

BEFORE
JAMES R. COX
ARBITRATOR

IN THE MATTER OF AN)
ARBITRATION BETWEEN)
)
METROPOLITAN ALLIANCE OF)
POLICE, BOLINGBROOK)
COMMAND CHAPTER #4)
)
and)
)
VILLAGE OF BOLINGBROOK)

UNION'S POST-HEARING MEMORANDUM

Pursuant to the Collective Bargaining Agreement between Metropolitan Alliance of Police and the Village of Bolingbrook, the parties selected Arbitrator Cox as the Arbitrator to decide the issues in this grievance arbitration proceeding. A hearing was held before Arbitrator Cox on March 8, 2010.

This Post-Hearing Memorandum is submitted pursuant to leave granted by the Arbitrator at the conclusion of the hearing.

INTRODUCTION

I.

CONTRACTUAL PROVISION
AT ISSUE

At issue in this grievance is the following provision in the collective bargaining agreement:

Section 17.3 Tuition

The Employer encourages Officers to improve and upgrade their skills through participation in job-related courses at local colleges and universities. Tuition for

approved courses will be reimbursed by the Employer, provided the Officer meets the following requirements:

- a. The Officer is a full-time Employee of the Police Department and has completed his/her probationary period.
- b. The program is job-related and the Officer has requested and received prior approval from the Chief of Police before enrollment.
- c. The Officer attends an accredited school.
- d. The Officer remains with the Village for six (6) months after the course reimbursement. Should the Officer, for any reason, terminate before the conclusion of the six (6) month service, the Village will be reimbursed on a prorate basis.
- e. The Chief of Police will submit a Purchase Order in advance of enrollment for proper approval.
- f. The Employer will limit reimbursement for tuition costs to a maximum of \$2,400.00 per fiscal year per employee, plus fifty percent (50%) of the costs for all texts required for qualified courses of study. This section shall be retroactive to May 1, 2007.
- g. To qualify for reimbursement, Officers must have receipts for tuition plus a grade report card showing the course work was completed with a grade of "C" or above.
- h. All tuition reimbursement is subject to the availability of funds as provided in the annual budget
- i. There will be no tuition reimbursement program not directly related to Police management or the Police field nor will there be tuition reimbursement for any doctorate or law degree course work.

II.

GRIEVANCE

On May 5, 2009, Lt. Freeman filed a Step 1 grievance for the denial of tuition reimbursement for fiscal year 2009-2010. On May 28, 2009, the grievance was denied.

On May 8, 2009, Sgt. Drabek filed a Step 1 grievance for the denial of tuition

reimbursement for fiscal year 2009-2010. On May 28, 2009, the grievance was also denied. On June 2, 2009, grievances from both MAP 3 and MAP 4 were consolidated regarding the denial of tuition reimbursement. On June 10, 2009, a Step 4 hearing was held. The Village Attorney, Mr. Jim Boan opined there was no contract violation when the Village denied the tuition reimbursement.

III.

ISSUES

Whether the Village violated Section 17.3 of the collective bargaining agreement when it failed to provide tuition reimbursement for two officers; and if so, what should the remedy be.

IV.

STATEMENT OF FACTS

Commander Teppel testified that right around January, a memorandum is sent out requesting anyone interested in tuition reimbursement for the upcoming year, submit the request the Chief of Police for consideration for the upcoming fiscal year. Tr. 26. On November 14, 2008, a memorandum went out advising the employees that in 2009 there would be no tuition reimbursement available. Tr. 27. In fiscal year 2007-2008, Commander Teppel spoke to the chief that he was accepted into a program. Tr. 29. The chief informed him that there should be enough money in the budget and therefore submit a memorandum to the chief. *Id.*

Commander Teppel would be the link in the chain of command so members of his division would submit the request for tuition reimbursement to the commander and then he would give it to the chief. Tr. 37. Expense for tuition reimbursement are done prior to enrolling in the class. *Id.* Commander Teppel has received the tuition benefit five or six

times and never turned down. Tr. 38. The November 14th memorandum was the first memorandum he has seen where the tuition funds have run out and are no longer available. Tr. 39. He does not recall any communications where the department told the officers to refrain from tuition requests for the 2009-2010 because it was not budgeted. Tr. 40. There is no document that the officers receive after submitting their request for reimbursement that advises them they are going to receive tuition reimbursement. Tr. 41.

Mr. James Boan, the Village attorney testified in late December or January, the department heads submit a budget to the Finance Department. Tr. 31. The Finance Department is charged with projecting revenues and accumulating all the Department's expenses. *Id.* In February, there is a release of a draft back to the Departments showing the total revenues being projected for the Village. *Id.* There is a process through which the staff comes up with either revenue enhancements or expenditure reductions that ends up with a balance budget that the staff presents to the Village Board. *Id.* The Village Board looked to eliminating discretionary spending in order to save as many jobs as possible. Tr. 33. In March or April 2008, the Village Board during budget hearings discussed that the tuition reimbursement program would not be funded. *Id.*

Mr. Boan does not know how many requests for tuition reimbursement were submitted for 2009-2010. Tr. 46. If a line item from the budget was eliminated, employees were not notified. Tr. 49. Mr. Boan does not know if a department head would notify employees there was no money budgeted, except for the posting of the budget. Tr. 50.

