

**MAP HAS WON A MAJOR GRIEVANCE** on behalf of our Prospect Heights Patrol and Prospect Heights Sergeants, where forced furlough days were the issue.

An arbitrator has decided that the city, under management rights, cannot unilaterally force chapter officers under the contract to take furlough days.

What is noteworthy in the decision is the arbitrator's statement that the Village of Prospect Heights has no one to blame but themselves for this predicament.

The grievance was argued by MAP attorney Jerry Marzullo.

IN THE MATTER OF ARBITRATION

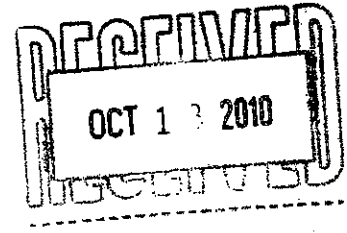
BETWEEN

METROPOLITAN ALLIANCE OF  
POLICE CHAPTER NOS. 252 & 253

AND

CITY OF PROSPECT HEIGHTS

) Arbitration Award:  
) FMCS Case Nos. 090807-03708-A,  
) 090714-03349-A  
) Furlough Grievances  
)  
) Before Raymond E. McAlpin,  
) Arbitrator  
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APPEARANCES

For the Employer: Amy Moor Gaylord, Attorney for City  
Barbara Barrera, Financial Consultant

For the Union: Richard Reimer, MAP Union Attorney  
Jerry Marzullo, MAP Union Attorney  
Joseph Pawlicki, Sergeant  
Scott Minniear, Patrolman  
Mary Lindgren, Detective

PROCEEDINGS

The Arbitrator remanded the remedy portion to give the Parties an opportunity to reach a mutually satisfactory settlement of the above grievances. This was unsuccessful. Therefore, the Arbitrator will assert jurisdiction.

## REMEDY

As noted in the July 20, 2010 award, there is no question that the City of Prospect Heights is in dire financial straights. The Citizens of Prospect Heights have no one to blame but themselves for this predicament. It is certainly reasonable for the City to make efforts to cut costs, but the question is "How can that be accomplished?" There is a Management Rights provision at Article II of the Collective Bargaining Agreement (reproduced above). This is often described as general language. There is also a provision at Section 14.2 which discusses layoff only. There is no mention of furloughs in either Collective Bargaining Agreement. Where contract language is specific in some respects it will normally be held to supercede other more general clauses. 'Specific' most often means constituting or falling into a named category. In addition, arbitrators also find that to express one thing is to exclude all others, i.e. to mention one item in a group or class of items and not to mention others may be construed to mean that the others were meant to be excluded. Therefore, the only recourse based on the lack of a mutual agreement is for the city is to follow the language below:

## ARTICLE XIV - XIII

### SENIORITY

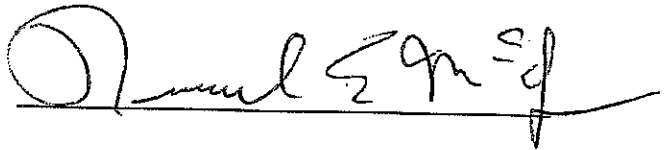
Section 14.2 - Patrol and 13.2 - Sergeants. Layoffs Layoffs, for reason of lack of work or reduction of the work force, shall be made in the inverse order of job classification seniority. All probationary employees in a position affected by layoff shall be separated before any non-probationary employee shall be subject to such a reduction in the work force. The City shall provide, whenever possible, at least ninety (90) days notice of layoffs.

Given the circumstances the 90 day notice may be waived if the City determines to follow the layoff provisions.

AWARD

Grievance sustained in accordance with the above.

Dated at Chicago, Illinois this 16<sup>th</sup> day of October, 2010.

A handwritten signature in black ink, appearing to read "Raymond E. McAlpin", written over a horizontal line.

