

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF MILTON

and

TEAMSTERS UNION, LOCAL 695

Case 39
No. 69886
MA-14786

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller and Brueggeman S.C., Attorneys at Law, by **Jill M. Hartley**, 1555 River Centre Drive, Milwaukee, Wisconsin, appeared on behalf of the Union.

Todd Schmidt, City Administrator, 430 East High Street, Milton, Wisconsin, appeared on behalf of the Employer.

ARBITRATION AWARD

Teamsters Union, Local 695, herein referred to as the “Union,” and City of Milton, herein referred to as the “Employer,” jointly selected the undersigned from a panel of arbitrators from the staff of the Wisconsin Employment Relations Commission to serve as the impartial arbitrator to hear and decide the dispute specified below. The arbitrator held a hearing in Milton, Wisconsin, on September 20, 2010. The parties stipulated to the facts and made oral argument at the end of the hearing. The arbitrator made an oral decision at the conclusion of the argument and issues this award to confirm that decision.

ISSUES

The parties stipulated to the following statement of the issues as follows:

1. Did the Employer violate the parties’ collective bargaining agreement or past practice when it denied Grievant Ward Edwardson, reimbursement for his full CDL renewal fee?
2. If not, what is the appropriate remedy.

RELEVANT AGREEMENT PROVISIONS

“ . . .

ARTICLE 7 – MAINTENANCE OF STANDARDS

Section 1. Protection of Conditions. The Employer agrees that all conditions of employment relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Agreement, and conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement.

It is agreed that the provisions of this Section shall not apply to inadvertent or bona fide errors made by the Employer or the Union in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of error.

Section 2. Extra Contract Agreement. The Employer agrees not to enter into any agreement or contract with its employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void.

. . .

ARTICLE 31. WAGES

. . .

Section 2. The CDL requirement will be added for all positions for all new hires. One current employee, Woody Perry, will be grandfathered.

. . . . “

FACTS

The parties stipulated to the facts. The Employer is a Wisconsin municipality which operates a Department of Public Works. The Union represents various employees of the Employer including employees of the Department of Public Works. There are about 10 employees in the bargaining unit. Grievant Edwardson was employed by the Employer in the Department of Public Works and is a member of the bargaining unit. All members of the

bargaining unit except one are required to have a Commercial Driver's License (herein "CDL") pursuant to Article 31, Section 2 of the agreement.

In the early 1990's the State of Wisconsin combined the CDL (then Chauffeur's license) with the driver's own personal driver's license to issue only one license to an individual. The Employer has regularly reimbursed employees who are required to have a CDL as a condition of employment for the original cost of the license and the cost of each subsequent renewal. This was known to all relevant supervisory and managerial employees of the Employer. There is a dispute as to whether the City Council ever knew or authorized the full reimbursement.

Prior to December, 2009 Edwardson renewed his CDL. He was charged a fee of \$74. This renewed both his CDL privilege and his regular driving privilege. The cost of renewing a regular driver's license for someone who does not have a CDL is \$34.

The Employer had combined its Clerk's Office with its Treasurer's Office shortly before December, 2009. In early December, 2009, Edwardson submitted his receipt to the Treasurer for reimbursement of the entire CDL payment. Previously, these submissions were made to the City Clerk. The Treasurer questioned why the Employer should have to pay the full cost of the CDL license. Ultimately, the Employer declined to pay more than the \$40 difference. The Union filed the grievance herein and the matter was submitted February 17, 2010, the Personnel and Finance Committee which denied the grievance. The matter was properly processed to arbitration.

DISCUSSION

Under current law, off-duty conduct operating a personal vehicle which results in a loss of the operator's driving privilege may affect a unit employee's employment with the Employer. Article 31, Section 2 requires that most unit employees have a CDL, but it is silent as to who pays the renewal fee. Article 7, Section 1 provides that the Employer will maintain "all conditions of employment relating to wages, hours . . . and general working conditions." The Employer has conceded that it has regularly reimbursed all employees for the full cost of the CDL at least as far back as the early 1990's and this was known to its management employees. Parties may develop mutual interpretations of their collective bargaining agreement by their conduct. In labor relations this is called "past practice."¹ These parties have done this. It is irrelevant that the City Council may not have been fully apprised of this practice. The practice involved is a minor matter which was well within the scope of management officials' authority to control. This is a "condition of employment relating to wages, hours . . . and general working conditions" within the meaning of Article 7 which may not be changed by the Employer. Accordingly, the grievance is sustained and the Employer is ordered to reimburse Edwardson for the remaining \$34 of his CDL payment.

¹ The concept of "past practice" is defined and its application discussed in NAA, *The Common Law of the Workplace: The Views of the Arbitrators* Sec. 2.20 (BNA, 2d. Ed); see, also, Richard Mittenenthal, "Past Practice and the Administration of Collective Bargaining Agreements" 1961 Proceedings of the National Academy of Arbitrators, page 31 (BNA, 1961).

AWARD

The grievance is sustained. The Employer shall reimburse Edwardson for the remaining \$34 of his CDL.

Dated at Madison, Wisconsin, this 21st day of September, 2010.

Stanley H. Michelstetter II /s/

Stanley H. Michelstetter II, Arbitrator