Lieutenant Lockard testified that an officer would submit the memorandum for reimbursement prior to the budget year in January or February. Tr. 56. It was always

assumed that once the memorandum was submitted, it would be approved. *Id.* In his 20 years with the department, Lt. Lockard has never seen a memorandum that money has run out or that the tuition reimbursement was not going to be funded. Tr. 58. The officers have always been told to put requests in January for that upcoming budget year. Tr. 58-59. The officers have never been told not to submit requests because there was no money. Tr. 59. Instead, they were told to put in the request for those monies so the tuition reimbursement could be funded in the upcoming budget year. Tr. 59. Prior to this grievance, when an officer had complied with the criteria in Section 17.3 of the contract, no one has been denied reimbursement. *Id.*

V.

ARGUMENT AND LAW

THE VILLAGE HAS FAILED TO PROVE A FINANCIAL REASON TO CUT
THE TUITION REIMBURSEMENT PROGRAM

The Village argues that the tuition reimbursement program was cut due to the recession and the need to save jobs of its employees. However, the Union introduced several exhibits regarding the expenditures of the Village to show how the Village is spending their money. For example, in 2009, the Village paid \$800 for DJ services for its fireworks show. Union Ex. No. 8. Union Exhibit 9 is a list of expenses – in excess of \$95,000 -- paid by the Village for flowers, sod, mulch and planters. For the 2009 fireworks, the Village paid \$38,000 for fireworks and an additional \$9,560 in overtime to staff the fireworks. Union Ex. 10 and 11. Furthermore, the Village spent additional overtime for the Pathways Parade and Jubilee. Union Ex. 11 and 12. Union Exhibit 13 is several invoices for legal services for labor issues the Village.

Despite the claims from the Village that it is not immune to the downturn in the economy, its expenditures do not show a Village in dire straits. In fact, its expenditures on non-essential items prove a fully functioning, economically stable village. It has not proven an emergency situation where it could not continue to operate or that it had no other alternative but to refuse tuition reimbursement. There was no evidence that the cost of the tuition reimbursement program would make it impossible for the Village to stabilize its financial condition or that the Village could not achieve financial stability absent the change in the tuition reimbursement. Although the Village argues it had to cut the tuition reimbursement from the budget in order to balance its budget, the Village has failed to make a persuasive argument that eliminating the tuition reimbursement was either necessary or even effective means in reaching that objective. Therefore, this Arbitrator should reject the Village's economic arguments and reward the officers the tuition reimbursement.

PAST PRACTICE OF THE VILLAGE PREVENTS REFUSAL OF TUITION REIMBURSEMENT

In 1960 the U.S. Supreme Court established the legal status of past practice as it applies to labor agreements when it stated "[t]he collective bargaining agreement covers the whole employment relationship. It calls into being a new common law – the common law of a particular industry or of a particular plant." *Steelworkers v. Warrior and Gulf Co.* 363 U.S. 574 (1960). The Court further explained that "[t]he labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law - the practice of the industry and the shop - is equally a part of the collective bargaining agreement although not expressed in it. *Id.*, at 582. A past practice based on

a mutual agreement is part of the contract. When the employer ignores, departs from, changes or eliminates the practice, a violation occurs upon which the union can grieve.

To determine whether a practice may be treated as a binding implied term of agreement, arbitrators often examine whether the practice deals with a major condition of employment. Archibald Cox and John T. Dunlop have urged that "a collective bargaining agreement should be deemed, unless a contrary intention is manifest, to carry forward for its term the major terms and conditions of employment, not covered by the agreement, which prevailed when the agreement was executed." *The Duty to Bargain Collectively During the Term of an Existing Agreement*, 63 Harv. L. Rev. 1097, 1116-17 (1950).

The Village has an established past practice regarding the tuition reimbursement program. Lt. Lockard testified that in his 20 years at the department, requests for tuition reimbursement were submitted in order for it to be budgeted for the next fiscal year. Furthermore, once the request was submitted it was a forgone conclusion that the request would be approved. On November 14, 2008, the Village exercised Section 17.3(h) is when it announced there would no tuition reimbursement for fiscal year 2009. Union Ex. 6. This announcement was only pertained to tuition reimbursement for 2009. Thus, it's the Villages practice to send notification the elimination of the tuition program for a particular fiscal year. Since, the Village failed to send notification to employees there would be no funds for tuition reimbursement for 2010, it is obligated to pay for tuition reimbursement pursuant to Section 17.3.

CONCLUSION

Wherefore, the Metropolitan Alliance of Police respectfully request this arbitrator to find that the Village has failed to prove an economic need to eliminate the tuition reimbursement for 2009 – 2010. Furthermore, since the Village has failed to notify its employees it would not fund tuition reimbursement in fiscal year 2010, it is obligated to reimburse the officers accordingly.

Respectfully Submitted,

BY:


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