



Cite as: 2007 (3) AELE Mo. L. J. 201
Employment Law Section - March, 2007

Training Reimbursement Contracts

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Introduction: Lateral entry or lateral theft?

The high cost of selecting applicants, sponsoring their academy training, and months of field training have prompted some agencies to offer hiring bonuses to police officers with a year or more of service with another community. Lateral attrition also has been a problem for correctional and fire/EMS agencies.

A number of agencies demand that new hires to sign a contract, which requires them (or a successor employer) to repay the cost of hiring and training their replacements – if they leave before a stated time period and join another law enforcement or public safety agency.

Article 1, Section 10 of the U.S. Constitution provides that “No state shall ... pass any ... law impairing the obligation of contracts ...” Subject to certain labor protection federal laws, and absent reasons of well-established public policy, penalty contracts are enforceable.

Triggers

There seems to be no harmony on the triggering of penalty clauses. There are several variations.

1. The penalty is due only when the employee voluntarily joins another law enforcement (or public safety) agency.
2. The penalty is due when the employee quits, for **any** non-excused reason.
3. The penalty is due even if the employee is terminated, for cause.

Specimen Contract #1 (a Wisconsin PD) provides that the applicant will reimburse the city up to a maximum of \$6,000 “if employment is terminated for any reason” within 36 months. It further provides that “whether [the applicant] terminates employment voluntarily or by action of the Department,” the reimbursement requirement applies, “regardless of the cause of termination.”

That contract allows approved medical, military, or educational leave, but the period during which the contract applies is extended for the leave period. Death or a disabling illness or injury excuses liability. Termination for “misconduct,” which is not defined, is specifically identified as not an acceptable excuse.

Most contracts provide that if the agency has to sue to recover a penalty, attorney’s fees also are provided. That could be many times the penalty, depending when the employee transfers to another agency

Amount of Penalty

Where there are many applicants, few positions, and intensive screening, it might cost up to \$20,000 to hire each trainee. Then add approximately \$22,000 in salary, tuition, fees and board to train each trainee for 16 weeks at an academy, and another \$28,000 to mature the employee -- counting part of the salary of field training officers.

That is a \$70,000 outlay. If the “average” police or corrections officer (or firefighter) stays only seven years, the penalty clause might start at \$70K and end at zero, with \$10K in annual depletions. Most contracts amortize over a shorter period, and typically do not include field training periods.

In Specimen Contract #1, the maximum penalty was only \$6,000. What a bargain for the hired officer!

- ➔ A Missouri sheriff once informed AELE that because his county paid much less than nearby towns and cities, every deputy that he hired had quit in less than a year after completion of the state-mandated training. Missouri is a “right to work” state and does not authorize collective bargaining for peace officers. The solution is to pay more and require a training reimbursement contract!
- ➔ In 2006 the City of Los Angeles sued 53 former officers for \$1.6 million, or an average of more than \$30,000 per ex-officer for contract violations. *Source*: 44 (2151) G.E.R.R. (BNA) 370 (Apr. 4, 2006) and *L.A. Times* of Mar. 23, 2006.

Minimum Wage Setoffs Required

Because of an abnormally low federal minimum wage, 29 C.F.R. 531.36, a minimum wage setoff is not a major consideration. But, there are several cases that limited recovery, because the FLSA minimum wage is payable, regardless of the terms of the contract. [Vil. of Montgomery v. \(John\) Thompson](#), #SC-KA-97-3820 (Ill.Cir.Ct., Kane Co. 1998) and [Strong v. Williams](#), 1980 U.S. Dist. Lexis 14185/at 5-f (M.D.Fla.).

The U.S. Dept. of Labor has held that public employers may not deduct from final paychecks, amounts due under training cost reimbursement clauses, except to the extent the compensation **exceeds** the federal minimum wage, including overtime. Wage & Hour Opin. Ltr. #FLSA 2005-18, [2005 DOLWH Lexis 20](#) (May 31, 2005).

The DoL letter makes clear that the minimum wage setoff does not apply to a claim or suit brought against the new employer by the former employer. Employee “raiding” is more common in the commercial sector. The usual legal consequences of raids – such as claims of unfair competition, or the appropriation of commerce and trade secrets – have no application to government entities.

A few states have enacted minimum wage levels that are higher than the federal amounts.

Duty to Bargain?

In a state that recognizes public sector unions, is management free to unilaterally impose a reimbursement agreement? Management may argue that since applicants, trainees and former employees are not members of the bargaining unit, there is no duty to bargain.

An appellate court in New Jersey held that the state’s Public Employment Relations Commission properly concluded that a public employer violated its duty

to bargain by unilaterally adopting a requirement that police applicants repay their training costs in the event of severance within two years after completion of their academy training.

The court rejected the employer's argument that the provision was not term and condition of employment because it became effective only after employment ceased. [New Jersey Transit Auth. v. N.J. Transit PBA L-304](#), #A-5710-96T5, 314 N.J. Super. 129, 714 A.2d 329, 1998 N.J. Super. Lexis 342, 158 LRRM (BNA) 3064 (1998), affirming # 97-125, 23 NJPER (LRP) ¶28,137, 1997 NJPER (LRP) Lexis 61 (NJ-PERC, 1997).

