

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**CITY OF RICHLAND CENTER
(POLICE DEPARTMENT)**

and

**RICHLAND CENTER POLICE DEPARTMENT,
LOCAL 2085-A AFSCME, AFL-CIO**

Case 54
No. 57298
MA-10583

Appearances:

Boardman, Suhr, Curry, & Field, Attorneys at Law, by **Mr. Steven C. Zach**, Fourth Floor, One South Pinckney Street, P.O. Box 927, Madison, Wisconsin 53701-09827, appearing on behalf of the City.

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of the Union.

ARBITRATION AWARD

The City of Richland Center, hereinafter referred to as the City, and the Richland Center Police Department, Local 2085-A, AFSCME, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a Request for Arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the transportation of employees. Hearing on the matter was held in Richland Center, Wisconsin on June 11, 1999. Written arguments were received by the undersigned by June 30, 1999. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

ISSUE

During the course of the hearing the parties were unable to agree upon the framing of the issue and agreed to leave framing of the issue to the undersigned. The undersigned frames the issue as follows:

“Did the City violate the collective bargaining agreement when it terminated the practice of transporting employees between their residence and the Police Department?”

"If so, what is the appropriate remedy?"

BACKGROUND

The City and the Union have been parties to a number of collective bargaining agreements. For over twenty (20) years the City has, for employees that requested it and who resided within the City Limits, provided transportation to and from work. Usually, the police officer going off duty would pick up the police officer going on duty approximately fifteen minutes prior to the start of the shift so the police officer would be at their work position five (5) minutes prior to the start of their shift. The police officers would use the time driving to and from the work place to brief each other and go over any special orders for the shift. In November of 1998 the Department moved into a new facility. Prior to the move the Department was located in downtown Richland Center and there was limited parking available. The new facility is located outside the downtown area and has ample parking. On December 14, 1999 Chief of Police Craig Chicker posted the following notice:

“All officers will provide their own way to and from work, parking is provided, i.e., officers will not be picked up or transported home.”

Thereafter a grievance was filed and processed to arbitration in accord with the parties' grievance procedure. The record also demonstrates that approximately one year prior to the change the Union informed the City that employees would no longer be “giving time” by being picked up fifteen (15) minutes prior to the start of their shift. Thereafter the City began picking up police officers five (5) to ten (10) minutes prior to the start of the shift.

Union's Position

The Union contends the transportation practice constitutes a binding past practice. The Union points out it was unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time. The Union asserts that there is no claim by the City that the practice was in any way equivocal being used by Chief Chicker himself when he was a bargaining unit employee.

The Union also argues that the underlying basis for the practice has not changed. The Union argues there is no basis the practice was based upon limited parking at the old facility or that there are no longer briefing sessions in the vehicles. The Union also points out that the practice was in existence prior to Chief Chicker's hiring in 1972 and that there is no evidence there ever was a parking problem at the old facility. The Union also asserts that although a representative objected to not receiving pay when reporting fifteen (15) minutes prior to the shift, that from that day on employees were no longer required to report fifteen (15) minutes early, the practice of transporting employees still continued. The Union further points out that Police Officer Daniel Pepich and Captain David Kropp testified the briefing of police officers still continued after the change was made to transport closer to shift start times.

The Union concludes that the practice is long standing and well understood, and, that the City failed to demonstrate that the basis for the practice had changed. The Union would have the undersigned direct the City to reinstate the practice.

City's Position

The City does not dispute the existence of a practice of transporting police officers to and from work. Nor does the City dispute that the practice was unequivocal, enunciated and acted upon over a period of time. The City does contend that the circumstances which gave rise to the practice have changed and therefore the City can unilaterally discontinue the practice. The City points out both retired Captain Jack Bauer and Chief Chicker testified one of the reasons for the transportation of officers was to facilitate briefing and that another reason was that there was limited and unsecured parking. The City asserts both of these underlying factors no longer exist.

The City stresses that per the Union's demand, employees are no "giving time" to the City by being picked up and briefed fifteen (15) minutes prior to the start of the shift. The City asserts this has resulted in briefing being done "on-shift" rather than in the squad car. The City also points out that new facility has ample parking and a lot that restricts public access.

The City concludes that when the Chief discontinued the practice of transporting police officers to and from duty he did so because the underlying factors for the practice no longer existed. The City argues the factual record and arbitral law concerning past practice require a denial of the grievance.

DISCUSSION

There is no dispute that there existed a practice concerning the transportation of police officers to and from work. The fundamental question therefore is did the underlying factors which gave rise to the practice change. Retired Captain John T. Bauer testified that when he started working for the City as a meter person on January 1, 1964, he was aware of the practice of transporting police officers to and from work and he knew it was a benefit. When he became

a sworn officer two (2) months after he was hired as meter person, he took advantage of the practice and continued to use the practice until he retired in April of 1995. Although Bauer testified he thought the practice was primarily used for briefing purposes, the practice was already in existence when he commenced working for the City. The record does not contain any evidence which would demonstrate Bauer knew how the practice started or why it was started.

The record also demonstrates then when Chief Chicker was initially hired by the City on April 1, 1972, the practice had already been in existence for at least eight (8) years. The record does not contain any evidence which would demonstrate the Chief knew how the practice started or why it started.

Therefore, the undersigned finds, the City's contentions that the underlying factors for establishing the practice were briefing time and lack of parking, while reasonable presumptions, to be mere speculation. The undersigned concludes that the City has failed to demonstrate what the underlying factors were for the establishment of the practice. While conditions have changed over time, there is no conclusive evidence which would demonstrate that the factors the practice was based upon have changed. The undersigned therefore finds, based upon the above and foregoing, that the City's unilateral termination of the practice violated the parties' collective bargaining agreement. The City is thus directed to reinstate the practice. If the City desires to terminate the practice it can do so by providing the Union with written notice that the practice would terminate when the collective bargaining agreement does.

The undersigned would note here that nothing herein should be construed that would mandate that the City not reinstate the practice in its entirety as it existed prior to the change sought by the Union ("giving time") a year and a half ago. The practice is not a mandate but at the employes' option if the employe resided in the City. Thus the City can reinstate the practice as it existed prior to the change. If the employe does not want to "give time" the employe does not have to participate in the practice. If the Union does not want employes to "give time" it can also seek to change in the practice by giving written notice when the collective bargaining agreement terminates.

AWARD

The City violated the collective bargaining agreement when it terminated the practice of transporting employes between their residence and the Police Department. The City is directed to reinstate the practice.

Dated at Madison, Wisconsin this 25th day of October, 1999.

Edmond J. Bielarczyk, Jr. /s/

Edmond J. Bielarczyk, Jr., Arbitrator

EJB/gjc

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