



CLINE & ASSOCIATES

# CLINE LAW NEWSLETTER

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Relying upon specific provisions of the CBA, the arbitrator found that the CBA allows the Employer to “manage and direct” the employees of the bargaining unit, to “schedule and assign work,” to establish “specialty positions and to select personnel to fill them,” and to determine “training needs and to assign employees to training.” He found that while seniority controlled shift overtime, the shift seniority provisions of the CBA did not have direct application to the special task force assignment at issue.

## Arbitrator Holds CBA Seniority Clause Not Violated When Probationary Officer Assigned to Task Force

An arbitrator held that a CBA provision that reserved management’s right to assign personnel to specialty and training positions trumped another provision in the contract that provided for shift overtime to be assigned by seniority. *Northeastern Illinois University*, 127 LA 158 (2009).

The CBA of Northeastern Illinois University and the Illinois Fraternal Order of Police Labor Council provides that “shift overtime” shall “be offered to the employees working the affected shift by seniority.” The CBA also provides that the Employer retains the right “to schedule and assign work; to establish and eliminate specialty positions and to select personnel to fill them” and “to determine fitness and training needs and to assign employees to training.”

In April 2008, there were a string of armed robberies and car burglaries in the vicinity of the Employer’s campus. As a result, the police department formed a special joint task force to put an end to the crimes taking place near campus. The Employer assigned a probationary police officer to the task force where he earned about 23 hours of overtime. The Union grieved alleging that the Employer violated the CBA by assigning a probationary police officer to the task force, allowing him to earn overtime that should have been offered, per the CBA, to a more senior member of the bargaining unit.

The arbitrator determined that the CBA was not violated and denied the grievance. He reiterated the “plain meaning rule” which provides that “if the words in the CBA are plain and



**Have a question?**

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clear, conveying a distinct idea, there is no occasion to resort to interpretation and the meaning is to be derived entirely from the nature of the language used." Relying upon specific provisions of the CBA, the arbitrator found that the CBA allows the Employer to "manage and direct" the employees of the bargaining unit, to "schedule and assign work," to establish "specialty positions and to select personnel to fill them," and to determine "training needs and to assign employees to training." He found that while seniority controlled typical shift overtime, the shift seniority provisions of the CBA did not have direct application to the special task force assignment at issue.

**Sometimes, different provisions of a CBA will seem to conflict with one another. For example, in this case, the shift seniority provision seemed to conflict with management's right to assign specialty positions and determine training needs. This is where doctrines of contract interpretation come into play. A classic example is the doctrine called "the plain meaning rule" which provides that if the words in the contract are clear, i.e., capable of being interpreted on their face, then there is no need to go outside "the four corners of the contract".**

On the other hand, if the words in the contract are ambiguous and subject to differing interpretations, the arbitrator will look at "parol evidence", i.e., evidence outside the four corners of the contract, to interpret what the parties meant when they drafted the contract. Such "parol evidence" could include past practice, comments made when the bargain was reached, or other "outside" evidence.

*Reba Weiss.*

## **ASK JIM**

**Question: Does the employer have to negotiate a change in dental benefits?**

**Dear Jim:**

We recently attended a medical insurance meeting regarding our dental insurance. The County is looking at other dental insurance carriers. Do we as the Guild, have to sign off on any dental insurance changes?

The last time we allowed a change, I think we got the short end of the stick. So, we want to make sure it doesn't happen again.

*Nervous.*

PERC case law specifically holds that if management has a need to change insurance carriers, they must provide a replacement carrier that offers “substantially similar” benefits.



Minor changes in plan design may be okay but changes that increase deductibles or co pays or drop significant benefits without offsetting improvements are likely something that would have to be negotiated.

**Dear Nervous:**

You can relax a bit (but only a little bit), because you have good contract language and good PERC case law on this issue.

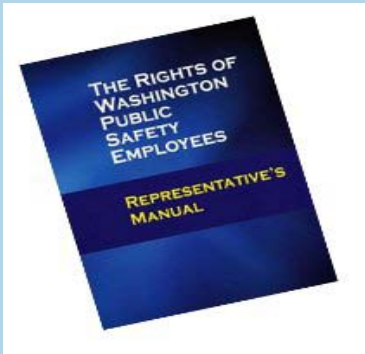
PERC case law specifically holds that if management has a need to change insurance carriers, they must provide a replacement carrier that offers “substantially similar” benefits.

Your contract actually incorporates this same legal requirement. It specifically says that if there is a need to change insurance plans, “the Employer will provide as much notice as practicable to the Guild and allow the Guild the opportunity to bargain.” It also indicates that after bargaining if there is no resolution, “the Employer shall have the right to modify premium structures, benefit levels, and coverages; provided, however, the Employer agrees to maintain existing health and welfare coverage or coverage which is substantially similar.”

This CBA language essentially follows the PERC standard – that employer’s may make small changes year to year, but if the changes are such that the two plans are no longer “substantially similar” then those changes have to be negotiated before they may be implemented. What constitutes “substantial” similarity? That’s a question of fact. Minor changes in plan design may be okay but changes that increase deductibles or co pays or drop significant benefits without offsetting improvements are likely something that would have to be negotiated.

Obviously, it is something that we would have to evaluate at when the new plan specifications are presented. Chances are, though, that based on the preliminary indications you have received, the changes to your dental plan will require bargaining.

*Jim.*



To learn more about collective bargaining rights and the other rights of public safety employees visit the Cline and Associates website where you can order our book "THE RIGHTS OF WASHINGTON PUBLIC SAFETY EMPLOYEE: REPRESENTATIVE'S MANUAL." This book is a 468 page compendium of labor law materials written especially for those involved in union-side representation of Washington public safety labor organizations.

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