➔ Florida's Public Employees Relations Commission held that a city violated its bargaining obligation by unilaterally adopting a resolution requiring newly hired firefighters to sign an agreement requiring reimbursement of training costs if they resign to accept employment with another fire department or state agency within two years after successful completion of firefighter training. The city's general home-rule powers did not override state collective bargaining laws. [Hallandale Prof. Fire Fighters Assn. L-2238 v. City of Hallandale](#), PERC #CA-88-080, Order #89U-161, 1989 FPER (LRP) Lexis 154, 15 FPER 20,214 (Fla. PERC, 1989).

➔ A city in New York could not unilaterally impose requirement that new appointees reimburse the city for training if they quit in three years. [In re City of Mt. Vernon](#), 18 PERB ¶ 3020, 2 *The Labor Lawyer* (ABA) 599, 23 G.E.R.R. (BNA) 667 (NY PERB 1985).

A duty to bargain does not end the process. A failure of management and the union to reach an agreement could result in impasse arbitration. At that stage, an arbitrator is likely to focus on the fairness of the proposed time and penalty schedule.

POST Decertification

In all but a few states, a Peace Officer Standards and Training board or commission oversees the certification of law enforcement officers. There may be a similar body for correctional officers, firefighters and EMTs.

In those states, law enforcement and correctional officers must possess minimum state training standards and be certified in good standing. If an employee breaches a contractual obligation to repay the agency for training costs, is that an adequate basis for a suspension or decertification?

There are several ways to approach the issue:

1. A finding that the breach of a contract does not require decertification, and the former employer must rely on civil collection procedures.
2. A finding that the employee did not “complete” his or her basic training, because of a breach of the reimbursement provision, and is not entitled to recertification with another agency.
3. A determination that the willful failure to reimburse the first employer is “misconduct” and requires suspension or decertification.

The author is unaware of any court cases on direct point. Only a few POST commissions or boards have the authority to involuntarily decertify active officers, absent a failure to complete mandatory pre and in-service training programs or the commission of a felony.

Most POST commissions or boards are unwilling to seek legislation that would position them against police and corrections officer unions. The political reality is simple: unions can influence many thousands of votes; a commission or board has no supportive voter base.

Appendix

A- Specimen Reimbursement Contracts:

[# 1 – small Wisconsin police dept.](#)

[# 2 – Florida municipal police dept.](#)

[# 3 – Florida university police dept.](#)

B- Cases upholding reimbursement agreements:

- **Florida:** [Strong v. Williams](#), 1980 U.S. Dist. Lexis 14185/at 5-f , 89 Lab. Cas. (CCH) P33,929 (M.D.Fla.).
- **Illinois:** [Village of Montgomery v. \[John\] Thompson](#), #SC-KA-97-3820 (Ill.Cir.Ct., Kane Co. 1998).
- **Georgia:** [City of Pembroke v. Hagin](#), 391 S.E.2d 465 (Ga. App. 1990).
- **Missouri:** [Smith v. Kriska](#), #ED82062, 113 S.W.3d 293, 2003 Mo. App.

Lexis 1335 (2003).

- **New Jersey:** [New Jersey Transit Auth. v. N.J. Transit PBA L-304](#), #A-5710-96T5, 314 N.J. Super. 129, 714 A.2d 329, 1998 N.J. Super. Lexis 342, 158 LRRM (BNA) 3064 (1998), affirming #97-125, 23 NJPER (LRP) ¶28,137, 1997 NJPER (LRP) Lexis 61 (NJ-PERC, 1997).
- **North Dakota:** [Bowbells Public School Dist. v. Walker](#), 231 N.W.2d 173, 1975 N.D. Lexis 164 (N.D., 1975); [Bottineau Public School Dist. v. Zimmer](#), 231 N.W.2d 178, 1975 N.D. Lexis 163 (N.D., 1975).
- **Ohio:** [Tremco Inc. v. Kent](#), #70920, 1997 Ohio App. Lexis 2367 (8th Dist.), and [Carlson Ambulance Transport v. Fischbach](#), #2699-M, 1998 Ohio App. Lexis 1556 (9th Dist.).
- **Wisconsin:** [Heder v. City of Two Rivers, Wis.](#), 295 F.3d 777, 2002 U.S. App. Lexis 13832, 7 WH Cases 2d (BNA) 1665 (7th Cir. 2002).

C- Cases rejecting reimbursement agreements: None!

D- Other References:

“Employee Raiding: What are a Company's Rights?” by Keeley, Kuenn & Reid.
www.kkrlaw.com/changes/employeeraiding.htm

Young, “The Pre-employment Contract Two Years Later: Pay as You Go,” 22 (3) *Journal of California Law Enforcement* 66 (1988).

F. E. Winslow, “Training Contract for Newly Hired Officers,” Irvine [Calif.] Police Dept. (1984). *National Institute of Justice* ref. [NCJ 104300](#)..

AELE Monthly Law Journal

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