



October 28, 2014

Final Investigative Report Concerning Ombudsman Complaint OM20140726

COMPLAINT

July 25, 2014 a citizen contacted the Ombudsman's Office alleging that a Municipal department director had expended Municipal funds to purchase jackets for Municipal employees within his chain of command, without prior executive director approval, as required by Municipality of Anchorage Operating Policy/Procedure No. 24-23.

FINDINGS

This complaint against a department director of the Municipality of Anchorage is **UNSUPPORTED**.

ANALYSIS AND CONCLUSIONS

The complainant alleged that a Municipal department director (director) had expended Municipal funds to purchase jackets for Municipal employees within his chain of command, without prior executive director approval. The complainant alleged that the purchases violated Municipality of Anchorage Operating Policy/Procedure No. 24-23.

Municipality of Anchorage Operating Policy/Procedure 24-23, Disallowed Purchases, outlines guidelines for disallowed Municipality of Anchorage (MOA) expenditures, and was signed by Mayor Dan Sullivan on 08/31/10. The complainant alleged that the purchase of the jacket violated the P&P's prohibition on the purchase of "Personal Clothing", which is described as "Personal Clothing, including shirts, sweaters, vests, ties, jackets, pants, shoes or boots". The P&P states that "The only personal clothing or uniforms that are allowed is by Labor Agreement. Any other clothing must have prior Executive Director Approval. (Refer to Labor Agreements and Payroll's Clothing Allowances Procedure Guide) (This does not apply to other MOA furnished personal safety equipment/supplies or MOA furnished shop coveralls/smocks)"

Investigation revealed that at the director's direction his executive secretary (secretary) had placed three orders with MT Uniforms in Johnstown, Pennsylvania. The orders were charged to the secretary's Municipal Procurement Card.

Order 1: Placed 03/12/2014, invoice #27053, for 39 Royal (blue) 3-season safety jackets, totaling \$2,468.10.

Order 2: Placed 08/07/2014, invoice #27349 for 5 Royal (blue) 3-season safety jackets, totaling \$391.73 (including \$61.98 in shipping charges).

Order 3: Placed 08/05/2014, invoice #27413, for 35 Royal (blue) 3-season safety jackets, totaling \$2,500.00 (including \$225.35 in shipping charges).

The director informed the Ombudsman that the jackets were distributed to department employees who "will ever be subjected to work in a hazardous situation in the field, in the yard or onsite where

construction is taking place.” According to the director, the jackets were purchased for safety reasons and to instill work-unit pride. The director noted that P&P 24-23, under “Personal Clothing”, states that “This does not apply to other MOA furnished personal safety equipment/supplies...” The jackets were purchased with Municipal funds, and are the property of the Municipality of Anchorage. Jacket recipients were tracked, but were not required to sign an acknowledgement that the jackets are Municipal property and must be turned in upon termination of Municipal employment.

The director acknowledged from the outset of the inquiry that he had not obtained prior executive director approval for the purchase of the jackets. He believed that the jackets served a legitimate workplace safety purpose, and consequently did not require executive director approval. The Ombudsman spoke with former Municipal Safety Director Hal Homer, who opined that while there is no well-defined procedure for departments to purchase personal safety clothing, the one thing that is defined is the fact that all such purchases require executive director approval (in this instance, the Municipal Manager). Mr. Homer noted that some departments have had the Safety Director evaluate need as part of the purchase process, and in at least one instance the Municipal Manager asked Internal Audit to evaluate the need for safety vests, to ensure that they would serve a legitimate workplace safety purpose, and pass an audit.

In the Ombudsman’s opinion, the jackets are obviously safety jackets that one would not wear for social occasions, and they most likely serve a legitimate work safety purpose and need. That is not in dispute; what is in dispute is if and how P&P 24-23 applies to the purchase of the jackets. While the policy states that “This does not apply to other MOA furnished personal safety equipment/supplies”, what constitutes “other MOA furnished personal safety equipment/supplies”? Does “other” imply that the exception does not apply to personal safety clothing not called for by Labor Agreement? Can any level of MOA management determine the need for personal safety clothing and authorize purchases? What standards, if any, are used? Is any personal safety clothing authorized, purchased, and provided by any level of MOA management to be construed as “MOA issued”? Who is authorized to determine if safety clothing, not called for by Labor Agreement or OSHA regulations, is necessary?

The Ombudsman sent an email inquiry to several department directors, deputy directors, division managers, the former MOA Safety Director, and the Purchasing Officer:

“I need your help in trying to understand how the process for purchasing safety clothing works. I have reviewed P&P 24-23, the P-Card Program Guidelines and relevant P&Ps, and have spoken with several individuals (who have differing interpretations). As MOA Directors, Deputy Directors and Managers, I would appreciate any insight that you might be able to share with me.

Below is the section of P&P 24-23 that is relevant to my inquiry. Based on your personal experiences:

- If clothing (or other safety equipment) is not called for by Labor Agreement or OSHA, or is not MOA furnished shop coveralls/smocks, who determines that a vest or jacket (or other clothing) is necessary safety equipment? Is this a decision that you believe you have the authority to make as a director, deputy or manager? Can any manager make this call in your department(s), or is this authority only given to supervisors at a certain management level? What criteria are used to make the determinations?
- Are you aware of any written policies or procedures that address this issue? If so, could you please forward me a copy?

| | | |
|-------------------|---|---|
| Personal Clothing | Personal Clothing including shirts, sweaters, vests, ties, jackets, pants, shoes or boots | The only personal clothing or uniforms that are allowed is by Labor Agreement. Any other clothing must have prior Executive Director approval. (Refer to Labor Agreements and Payroll's Clothing Allowances Procedure Guide) (This does not apply to other MOA furnished personal safety equipment/supplies or MOA furnished shop coveralls/smocks) |
|-------------------|---|---|