Raymond E. McAlpin, Arbitrator

**IN THE MATTER OF ARBITRATION**

**BETWEEN**

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   **Mary Lindgren, Detective**

**PROCEEDINGS**

**The Parties were unable to reach a mutually satisfactory settlement of a certain grievance and, therefore, submitted the matter to arbitration pursuant to Article VI, Sections 3 and 4 of the Collective Bargaining Agreements between Chapters 252 and 253 and the City of**

**Prospect Heights. The hearing was held in Prospect Heights, Illinois on March 24, 2010. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses, and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the Collective Bargaining Agreement had been complied with and that the matter is properly before the Arbitrator. Final briefs were received on June 27, 2010.**

### **ISSUES**

**The Parties stipulated to the following issues at pages 7 and 8 of the transcripts:**

**Did the City violate Section 16.1 in Appendix A of the Collective Bargaining Agreement between MAP Chapter 252 and the City of Prospect Heights? If so, what is the appropriate remedy?**

**The second issue is at follows:**

**Did the City violate Section 15.1 in Appendix A of the current Collective Bargaining Agreement between MAP Chapter 253 and the City of Prospect Heights? If so, what is the appropriate remedy?**

**PERTINENT CONTRACT PROVISIONS**

**COMMON TO BOTH PATROL OFFICERS' AND SERGEANTS'**

**COLLECTIVE BARGAINING AGREEMENTS**

**ARTICLE II**

**MANAGEMENT**

**Section 2.1. Management Rights.** Except as expressly limited by the express provisions of this Agreement, and subject to the powers of the Prospect Heights Fire and Police Commission, the City retains all traditional rights to manage and direct the affairs of the City in all of its various aspects and to manage and direct its employees, including but not limited to the right to make and implement decisions with respect to the following matters without having to negotiate over such decisions or the effects of such decisions: to establish, plan, direct, control and determine the budget and all the operations, services, policies and missions of the City; to supervise and direct the working forces; to determine the qualifications for employment and job positions and to employ employees; to determine examinations and examination techniques, and to conduct examinations; to determine policies affecting the training of employees; to schedule and assign work, to transfer and reassign employees; to establish work, performance and productivity standards and, from time to time, to change those standards; to assign overtime; to purchase goods and services; to determine the methods, means, organization and number of personnel by which departmental services shall be provided or purchased; to make, alter and enforce rules, regulations, orders and policies; to evaluate, promote or demote employees; to determine whether work and/or services are to be provided by employees covered by this Agreement (including which employees) or by other employees or persons not covered by this Agreement; to discipline, suspend and/or discharge non-probationary employees for just cause in accordance with the applicable provisions of the Illinois Municipal Code (probationary employees without cause); to

change or eliminate existing equipment or facilities and to introduce new equipment or facilities; to subcontract work; to establish, change, add to or reduce the number of hours, shifts, tours of duty and schedules to be worked; and to relieve or layoff employees. The City shall also have the right to take any and all actions as may be necessary to carry out the mission of the City and the Police Department in the event of civil emergency as may be declared by the Mayor, the City Administrator, Police Chief or their authorized designees, which may include, but are not limited to, riots, civil disorders, tornado conditions, floods or other catastrophes or financial or other emergencies, and to suspend the terms of this Agreement during such civil emergency.

**ARTICLE V/ARTICLE VI  
GRIEVANCE PROCEDURE**

**Section 5.1/Section 6.1. Definition.** A “grievance” is defined as a dispute or difference of opinion concerning the interpretation or application of the express provisions of this Agreement raised by an employee (or by the Chapter pursuant to Section 6.8 of this Agreement) against the City involving an alleged violation or misapplication of an express provision of this Agreement, but shall exclude any dispute or difference of opinion concerning the suspension, removal or discharge of an employee or other action which is subject to the jurisdiction of the Board of Fire and Police Commissioners of the City.

...

**Section 5.4/Section 6.4. Arbitrator’s Authority.** The arbitrator shall consider and decide only the specific issue(s) submitted to him. The arbitrator shall have no power or authority to render a decision (1) contrary to the express provisions of this Agreement or (2) restricting, limiting or interfering in any manner with the powers, duties or responsibilities granted to or imposed on the City or the City Fire and Police commission under this Agreement, applicable law or public policy. The arbitrator shall not have the power to amend, delete, ignore, add to or change in any way any of the terms of this Agreement or to impair, minimize or reduce any of the rights reserved to management under the terms of Article II or other terms of this Agreement, either directly or indirectly, nor shall the arbitrator have the power to substitute the arbitrator’s discretion for that of management. In addition, the arbitrator shall have no authority to impose upon any party any obligation not provided for explicitly in this Agreement, or to issue any decision or propose any remedy which is retroactive beyond the period specified in Step 1 of this grievance procedure. Any decision



or award of the arbitrator rendered within the limitations of this Section 6.4 shall be binding upon the Chapter, the employee and the City.

