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June 10, 2010

Malcolm D. Brown
Butzel Long
41000 Woodward Ave.
Bloomfield Hills, MI 48304

Chad D. Engelhardt
Moran Raimi et al
320 N. Main St., Suite 101
Ann Arbor, MI 48104

Re: Oakland County/OCDSA; Grievance No. 008-002; Take-Home Vehicles

Enclosed are the decision and my bill in this matter.

Cordially,



Enclosures

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Oakland County
c/o Malcolm D. Brown, Attorney
41000 Woodward Ave.
Bloomfield Hills, MI 48304

Oakland County Deputy Sheriff's Association
c/o Chad D. Engelhardt, Attorney
320 N. Main St., Suite 101
Ann Arbor, MI 48104

Re: Oakland County/OCDSA; Grievance No. 008-002; Take-Home Vehicles

ARBITRATOR'S BILL

| | |
|--|------------|
| Hearing: 1.5 days (including travel) at \$1,000/day. | \$1,500.00 |
| Study and decision writing: three days. | 3,000.00 |
| Travel and meal expenses: | 50.00 |
| <hr/> | |
| TOTAL AMOUNT DUE: | \$4,550.00 |
| Amount payable by Employer: | \$2,275.00 |
| Amount payable by Union: | \$2,275.00 |

Arbitrator's Tax No. 383427650

ARBITRATION

OAKLAND COUNTY

-and-

Grievance No. 008-002

OAKLAND COUNTY DEPUTY
SHERIFF'S ASSOCIATION

SUBJECT

Policy change; elimination of take-home vehicle use for bargaining unit employees other than those on call for immediate report-from-home assignment while off duty.

ISSUE

Did the Employer's promulgation and January 5, 2008 implementation of the "take home vehicle protocol" violate Article I and/or XXII of the parties' agreement?

CHRONOLOGY

Grievance submitted: February 20, 2008

Arbitration hearing: January 27, 2010

Briefs received: March 25 (Union) and May 21, 2010

Decision issued: June 10, 2010

APPEARANCES

For the Employer: Malcolm D. Brown, Attorney

For the Union: Chad D. Engelhardt, Attorney

SUMMARY OF FINDINGS

The relevant condition of employment in this case was not providing take-home vehicles to bargaining unit employees merely because they held particular assignments, such as patrol investigator, but because it was a requirement of such assignments that they be on call at all times and immediately report from home to job situations during normal off-duty hours, consistent with Board of Commissioners Resolution #93230, incorporated into the agreement by Article XIX. That condition of employment has been maintained under the new protocol, because employees who still have such responsibilities still are provided take-home vehicles, and it would be contrary to Resolution #93230 to provide them to those who do not. Thus there was no violation of Article I or XXII and the grievance must be denied.

BACKGROUND

For many years all employees in the Deputy II classification holding certain “special assignments” within that classification – notably patrol investigators, also referred to as detectives – were required to be on call at all times and immediately report from home to job situations during normal off-duty hours, and were provided take-home vehicles. In response to budgetary exigencies (declining tax revenues and continually rising costs) the Employer reexamined that arrangement in 2007 and promulgated a “take home vehicle protocol” that took effect on January 5, 2008.

It reduced the number of special assignment employees with on-call, report-from-home responsibilities (for example, one patrol investigator per station) and limited take-home vehicles to those who still had such responsibilities. The Employer did not formally notify the Union of promulgation or implementation of the protocol but communicated it to command officers by e-mail on December 26, 2007. Union officers heard about it from members soon after implementation, complained to the Sheriff, requested negotiation (which was denied), and then filed a grievance claiming the unilateral policy change violated Articles I and XXII of the agreement and demanding that it “cease immediately and that all affected members be made whole.”

In Article I the Employer recognizes the Union as exclusive bargaining representative for certain Sheriff’s Department employees, including Deputy II. The Union claims the Employer violated it by promulgating and implementing the protocol without bargaining and refusing its request to bargain after it was adopted.

Article XXII, the Maintenance of Conditions clause, reads as follows:

Wages, hours and conditions of employment legally in effect at the execution of this Agreement shall, except as improved herein, be maintained during the term of this Agreement. No employee shall suffer a reduction in such benefits as a consequence of the execution of this Agreement.

Although the Union emphasizes the guarantee against “reduction in benefits” in the second sentence of Article XXII, that really is not the point of its grievance, there being no claim that execution of the agreement (in 2003) caused any reduction in benefits. The crux of its claim is that providing take-home vehicles to all patrol investigators and certain other special assignment Deputies II was an established condition of employment in

effect when the agreement was executed and the protocol did not “maintain” but *eliminated* it for many employees.