I appreciate your assistance with this. There seems to be a fair amount of confusion regarding this issue. Please feel free to share this email with anyone in your chain of command who might be able to provide relevant information. When you respond to me, please do not hit "reply all". Thanks for your assistance,"

In response to the Ombudsman's inquiry, the Purchasing Officer stated that his "understanding and in conversation with the Muni Manager is he is the only one that can approve personal clothing that is not called forth in the union agreements". The Public Works Director responded that "Public works, buys safety equipment all the time with p-cards. If it is safety Equipment all members of our department with P-cards purchase it without ever receiving approval because it is safety equipment. This section applies to Personal Clothing and we do not purchase personal clothing. The exemption in the third column for safety equipment is obvious and necessary and was intended to allow safety equipment otherwise the Municipal Manager would be inundated with a crazy amount or requests that a Director and or his staff authorized to have a p-card need to purchase all the time to keep our staff safe. Safety is of the utmost importance to my staff and me as we are in dangerous locations daily and safety equipment including jackets, vest, hard hats, gloves, glasses, etc. are continuously purchased and have been since I began at the MOA."

The Transportation Inspector stated that "I have been dealing with this issue for a good part of 2014. Following is how I handled it. I received a request for field safety jackets from my AMEA code enforcement staff. After reviewing P&P 24-23, and the AMEA CBA that only says if non-washable clothing is provided by the municipality, as a requirement of the position, it must be laundered by the municipality. Since the request was not mandated by the CBA, but determined it to be a legitimate request because even myself have had concerns about being run over when I am in the field at night, I asked the MOA safety director to perform a job safety analysis (attached) to determine the need, and if so, they type of equipment. The safety analysis was completed and determined ANSI Type II jackets would provide the best safety. I had a discussion with George, as the department head and during that discussion it was remarked that due to some issue he had to approve the purchase. In the same meeting, the safety officer commented that the need was legitimate due to staff being in the streets and that unlike, for example, food safety inspectors that went into business, an ID could suffice to identify staff. In summary, with the safety analysis as a guideline, and further consultations with my staff, I approved the purchase of identical jackets using the P-card. The jackets happen to be on order. Once received, Alaska Safety will provide the silver and orange reflective cloth that will be sewn onto the jackets, along with the MOA logo. These will be used while in the field."

The Municipality's Chief of Code Enforcement stated that "The P&P is intended to permit the purchase of safety equipment/supplies in order to get it to the employees in a timely fashion to help keep them as safe as possible. We **do not** purchase personal clothing that is "nice to have." Any vests, coats etc we have purchased is retroflective to ANSI standards and is Personal Protective Equipment (PPE). We also have our Peace Officer badges and Code Enforcement patches affixed as it identifies our code enforcement officers as municipal employees so when they approach a citizen on or off private property they are assured we are performing our official duties and are not random citizens trespassing or interfering in their daily lives which would expose our officers to risk. In my opinion the P&P is clear."

While the Chief of Code Enforcement, and others, believe that P&P 24-23 is clear, based on the wide range of responses to the Ombudsman's inquiry, the Ombudsman believes that the P&P to be confusing and unclear. The Ombudsman still believes that the intent of the P&P is to require executive director approval for any safety clothing not called for by Labor Agreement or OSHA, as does the Municipal Manager, Purchasing Officer and former Municipal Safety Director. However, the Ombudsman acknowledges that several experienced MOA employees interpret the policy differently.

When expending public funds it is essential that Municipal employees have clearly defined policies and procedures to guide them. Municipal employees need have a clear understanding of what constitutes "MOA furnished personal safety equipment/supplies", and if this includes personal safety clothing not called for by Labor Agreement. They also need a clear understanding of what level of MOA management is authorized to determine the need for personal safety clothing and authorize purchases. What standards, if any, are used? Is any personal safety clothing authorized, purchased, and provided by any level of MOA management to be construed as "MOA issued"? Who is authorized to determine if safety clothing, not called for by Labor Agreement or OSHA regulations, is necessary? Which interpretation of P&P 24-23 is the correct interpretation?

Because the intent of Municipality of Anchorage Policy/Procedure 24-23 is being interpreted differently across multiple departments and management levels, and because there is no evidence that the director did not believe that he was following proper procedures, and because the Ombudsman believes that the intent of the P&P is not as clearly defined as it should be, this complaint against a department director of the Municipality of Anchorage is UNSUPPORTED. A copy of the preliminary report was sent to the department director on September 11, 2014. Based on the investigating of this case, the Municipal Ombudsman recommends the following:

- 1) that the intent of Municipal Policy/Procedure 24-23, regarding Personal Clothing and the exception for "other MOA furnished personal safety equipment/supplies" be more clearly defined.
- 2) that Municipal policies/procedures be revised to clearly define what level of Municipal management is authorized to determine that the need for personal safety clothing, not called for by Labor Agreement or OSHA, exists and authorize purchases.
- 3) that the Municipality contract with a preferred provider for purchase of safety clothing not called for by Labor Agreement or OSHA, allowing for more uniformity of products and pricing.
- 4) that a template be developed for a sign-out form for approved personal safety clothing that is not covered by of Labor Agreement or OSHA. Employees would acknowledge receipt of the clothing, and that it is the property of the Municipality and must be returned upon termination of service.

Based on this finding, and these recommendations, this case is closed.

If you object to the Ombudsman's decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.

A handwritten signature in black ink, appearing to read "Darrel W. Hess". The signature is written in a cursive style with a large initial "D".

Darrel W. Hess
Municipal Ombudsman