**PATROL OFFICERS' COLLECTIVE BARGAINING AGREEMENT**

**ARTICLE XVI  
WAGES**

**Section 16.1. Wage Schedule.** Employees shall be compensated at a minimum in accordance with the wage schedules attached to this Agreement as Appendix A. All wages and wage-related benefits shall be retroactive to May 1, 2005. All retroactive benefits shall be paid within two (2) weeks of approval by the City Council.

**SERGEANTS' COLLECTIVE BARGAINING AGREEMENT**

**ARTICLE XV  
WAGES**

**Section 15.1. Wage Schedule.** Employees shall be compensated at a minimum in accordance with the wage schedule attached to this Agreement as Appendix A. All wages and wage-related benefits shall be retroactive to May 1, 2002.

**ARTICLE XIV - XIII**

**SENIORITY**

**Section 14.2 - Patrol and 13.2 - Sergeants. Layoffs** Layoffs, for reason of lack of work or reduction of the work force, shall be made in the inverse order of job classification seniority. All probationary employees in a position affected by layoff shall be separated before any non-probationary employee shall be subject to such a reduction in the work force. The City shall provide, whenever possible, at least ninety (90) days notice of layoffs.

## UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

The City of Prospect Heights has a Mayor, a City Administrator, five Aldermen and an outside Finance Director. The City is a non-home rule municipality. The City has various forms of income and has the authority to borrow money.

The City established its own Police Department in July, 1990. Prior to that time the Cook County Sheriff's Department provided police services. The structure of the Department currently consists of the Chief of Police, Deputy Chief, sergeants, corporals and patrol officers. The City has various numbers of officers on duty depending on the shift and whether or not it is during the week or on the weekends. There is no minimum manning provision in either contract.

The Metropolitan Alliance of Police (MAP) has been the only Union representing the police bargaining units since it was organized in 1998. Under the police unit there are 17 sworn officers with two members absent without replacement. With respect to the sergeants' unit, it consists of five sergeants - one was promoted to commander and has not been replaced. The last sections of both contracts are

essentially the same as is Appendix A. The City did not propose to change either of these during recent negotiations.

On June 2, 2009 the Parties were continuing negotiations for successor agreements. The Union was informed that that afternoon the City was announcing a unilateral implementation of citywide furloughs. The City stated that it was going to introduce 24 hours of furlough each month beginning July 1, 2009 for the next ten months. That afternoon members of the Police Department and the Chief held their own meeting to help the City save money and avoid any furloughs. The bargaining units made proposals that would have saved the City over \$160,000 and this was reduced to writing. The Union offered further concessions which are contained within Union Exhibit 13. The Union determined that the City was going to save in excess of \$243,000 based on the furloughs which was clearly in excess of the Police Department's share of the shortfall and almost as much as the entire City shortfall.

The explicit language of the Collective Bargaining Agreement allows only for layoffs and not furloughs. The contractual language in each of the respective contracts contemplates layoffs being the only recourse to the City. The Union provided numerous citations in support of this position. The Management Rights provision provides that broad based management rights can be expressly limited by the provisions of the Collective Bargaining Agreement. The unambiguous provision regarding reduction of the work force is the express limitation on the Management

**Rights clause of the contract. Both contracts anticipate an annual wage based on an officer's hourly rate. The language in the contract makes it clear that furloughs were never contemplated, but the layoff mechanism was and it was modified and defined during subsequent contracts.**

**Section 16.1 of the police contract and Section 15.1 of the sergeants' contract are read in conjunction with Appendix A. These provisions are not permissive, but mandatory and are duly bargained for in the Collective Bargaining Agreements. In addition to the Collective Bargaining Agreements, the pertinent Illinois statute does not contemplate furloughs at any time. Furloughs are not contemplated throughout the entire Board of Police and Fire Commissioners Act. The only way to effectuate a reduction in force is to implement layoffs.**

**Arbitrators generally do not interpret the term 'layoff' broadly to include any reduction in the normal work week that results in a loss of work. There is no authority to reduce the work week absent an explicit contractual provision. The annual wage provisions in Appendix A limit the City's authority only to layoff, not to reduce the annual pay. Again, the Union provided a number of citations. The contract contains a guarantee of full work by more senior employees as opposed to more junior employees. In addition, the City's contention that there is a minimum manning provision should carry no weight as well since those would only be of interest in the absence of explicit contractual provisions. As noted above, there are officers and**