In support of that claim, Union witnesses testified that having a take-home vehicle in such assignments was an important benefit, counterbalancing the added (and otherwise uncompensated) responsibilities of such assignments, particularly the always-on-call responsibility. They also said they sometimes made personal use of such vehicles (and knew others who used them *extensively* for personal activities) and losing them increased their commuting costs and had other adverse economic consequences, in some cases even necessitating the purchase of a second personal vehicle.

They also said the Employer never had communicated restrictions on personal use of such vehicles, but that was shown not to be the case when the Employer placed in evidence two vehicle use policies, issued in 1991 and 2004. The earlier one said “Under no conditions will vehicles be used for purely personal reasons.” The later one said “Employees issued/assigned a county or official vehicle are precluded from the use of that vehicle for non-business related personal use, vacation travel.” Employer witnesses also testified that two bargaining unit employees had been disciplined for improper personal use of take-home vehicles.

Use of take-home vehicles also is addressed in Board of Commissioners Resolution #93230 adopted October 21, 1993 and incorporated into the collective bargaining agreement by Article XIX, which says “All Resolutions of the Oakland County Board of Commissioners, as amended or changed from time to time, relating to the working conditions and compensation of the employees covered by this Agreement . . . are incorporated herein by reference and made a part hereof to the same extent as if they were specifically set forth except as provided and amended by this Agreement.”

In pertinent parts, the resolution says:

II. PRINCIPLES OF VEHICLE ASSIGNMENTS

The County Executive is responsible for the assignment of vehicles. The basic principle in the assignment of a County vehicle to a department, a group of employees or an employee, for the conduct of County business, shall be in the best interest of the County in terms of economy, improvement or necessity of operations. . . .

III. HOME/WORK ASSIGNMENTS

It is the intention of this policy that home/work assignments shall be kept to a minimum. In any case where it is determined that it is to the County’s advantage to have the employee take a County vehicle home at the end of the normal work day, it is understood that the vehicle is to be used for the conduct of official business only, and,

not for personal activities. The County Executive, in determining "Home/Work" assignments will give consideration to the following:

A. Reporting to Job Sites Rather than the Home Office:

Where it is determined that it is to the County's advantage to have the employee report directly to the job site rather than to the home office and later travel to the job site. In such cases, the dollar savings in efficiency of operation must be shown or the need to provide an expected public service apparent. An example is; if the employee normally started work at 8:30 a.m. and had to report to the office first, he/she would not actually start work on the job until after 9:00 a.m.

B. Responding to a Job Situation During Off Duty Hours

Where the employee must report immediately to a job situation during normal off-duty hours, under the conditions described in Section II, paragraphs B, C, D, E and F. Whenever possible such assignments shall be on a rotating basis from a vehicle pool. [The relevant paragraph in Section II is D., which refers to a determination "that a County vehicle is required to effectively carry out the regular functions of the department for the purpose of investigative or undercover work."]

The assignment of vehicles to "Home/Work" status are required to be justified annually by the assigned department and approved by the County Executive.

Neither party presented any of the annual justification statements referred to in the Resolution, but as an example of documents submitted every year by deputies with take-home vehicles, the Employer introduced an Affidavit for Reporting of Taxable Fringe Benefit by a patrol investigator with a statement that his use of his assigned vehicle was "exempt" from taxation because he was a "Police officer on call 24/7."

Major Damon Shields, who was in charge of Sheriff's Department law enforcement services from 2003 to 2008, testified that he knew of no employees who used take-home vehicles for personal activities (other than the ones identified as having been disciplined for such). He said he always considered that a "matter of trust" and thought deputies would "do the right thing." He also testified that the vehicles were provided pursuant to Resolution #93230, because it was considered advantageous for the County that all patrol investigators and certain other special assignment deputies be on call at all times to report immediately to work sites directly from home, but that had to be and was reconsidered in light of worsening budgetary realities.

The Union contends the contract is silent concerning provision and use of take-home vehicles, but providing them to all patrol investigators and other special assignment deputies who had them for many years was a condition of employment established by past practice, which the Employer could not change unilaterally during the term of the agreement. In support of that position it cited several arbitration decisions in cases between

other parties in which long-standing provision of take-home vehicles to all detectives was found to be an enforceable past practice that an employer could not unilaterally repudiate, and tried to distinguish and diminish the significance of a 1994 decision to the contrary in a case between this Employer and the Command Officers Association.

