

ESTABLISHING AND PRESERVING MANAGEMENT RIGHTS

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“Rather than just complaining over the loss of management rights, this class will teach chiefs how to establish and hang onto key tools that will allow them to lead their departments without constantly running into a stone wall with the union.” – IACP Course Description

Call from chief:

- I JUST BECAME CHIEF AND I WANT TO GET OFFICERS TO STOP WEARING BEARDS, FACIAL PIERCINGS AND TATTOOS.
- I ISSUED A GENERAL ORDER AND THE UNION'S LAWYER SAYS I CANNOT DO THAT.
- IF I CANNOT EVEN ISSUE ORDERS, WHAT SHOULD I DO? WHAT ABOUT MY "MANAGEMENT RIGHTS"?

WHAT DID CHIEF DO WRONG?

- NEVER SAY, “EFFECTIVE IMMEDIATELY”!!!!!!
- CHECK COLLECTIVE BARGAINING CONTRACT
- CHECK PERSONNEL ORDINANCE, BY-LAW OR MANUAL
- CHECK STATE LAWS
- DON'T VIOLATE FEDERAL OR STATE ANTI-DISCRIMINATION LAWS OR REGULATIONS

NOTICE

- CLEAR
 - SO UNION CAN DECIDE WHETHER TO DEMAND BARGAINING
- ACTUAL NOTICE TO UNION
 - NOT RUMORS
 - COMMON KNOWLEDGE MAY NOT SUFFICE
- TIMING
 - SUFFICIENTLY IN ADVANCE OF PROPOSED IMPLEMENTATION



OPPORTUNITY TO BARGAIN

- GOOD FAITH FOLLOWING DEMAND TO BARGAIN
- PRESERVE STATUS QUO DURING GOOD FAITH NEGOTIATIONS
- IMPLEMENT
 - AGREEMENT
 - IMPASSE
- EXTERNALLY IMPOSED DEADLINE EXCEPTION

RECOMMENDATIONS

- BARGAIN PROPOSED CHANGES
- DON'T ARGUE TOO LONG OVER "DECISIONAL" VS. "IMPACT" BARGAINING



WHAT ARE MY MANAGEMENT RIGHTS?

SOURCES OF RIGHTS

- STATUTORY
- INHERENT
 - NATURE OF PUBLIC ADMINISTRATION

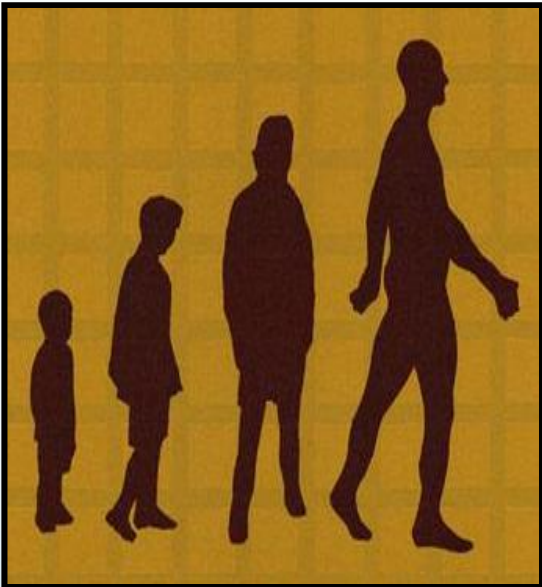


MANAGEMENT RIGHTS CLAUSES NEEDED

- LIMITED ONLY BY CONTRACT
- BALANCES GAINS ON UNION SIDE
 - REINFORCES TRADITIONAL RIGHTS
 - UNION ENCROACHMENT



EVOLUTION OF CLAUSES



- “MAINTAIN TRADITIONAL RIGHTS”
- LRC REQUIRES SPECIFICITY
 - DETAILED
 - PREFERABLY WITH EXAMPLES
 - “MEETING OF MINDS”

BE PREPARED TO DOCUMENT

- LAW ENFORCEMENT PRIORITIES
 - NOT SUBJECT TO BARGAINING
 - MATTER OF POLICY
 - NEED NOT EXPLAIN REASONS
- MID-TERM BARGAINING
 - IMPACT
 - DECISION



PUBLIC POLICY

- CORE GOVERNMENTAL DECISIONS
 - NEED NOT BARGAIN
 - LIMITED TO TERMS OF EMPLOYMENT
- CAN'T GIVE UNIONS TOO MUCH VOICE
 - POLITICAL PROCESS REQUIRED



INHERENT RIGHTS?

