 2008. The answer he was given was inadequate and he had to make other inquiries. The grievance was filed August 26<sup>th</sup>. I am satisfied that the grievance herein was filed well within 21 days of the time the Union or the employee knew or should have known of the essential facts. For all of the above reasons, it is timely.

### 3. Contract Interpretation

One of the major functions of labor arbitrators is to interpret ambiguous language. In this regard arbitrators apply the standards of contract construction long applied by arbitrators and the courts in the light of the realities of the work place and collective bargaining. Arbitrators seek to determine what the parties actually intended or, where the parties may not have had an actual intent, what parties similarly situated would have intended.<sup>5</sup>

The parties' positions have framed a major issue of contract interpretation as to the meaning of the terms "tuition for up to 16 credits hour" in Article 12, Section 1 of the agreement. The Employer essentially argues that the waiver only applies to items included in the credit hour charges to employees at the time the parties negotiated the language and not to anything that had been excluded by the employer. It may also be arguing that the designation of what is to be included in the waiver in the future is solely a matter for Employer discretion beyond the credit hour charges historically regularly waived by the Employer. The Union argues that anything which is "tuition" other than overload credit hours is waived whether included in the charges the Employer assesses for credit hours, except for credit hours beyond the stated amounts. Either interpretation is plausible.

There is no evidence that the concept of "tuition" was discussed when the language in dispute was first adopted. Further, the undisputed evidence establishes that the Board has never had a definition of "tuition" and "fee," but, rather, sets both under an all-encompassing concept of "fees." The definition or distinction between the two has been generally established by the Employer's conduct over the years.

I note that had the phrase read as a whole does not limit the concept of "tuition" as to whatever the Employer chooses or has in the past chosen to charge for credit hours. The language includes the word "for" instead of the word "of" which would have been appropriate had the concept of "tuition" been thus limited.

In any event, it is very unlikely that the parties would vest in the Employer the right to change the concept of tuition by taking costs normally associated with tuition in the credit hour charges and making them a "fee." See, for possible example, the "energy surcharge" discussion

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<sup>5</sup>NAA, The Common Law of the Workplace: The Views of the Arbitrators (BNA, 2<sup>nd</sup>.ed.), Sec. 2.1 et seq.

at Union exhibit 7, page 15. Therefore, the better view of this language is to give the concept of “tuition” independence in the construction of the disputed phrase.

#### 4. Merits of 2008 grievance

The Employer has argued that because the disputed amount was charged as a “fee” at the time the language was negotiated it should be considered “fees.” Arbitrators give heavy weight to the past practices of the parties. The core of the past practice doctrine is the fact that it signifies the parties’ mutual understanding of a set of circumstances.<sup>6</sup> Here, however, it is not likely that the fact that the parties did not address this in bargaining and have not addressed it in the years prior to 2008 show any understanding of the parties. “Fees” of a similar nature are charged at some of the seven institutions in the Oregon University System. The amounts involved are small. The amount involved in this case was obscured in the tuition fee schedule. It is therefore more likely that neither party was aware of the nature of the disputed amount in negotiations leading to the disputed language. Accordingly, the fact that it existed at the time of negotiations and in years prior to 2008 is given little weight.

The parties have agreed that the major distinction between “tuition” and “fees” (in the less encompassing sense) is that “tuition” is primarily charged by the credit-hour and pays the students’ share of the costs of administration and direct instruction in the academic program. There are other sources of revenue paying for those costs, including, but not limited to, state general purpose revenue during the regular school year.

The parties also agree without dispute that fees generally are for activities and services which are in addition to, or different from the costs of administration and direct instruction. This distinction was made by all of the relevant witnesses in this proceeding.

Associate Vice President for Finance and Administration Helligman also explained that the basic distinction between “fees” and “tuition” is that “tuition” can be used anywhere in the budget, but “fees” are restricted to a specific use.

The relatively undisputed evidence is that the disputed fee is charged of all students who enroll in summer session<sup>7</sup> and is used to pay the salaries and overhead of the summer session office. It may be also used for some instruction costs, financial aid and for the purpose of promoting the summer session program. While the testimony in this case was not detailed, the preponderance of the evidence leads to the very strong conclusion that all of the above services would fall within the concept of “the costs of administration and direct instruction” if they were to occur in the regular school term.

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<sup>6</sup> Common Law, supra, Sec. 2.20 et seq.

<sup>7</sup> But remitted for some other employees

The motivation for having a separate summer session office and for charging a separate fee is mainly because the legislature has determined that state general purpose revenue should not be used for funding summer sessions. While other fees have special purposes which appear to be recognized by the parties, treating the summer school office as a separate expense because of limits on state finding tends to be a purpose which conflicts with the terms of the collective bargaining agreement. The agreement expressly provides that summer session tuition is to be remitted as well. It makes no mention of a separate funding source. Further, whatever the source of funds, unit employees are employed to teach in summer session in the same manner that they are employed in the regular terms.

Finally, the real reason this appears to be structured as a “fee” rather than “tuition” relates not to the purpose in the previous paragraph, but to the exigencies of collecting “tuition” by the credit hour in the summer. Students are less likely to take a full credit load in the summer and by expressly “front loading” the fee rather than spreading it over all credit hours, OSU more fairly distributes the costs. Accordingly, I conclude on the basis of the preponderance of the available evidence that the disputed fee is solely “tuition.” The available evidence indicates that once the funds from the disputed fee are received, they are co-mingled in the general fund. I also conclude that it is not tuition in excess of the stated number of credit hours. Accordingly, it is “tuition” subject to remission.

## 5. Remedy

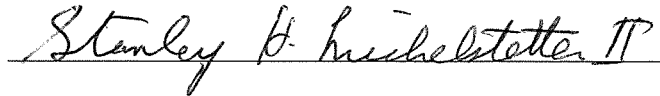
The appropriate remedy is to order payment to the affected students for the summer session of 2008. No grievance was filed in previous years and the circumstances may have been different then. It is inappropriate, therefore, to make any back pay award for years prior to 2008. The billing leading to this grievance was somewhat retroactive. The twenty-one day time limit does not preclude a remedy for circumstances in existence before the start of the period and the Employer’s argument that the remedy should be limited only to the period 21 days before the grievance is both impractical and changes the meaning of the time limits. The Union’s argument that there should be a prospective order affecting 2009 and subsequent years is inappropriate. First, the determination of whether a putative “fee” is “tuition” is based upon specific accounting facts. The determination here was made upon a preponderance of the limited available evidence. More specific evidence might produce a different result. Second, the parties bargained a new agreement with knowledge of the existence of this dispute without a change in the applicable language or dealing with this issue in some other way. Those circumstances must be addressed. The issue at hand is better left for future bargaining under the circumstances.

## AWARD

The Employer violated the agreement when it failed to remit the \$34 fee in dispute for the 2008 summer session. The Employer shall refund the fee for that summer session for all affected unit employees. I reserve jurisdiction over issues arising from the specification of remedy if

either party requests that I do so in writing, copy to the opposing party within (60) days of the date of this award.

Dated at Madison, Wisconsin, this 13<sup>th</sup> day of February, 2010.

A handwritten signature in cursive script, reading "Stanley H. Michelstetter II", is written over a horizontal line.

Stanley H. Michelstetter II, Arbitrator