**sergeants who are absent from the active roster and the City made no effort to fill those vacancies.**

**Unilateral implementation of furloughs violates the contract clause of the United States Constitution. A number of citations were provided. As in those citations, the contract between the Parties was impaired. An impairment was substantial and was not reasonable and necessary. This is particularly true since the City made a unilateral implementation of this plan. The City never bothered to negotiate with the Police and Sergeants Unions over these furloughs as it did with other bargaining units. There were several other more reasonable and moderate alternatives that would have served the City's purposes. The Union has never argued that the current economic situation is difficult, however, unilaterally implemented furlough plans are not the appropriate approach.**

**The evidence regarding the City's budget shortfall after June 4, 2009 is not relevant and should be ignored in its entirety. The City used information that was in its possession prior to June 2, 2009 to determine the \$250,000 shortfall. A significant number of City exhibits were prepared after the fact and after the decision to unilaterally implement the furlough system and, therefore, should be ignored. In any event the City has clearly engaged in fiscally unsound management practices which should not now alleviate its responsibilities under the duly bargained for and authorized Collective Bargaining Agreement. The City had numerous opportunities**

to increase its income in a number of different ways and which were not implemented.

The City attempted to show that one of the reasons for its financial crisis is the requirement to fund the Police Pension Fund. The record shows that the funding dropped dramatically in recent years. Much of the problem is resulting from the chronic under-funding of the Pension Fund for a number of years.

The record shows that the city has violated the duly bargained for contracts between the two bargaining units by violating the clear and unambiguous language of those contracts as well as the United States Constitution. The City has only itself to blame for the financial mismanagement which has led it to a unilateral implementation of an improper reduction in force. Therefore, the grievances should be sustained, the City should cease and desist furloughing bargaining unit members and award back pay and damages as well as any other remedy deemed appropriate.

## **EMPLOYER POSITION**

**The following represents the arguments and contentions made on behalf of the Employer:**

**This is a dispute involving the City's inherent managerial right to implement employee furloughs. The City is in extremely dire financial circumstances. The City made every effort to increase its revenue streams but was unsuccessful in closing its budget gap. Section 2.1 of the Collective Bargaining Agreement gives the City the right exclusively and unencumbered to implement furloughs. The Police Chief has the right to set and change minimum manning requirements which are not established pursuant to any Collective Bargaining Agreement.**

**Many of the revenue sources for the City are economically driven. The state is also considering a decrease in the amount of income tax that would be allocated to local governments. This would result in the City losing approximately \$400,000. The state has proposed an increase in the property tax cap which would only replace about 25% of its lost income tax revenue. Obviously, the City's home-rule status has an impact on its revenue sources. The City has made a number of attempts to change this through referendum in 2008 which were unsuccessful. In addition, the City has no realistic borrowing options.**

The City is facing a budget crisis due to the projected deficit in the General Fund. The City has made every effort to reduce expenses as it formulated a budget for fiscal 2010. The City has experienced significantly decreased revenues beyond what had been budgeted for the 2010 fiscal year. The City considered its options and determined that furlough was the appropriate remedy.

The impact of furloughs on the Police Department did not diminish the police officers' hourly rate. The City contacted the Union's attorney and left the matter in the Police Chief's hands. These discussions, while seemingly appropriate, were in fact short-lived, illusory and fleeting.

During the fall of 2009 the City's financial calamity was continuing and there was no indication that the City would be able to discontinue the furloughs. The reasons for the additional decline was primarily due to reduced revenues. The City made additional efforts to increase its own revenue streams.

The City began preparations for the 2011 budget year. It appeared that the deficit would be increasing which, even after all additions and deletions, resulted in a \$451,000 deficit. The City considered that layoffs alone would have resulted in a situation that would have crippled the City's ability to operate and is simply not a viable option. The City then determined that a combination of layoffs and furloughs would close much of the gap. Despite this, the City's budget deficit worsened. The City



continues to take steps to reduce its costs and achieve budget savings. The Union has not established a violation of the contracts. The Unions bear the burden of proof. The plain language of the Management Rights clause supports the City's decision. The City provided numerous citations in support of this position. The City has the sole right and discretion to reduce employee work hours, shifts and tours of duty. The City's right to implement furloughs is unlimited and unfettered. Again, citations were provided. The Management Rights provision is clear and unambiguous and preserves and retains the City's right to implement furloughs and reduce employee work hours.