- HIRE
- ASSIGN
- PROMOTE
- TRANSFER
- SCHEDULE
- EVALUATE
- REORGANIZE

EXAMPLES

- DEPLOYMENT OF RESOURCES
- REDUCTION OF STAFF
- 1 VS. 2 PERSON CRUISERS
- MANDATING POLYGRAPHS IN CRIMINAL CASES
- REASSIGNING PROSECUTOR DUTIES TO MUNICIPAL COUNSEL
- NO ARRESTING OFFICERS AT ARRAIGNMENT

E MAIL FROM CHIEF

- PLEASE TAKE A LOOK AT THE ATTACHED E MIAL THAT I JUST RECEIVED FROM THE UNION COMPALAINING ABOUT HOW I PLAN ON CONDUCTING PROMOTIONAL INTERVIEWS AND USING A COMBINATION OF AN ASSESSMENT CENTER AND WRITTEN EXAM.
- ISN'T IT UP TO ME TO DECIDE HOW WE EVALUATE CANDIDATES FOR PROMOTION?

PROMOTIONS

- INHERENT MANAGERIAL PREROGATIVE
- NOT SUBJECT TO ARBITRATION
- CHANGE IN PROCEDURES?
 - IMPACT BARGAINING IF REQUESTED
 - NOTICE
 - OPPORTUNITY TO DEMAND BARGAINING
- EXAMPLES
 - PSYCHOLOGICAL EXAMS, INTERVIEW PANELS, ASSESSMENT CENTERS, ORAL OR WRITTEN EXAMS



ANOTHER CALL FROM A CHIEF:

- WHAT CAN I DO, THE COLLECTIVE BARGAINING AGREEMENT SAYS OFFICERS ARE ALLOWED TO PICK THEIR SHIFTS, THE VEHICLES THEY WILL DRIVE, THEIR VACATIONS, THEIR SECTORS AND EVEN THEIR SPECIALTY ASSIGNMENTS, ALL BY SENIORITY.
- I WANT TO MAKE AN OFFICER A DETECTIVE. SHE HAS BEEN DOING A GREAT JOB, HAS ATTENDED SEVERAL SCHOOLS ON HER OWN, AND IN MY OPINION IS MUCH BETTER SUITED FOR THE JOB THAN THE SENIOR OFFICER THAT HAS NEVER DONE ANYTHING HIS WHOLE CAREER.

PUBLIC POLICY

- CONTRACT PROVISION RE: PROMOTIONS UNENFORCEABLE
- CAN'T GRANT ARBITRATOR POLITICAL POWER

UNENFORCEABLE CLAUSE

- EVEN IF IN CONTRACT
 - APPOINTMENT, ASSIGNMENT AND PROMOTION OF POLICE OFFICERS
 - NOT BOUND BY AGREEMENT TO ARBITRATE REAPPOINTMENT DECISION