In that case, arbitrator John Coyle found that discontinuing provision of take-home vehicles to jail lieutenants did not violate that contract's maintenance of conditions clause (a one-sentence provision essentially identical to the first sentence of Article XXII in this contract), because that general statement gave way to the specific provisions of the County vehicle policy then in effect and incorporated into that agreement as the current policy is into this one.

That policy, like the current one, said the "basic principle" for assignment of County vehicles was "the best interests of the County." Coyle found that any economic benefit redounding to an employee from having a take-home vehicle could be considered "no more than a coincidental result" of an assignment that was made "exclusively for the operational and economic benefit of the County." Thus he ruled there was no contractual obligation "to perpetuate the coincidental usage of vehicles the grievants have enjoyed as an indirect fringe benefit" and denied that grievance.

The Employer places great emphasis on Coyle's decision, arguing those findings are equally applicable here. It also cites another decision (not involving take-home cars) in which arbitrator Beitner ruled that a grievance protesting an increase in retirees' drug co-pays lacked merit because such increases were authorized in a Board of Commissioners' Resolution incorporated into *this* agreement by Article XIX. The Employer contends the same outcome is required here because the specific provisions of Resolution #93230, incorporated in the contract by Article XIX, prevail over the general maintenance of conditions language of Article XXII and any alleged past practice.

It also argues there was no mutually established and accepted past practice of providing take-home vehicles to all deputies in patrol investigator or other special assignments as a benefit of holding such an assignment. It insists it simply exercised its management prerogative to provide vehicles to employees with on-call, report-from-home responsibilities in its own best interest, consistent with Resolution #93230, and continued to do so, albeit in changed circumstances, under the take home vehicle protocol.

The Employer finds further support for its actions in Article II, which says “methods and means of Department operations are solely and exclusively [its] responsibility.” It asserts that it properly exercised such authority in unit-by-unit decisions on the most efficient methods for on-call assignments and use of County vehicles.

Finally, it contends the other arbitration decisions cited by the Union have no significance in this case, because they involved other parties and agreements without specific contractual requirements for or limitations on take-home vehicle use such as part of this contract through Resolution #93230 and Article XIX.

DISCUSSION AND FINDINGS

The Employer is correct that the key difference between this case and those cited by the Union is that they involved what the arbitrators found to be past practices established independent of any explicit contractual authorization or limitation, because the contracts said nothing about providing take-home vehicles to the affected employees. But in this case take-home vehicles were provided to patrol investigators and other “special assignment” DII’s pursuant to explicit contractual authorization and consistent with explicit contractual limitations: namely, those spelled out in Board of Commissioners Resolution #93230 incorporated into the agreement by Article XIX. Therefore those decisions lend no significant support to the Union's position.

Equally important, considering the alleged “practice” in this case in context with that Resolution, it must be concluded that the “condition of employment” the Employer was obligated to maintain during the term of the agreement was not a bargained-for benefit of take-home vehicles for all patrol investigators and certain other special assignment DII’s merely because affected employees had such assignments. It was much narrower than that because those employees were provided such vehicles because they were always on call and required to report immediately *from home* to job situations during normal off-duty hours, and the County considered it to be to its advantage and in its best interest *as an operational necessity* for them to be able to do so.

In this case as in the earlier one decided by arbitrator Coyle, any benefits that may have accrued to employees working under that arrangement – including saving commut-

ing costs or having one personal car instead of two – were merely coincidental with the Employer's appropriate exercise of managerial prerogatives in its own interest. Thus they were not entitled to continuation of such benefits if their on-call, report-from-home responsibilities were discontinued.

Neither, it might be added, were they *ever* entitled to *carte blanche* use of Employer-provided take-home vehicles for personal use. Resolution #93230 and County vehicle policies mentioned above made it clear they were not to be used “for personal activities.” If some employees nevertheless did use them for personal activities, without management knowledge or approval, any such noncompliance with the policies did not create any such entitlement either.

The Employer had the management right under Article II to change its method of operation regarding assignment of on-call/report-from-home responsibilities, and it did so for legitimate, well documented budgetary reasons. After restricting such responsibilities to fewer employees specifically assigned to be on call to report immediately to job situations from home on particular days, it had not only the contractual authority but the obligation, through Article XIX, to provide take-home vehicles only to those employees who actually qualified for them under Resolution #93230.

The “take home vehicle protocol” did exactly that; thereby maintained the relevant condition of employment; and the Employer was not obligated to bargain with the Union about the operational changes therein because they involved no alteration or repudiation of the agreement. Thus the protocol did not violate Article I or XXII, and the grievance must be denied.

AWARD

Grievance No. 008-002 is denied.



Paul E. Glendon, Arbitrator
June 10, 2010