There is no showing in this matter that the City's actions were arbitrary or capricious. Furloughs were implemented universally and across the board solely in an effort to address the budget crisis and after exhausting its limited ability to increase revenues. Therefore, a financial emergency existed and furloughs were implemented as a matter of last resort.

The Union has waived bargaining over furloughs because the Unions clearly and unmistakably waived bargaining over the decision to implement furloughs as well as any bargaining over the effects of that decision during the life of the Collective Bargaining Agreement. Again, citations were provided.

The Union bears a heavy burden seeking to establish that the City violated the Agreement in this instance. For all the foregoing reasons the City respectfully submits

that the Union has failed to satisfy this burden and requests that the grievance be denied.

### DISCUSSION AND OPINION

In contract interpretation cases, the arbitration process is not a court of equity in which the Arbitrator has the luxury of determining what is fair, equitable or even reasonable in the face of what might be considered by some to be unreasonable contract language. Where an arbitrator determines that the contract language is clear, it is his/her obligation to order the Parties to follow that course of action. Arbitrators receive their authorities from the appropriate arbitration statutes, the issues stipulated by the Parties, and most importantly the Labor Agreement. It is the Arbitrator's obligation to read the agreement, and once he/she determines the intent of that language, to relate that intent to the Parties. This must be done irrespective of the Arbitrator's personal feelings as to what would constitute an appropriate or perhaps even a reasonable provision of a Collective Bargaining Agreement.

There is no question that the City of Prospect Heights is in dire financial straights. Much of this can be attributed to the fact that the City is a non-home rule city. The City has made reasonable efforts to try to become a home-rule city, and this

has been rejected by the citizens of Prospect Heights, and in this Arbitrator's opinion, a very short-sighted decision on their part. Severely under funding safety and security departments will not only affect property values but put citizens at risk.

It is certainly reasonable for the City to make efforts to cut costs, but the question is "How can that be accomplished?" There is a Management Rights provision at Article II of the Collective Bargaining Agreement (reproduced above). This is often described as general language. There is also a provision at Section 14.2 which discusses layoff only. There is no mention of furloughs in either Collective Bargaining Agreement. Where contract language is specific in some respects it will normally be held to supercede other more general clauses. 'Specific' most often means constituting or falling into a named category. In addition, arbitrators also find that to express one thing is to exclude all others, i.e. to mention one item in a group or class of items and not to mention others may be construed to mean that the others were meant to be excluded.

By resorting to furloughs, the City did try to spread the pain among employees. Taxpayers have limited the City as to what options it has. Layoffs, of course, affect only individual employees and also impact the City's ability to fulfill its mission. The Arbitrator finds that the City made reasonable efforts to increase revenues and to reduce expenses. The Arbitrator would also note that the labor agreement contains provisions which speak to annual wages.

Prior to proceeding to the remedy portion of this case, the Arbitrator would note for the record here that arbitration is not a proper forum for determining constitutional law and, therefore, he will not make any rulings with respect to that argument.

The most disturbing element of this case to this Arbitrator is the fact that the Parties and particularly the City, who is the moving Party here in terms of the furloughs, made no reasonable efforts to negotiate with the Union over this matter. The duty to bargain and to bargain in good faith is a continuing one. It does not only exist during the collective bargaining negotiations but it does exist throughout the relationship. The Arbitrator finds that the appropriate initial remedy is to give the Parties the opportunity to do what they should have done in the first place. The Parties will be given sixty (60) calendar days from the receipt of this award to meet and confer in a good faith manner to attempt to resolve this matter that will meet both the City's economic circumstances and the needs of the bargaining unit. Should the Parties fail to achieve an agreeable conclusion, then the Arbitrator will reassert jurisdiction and will fashion a remedy within a reasonable period of time from notification of an impasse. The Arbitration would urge the Parties to work together during these very difficult times in order to meet as best they can the needs of both sides.

**AWARD**

**Grievance partially sustained in accordance with the above.**

**Dated at Chicago, Illinois this 20<sup>th</sup> day of July, 2010.**

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**Raymond E. McAlpin, Arbitrator**