NON-DELEGABLE

- UNLAWFUL AND UNENFORCEABLE
- EQUIVALENT TO NO CLAUSE IN CBA

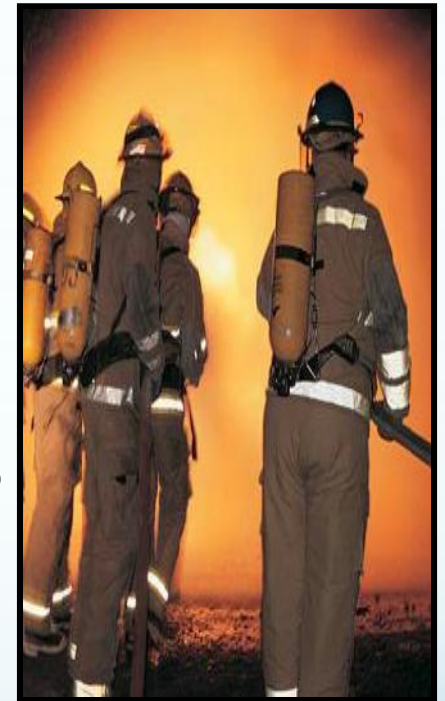


RECOMMENDATIONS

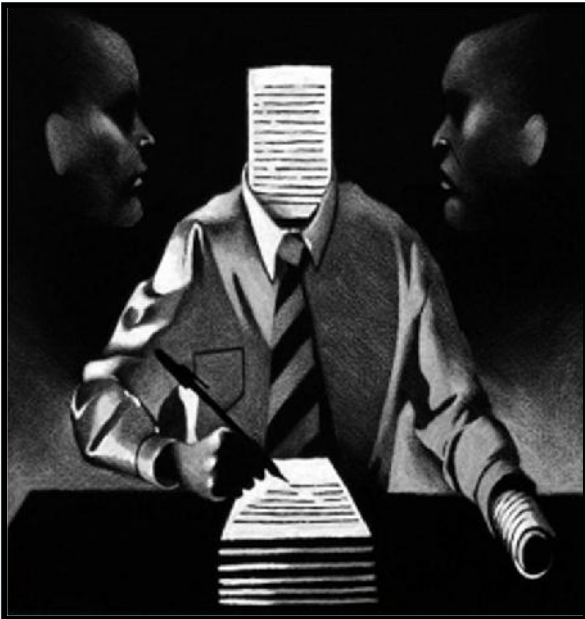
- AVOID “UNENFORCEABLE” CLAUSES IN CONTRACTS
 - UNNECESSARY ARBITRATION
 - TIME AND \$

NON-DELEGABLE RIGHTS OF MANAGEMENT

- NOT MANDATORY SUBJECTS
 - CAN'T ABANDON BY AGREEMENT
 - NOT ARBITRABLE
- NEED NOT DISCUSS AT NEGOTIATIONS
 - UNION CAN'T INSIST
- CAN DISREGARD IN CONTRACT
- REFUSE TO INCLUDE IN SUCCESSOR CBA



RECOMMENDATIONS



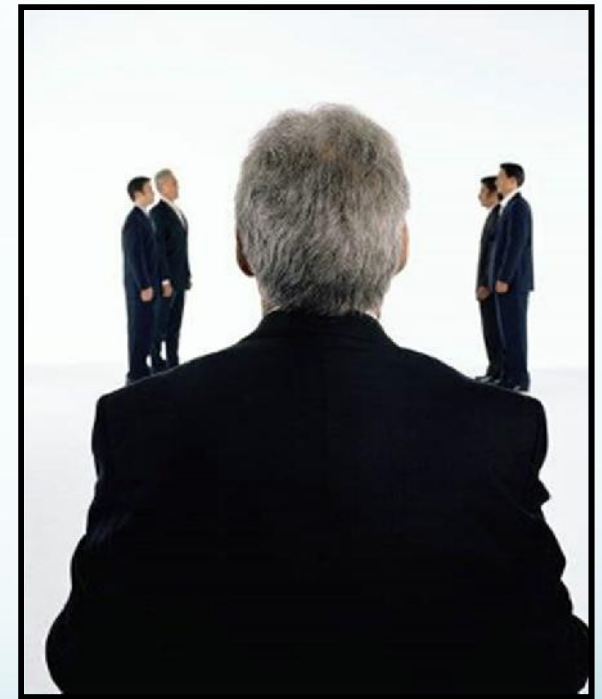
- OK TO DISCUSS WITHOUT WAIVING RIGHTS
- MAY STOP ANYTIME
- **INSIST AT ARBITRATION**
 - “EVERYTHING ON TABLE”

ANOTHER QUESTION:

- WE HAVE A VISIT FROM THE GOVERNOR AND SENATOR NEXT MONTH. I WANT TO ASSIGN A LIEUTENANT TO COORDINATE ALL WORK AND TO MEET WITH THE STATE POLICE AND THE POLITICIANS' ADVANCE TEAMS.
- A CAPTAIN HAS SENT ME AN E MAIL SAYING THAT AS THE SENIOR OFFICER, THE COLLECTIVE BARGAINING AGREEMENT GIVES HIM FIRST SHOT AT THIS ASSIGNMENT, ESPECIALLY SINCE IT INVOLVED A LOT OF OVERTIME.

