BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
CITY OF LaCROSSE (FIRE DEPARTMENT)	
and	Case 180 No. 42581 MA-5739
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 127, AFL-CIO	

Appearances:
Mr. Thomas L. Jones, III, Assistant City Attorney, on behalf of the City.
Davis, Birnbaum, Joanis, Marcou & Colgan, Attorneys at Law, by Mr. James G. Birnbaum, on behalf of the Union.

ARBITRATION AWARD

The above-entitled parties, herein the City and Union, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on October 23, 1989 in LaCrosse, Wisconsin. The hearing was not transcribed and briefs were received by June 9, 1990.

Based upon the entire record, I issue the following Award.

ISSUE:

> Did the City violate the contract when it refused to place grievant Steven Laufenberg on sick leave after suffering a non-working related injury and when, instead, it placed him on light-duty status; when it refused to allow him to use sick leave for certain scheduled vacation days; and when it issued him a warning letter; if so, what is the appropriate remedy?

DISCUSSION:

The genesis of this dispute dates back to that age-old struggle of man (and woman) against fish.

In the beginning of May 1989, 1/ Laufenberg, an Engineer, while fishing was bitten on a finger by a northern pike. Although the finger swelled up, Laufenberg did not seek any immediate medical treatment for it until the beginning of July when the swelling and pain got worse.

On or about July 6, he saw Doctor Wayne A. Bottner who wrote a "status report" note referring him to a general surgeon. Said note was totally silent as to whether Laufenberg was fit to return to work.

Laufenberg on July 6, spoke to Assistant Fire Chief Bitner about being placed on sick leave. Bitner agreed to put him on sick leave status and told him he would need a doctor's note stating that he was disabled if he intended to remain off work for more than 72 hours.

On July 12, Laufenberg received a note from Dr. Bottner stating that his hand would have to remain in a splint until July 24. Said note was silent as to whether Laufenberg was fit to return to work.

On July 13, Laufenberg met with Bitner and Fire Chief Howard J. Johnson, at which time he produced Dr. Bottner's note; stated that the City was free to contact Dr. Bottner; and said that he wanted to return to work on light-duty status. Chief Johnson told him that he would need a doctor's note stating that he could return to work on light duty and that unless a doctor authorized it, he would not receive any sick pay unless he had a doctor's note stating that he was totally disabled. Laufenberg also requested that he be allowed to use sick leave rather than vacation time for his scheduled July 19, 21 and 23 vacation. Chief Johnson turned down that request on the ground that Laufenberg was not totally disabled.

On the next day, Laufenberg was examined by Dr. Brailey who gave him a doctor's note stating that he could return to work, but only if he did not use his injured hand for any purpose. On the same day, Laufenberg met with Chief Johnson and Assistant Chief Taylor. Johnson told Laufenberg that the City was going to contact Dr. Brailey to see whether Laufenberg could be placed on light duty. City Personnel Director Jerome Rusch subsequently telephoned Dr. Brailey who said that Laufenberg could return to work in that capacity. Laufenberg was then told that his request for sick leave was being denied; that he would

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1/ Unless otherwise noted, all dates hereinafter refer to 1989.

immediately be placed in light-duty status; and that he would have to work the rest of the day, contrary to Laufenberg's request that he be allowed to go home.

Laufenberg on July 17 filed a grievance complaining over how he was being treated which Chief Johnson denied on July 24.

Following his return from vacation, Laufenberg was switched from his regular 24-hour "C" shift to an eight (8) hour day, five (5) day-a-week shift effective July 28, where he answered telephones and performed certain inspection work duties he had never before performed.

On July 24, Dr. Charles H. Hayden prepared a note which stated that Laufenberg "may return to work using his right hand only".

On August 1, Laufenberg requested sick leave for July 31, and August 1 because of problems with his finger. Chief Johnson denied said request because Laufenberg had not complied with his earlier directive that he could return to work after any doctors' appointments only if he produced a doctor's note regarding any such visits.

On August 1, Johnson gave Laufenberg a written warning for insubordination over his refusal to fill in a personal time sheet as ordered that day and because he earlier had failed to follow the appropriate sick leave procedure.

On August 2, Dr. Hayden prepared a note stating that Laufenberg was unable to work on July 31 and that he could go back to work on August 1. On or about August 17, Laufenberg presented another doctor's note from Dr. Hayden which stated that "He may return to light duty work as of today."