ASSIGNMENT

- INHERENT MANAGERIAL PREROGATIVE
- NOT SUBJECT TO ARBITRATION
 - MAYBE PROCEDURES
 - NOT DECISION ITSELF



BOSTON POLICE - 1978



- REASSIGNED DESPITE CONTRACT
 - PROCEDURES
 - QUALIFICATIONS, ABILITY AND SENIORITY
 - PROVISIONAL PROMOTION OF LIEUTENANT TO CAPTAIN

RECOMMENDATIONS

- ABSOLUTE SHIFT ASSIGNMENTS BY SENIORITY
VOID AND UNENFORCEABLE
- SPECIALIST ASSIGNMENTS
- EVEN IF IN CBA

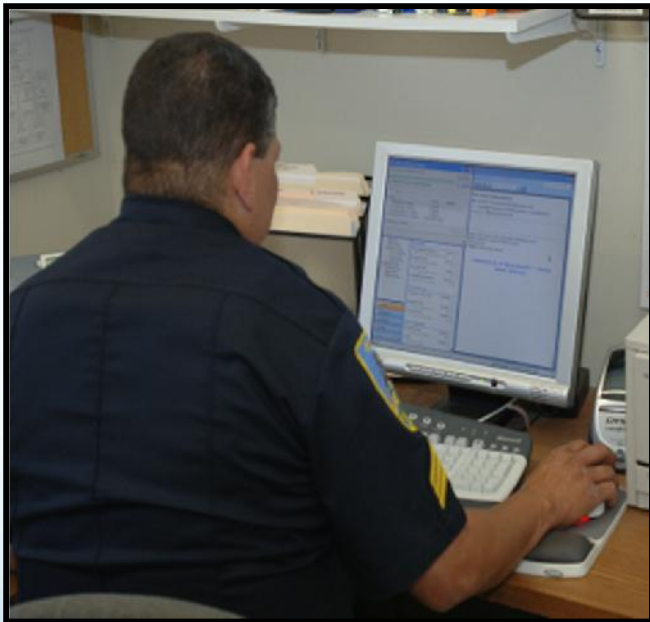
- "... THE LEGISLATURE DID NOT INTEND TO EMPOWER THE *ARBITRATION PANEL* IN MAKING ITS AWARD TO DEPRIVE THE CHIEF OF HIS AUTHORITY TO 'EXERCISE HIS OWN DISCRETION AND JUDGMENT AS TO THE NUMBER, QUALIFICATIONS AND IDENTITY OF OFFICERS NEEDED FOR PARTICULAR SITUATIONS AT ANY GIVEN TIME.'"

ASSIGNMENT MANAGERIAL PREROGATIVE

- UNION PROPOSAL
 - PERSONAL PREFERENCE BY SENIORITY AND RANK
 - ASSIGNMENT OF DUTIES, SHIFTS
 - VACATION AND LEAVES OF ABSENCE



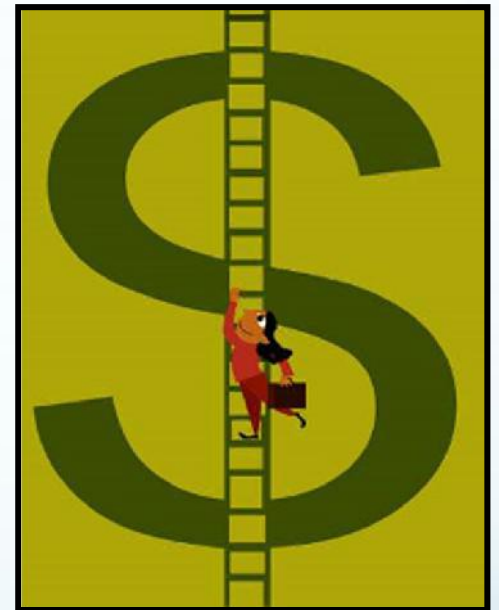
OK TO REFUSE ARBITRATION



- DESK DUTY
 - WITHOUT FIREARM
 - OK TO ORDER PSYCHIATRIC EXAM
 - PUBLIC POLICY CARRYING WEAPON
- CIVILIAN RIDE-ALONGS
- MID-TERM BARGAINING