On or about August 29, Laufenberg experienced a problem with his neck and received a note from Dr. Brailey stating that he was on total disability until September 7. The City granted him sick leave for that injury. On September 7, Laufenberg presented the City with a doctors' note which stated that he could return to his regular job. On September 8, the City reassigned him to his former 24-hour "C" shift in his regular classification and location.

In support of the grievance, the Union primarily argues that the City violated Article 10 of the contract when it denied Laufenberg sick leave; that the City likewise violated Article 15 of the contract when it denied Laufenberg the use of sick leave during his previously scheduled vacation time; and that the City lacked just cause to discipline him. The Union therefore asks that Laufenberg be paid time and one half for any time that he worked when he should have been on sick leave and that any references to his discipline be expunged from his files.

The Employer, in turn, maintains that Laufenberg was not qualified to use sick leave until August 29 when he became totally disabled and when it granted him said leave; that he did not acquire the right to change his vacation schedule because he was not totally disabled; that it retained the right to change Laufenberg's duty assignment or work schedule; and that it in fact had just cause to discipline Laufenberg.

The basic question presented here is whether Laufenberg was entitled to two months of paid sick leave for a fish bite which occurred while he was off duty, and when, based on medical evidence, he was still able to perform light duty.

It is necessary to point that out at the outset because Laufenberg's claim, on its face, appears unreasonable given the relative minor nature of his injury which disabled only a very small part of his body, his finger. That being so, it was entirely reasonable for the City to view Laufenberg's claim with suspicion and for it to insist on absolute medical proof that he was totally disabled. That is why the various medical notes noted above are of such importance in resolving this dispute.

All of the notes predating August establish that Laufenberg was not totally disabled and that he in fact was able to return to work on light duty status. The Union complains about his light duty assignments and asserts that he was entitled to stay home for two months while being fully paid by the City because the City has never before placed a firefighter on light duty status and because the City cannot unilaterally establish such light duty status without first bargaining it with the Union, something it has failed to do.

In fact, the City under Article 21 of the contract retains the right to control "the direction of the work force", to "determine schedule of work", and to determine "the methods, processes and manner of performing work . . . ." Rule 11 of the City's Rules and Regulations, which are incorporated by reference into the contract, provides that drivers "shall perform such other duties as may be assigned to them by their commanding officer." This language therefore gives the City the right to determine who shall perform what work and when, provided only that there are no other contractual provisions which limit this right. Here, there are none, as the remainder of the contract is totally silent on the question of light duty status. As a result, the City was entirely justified in insisting that Laufenberg work on light duty while recuperating from his relatively minor injury even though this marked the first

time that any employe has been placed on light duty status.

To hold otherwise is to allow Laufenberg to collect a significant windfall - i.e. to enjoy the fruits of summer at home or to again visit the fishing banks - while he collected full pay from the City for doing nothing. 2/ That is not the purpose of sick leave; absent express contract language to the contrary, it kicks in only when an employe is totally unable to work because of a medical condition outside of his/her control. Here, Laufenberg retained full control over his ability to do other job tasks even if they were different from ones he previously performed and even though he was assigned a different shift, as that was the only way for the City to achieve its inherent management right of having Laufenberg earn the money it was paying him.

By the same token, the City did not violate the contract when it refused to accede to Laufenberg's request that he be granted sick leave for the approximately two months in issue,as he in fact was still able to perform his newly assigned job tasks. Laufenberg therefore was not entitled to switch around his vacation days on July 19, 21, and 23 since he did not qualify for sick leave on those days.

That leaves for consideration the August 1 written warning issued to Laufenberg for insubordination. The record on this score shows that Laufenberg did not comply with Chief Johnson's directive that he had to fill in personal time sheets whenever he returned from a medical appointment and that he did not follow the correct procedure for requesting sick leave for July 13, 14, 24 and 25. Nevertheless, I find that the City lacked just cause to discipline Laufenberg, since his actions did not quite rise to the level of insubordination. Accordingly, the City shall rescind said warning letter and expunge any references to it in Laufenberg's personnel file.

In light of the above, it is my

AWARD

1. That the Employer did not violate the contract when it refused to place grievant Steven Laufenberg on sick leave after suffering a non-work related injury; when it placed him on light duty status; and when it refused to allow him to use sick leave for certain scheduled vacation days.

2. That the City lacked just cause to issue him its August 1, 1989 warning letter.

Dated at Madison, Wisconsin this 15th day of October, 1990.

By _____
Amedeo Greco, Arbitrator

2/ This was not the only windfall sought by Laufenberg - he also filed a claim with the Fireman's Relief Association for 55 days of benefits which was subsequently denied.