MANDATORY SUBJECT

- PROMOTION PROCEDURES
 - MANDATORY SUBJECT
 - NOT CONTRARY TO CIVIL SERVICE



BARGAINING OBLIGATION



- NOTICE OF PROPOSED CHANGES
- NEW PROMOTIONAL REQUIREMENTS OR PROCEDURES

ANOTHER E MAIL:

- THE COLLECTIVE BARGAINING AGREEMENT SAYS WE HAVE TO APPOINT NEW OFFICERS FROM THE RESERVE FORCE. I HAVE A COUPLE OF GOOD APPLICANTS FROM OUTSIDE THE DEPARTMENT, ONE IS A RECENTLY RETURNED VET WITH THREE YEARS OF MP EXPERIENCE, A BACHELORS IN LAW ENFORCEMENT, AND A FAR SUPERIOR CANDIDATE THAN THE ONES WE HAVE ON OUR RESERVE FORCE.
- WHAT CAN I DO?

APPOINTMENTS

- MANAGERIAL PREROGATIVE
- NOT SUBJECT TO ARBITRATION
- NON-DISCRIMINATORY
- STARTING AND STEP PAY



HIRING DECISIONS AND QUALIFICATION STANDARDS

- NEED NOT BARGAIN
- ONLY AFTER BECOME EMPLOYEE
- CONDITIONS FOR HIRE
 - TESTING
 - QUALIFICATIONS
- REQUIREMENT FOR CONTINUED EMPLOYMENT
 - RESIDENCY



NOTE FORM MAYOR OR MANAGER:

- CHIEF, I WANT TO DISCUSS REPLACING UNIFORMED OFFICERS WITH CIVILAIN DISPATCHERS. IN FACT, WE MIGHT EVEN WEANT TO MERGE OUR DISPATCHERS WITH THOSE IN AREA COMMUNITIES OR THE LOCAL SHERIFF'S OFFICE OR STATE POLICE.
- DON'T JUST GIVE ME A LIST OF OBJECTIONS THE UNION WILL RAISE; TELL ME WHAT I NEED TO DO TO MAKE THIS HAPPEN!

TRANSFER UNIT WORK

- CITY “HIRED” PRISONERS AND WELFARE RECIPIENTS
- HIRE CIVILIAN DISPATCHERS
- JOIN REGIONAL DISPATCH SYSTEM

A CHIEF CALLS WITH THIS:

- WE HAVE NEVER HAD A SCHOOL RESOURCE OFFICER OR A DETECTIVE. THE UNION TELLS ME I CANNOT HIRE ONE FROM THE OUTSIDE OR PROMOTE SOMEONE TO THE POSITION FROM THE INSIDE UNTIL THE UNION AGREES TO THE QUALIFICATIONS, PAY, WORK SCHEDULE AND JOB DESCRIPTION.
- I WANT TO TELL THE UNION REP WHAT I RTHINK AND WHERE HE SHOULD GO, BUT...

PRE-HIRE QUALIFICATIONS

- EXCLUSIVE MANAGERIAL PREROGATIVE
 - NOT DISCRIMINATORY
 - NEED NOT BARGAIN
- ARBITRATOR'S LIMITED POWER
 - VOID APPOINTMENT IF VIOLATES CBA
 - NOT ORDER OTHER APPOINTED
- RESIDENCY OK FOR NEW HIRES
- DRUG AND ALCOHOL TESTING OK
- PSYCHOLOGICAL TESTING

RECOMMENDATIONS

- DISTINGUISH APPLICANTS FROM EMPLOYEES
- COMPLETE PRE-HIRE CONDITIONS BEFORE START WORK
- DON' T DISCRIMINATE

RECOMMENDATIONS

- OK TO CREATE NEW POSITIONS
 - NEED NOT DISCUSS WITH UNION
 - WHY NOT DO SO ANYWAYS?
- IN BARGAINING UNIT?
 - SHOW UNION PLANS AND QUALIFICATIONS
 - SALARY RANGE
- CHANGING ENTRY-LEVEL PAY
 - REGULAR CONTRACT NEGOTIATIONS ONLY