

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
 : Case 227  
 OSHKOSH CITY EMPLOYEE UNION : No. 51279  
 LOCAL 796, AFSCME, AFL-CIO : MA-8557  
 :  
 and :  
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 CITY OF OSHKOSH :  
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Appearances:

Mr. Gregory N. Spring, Staff Representative, Wisconsin Council 40, AFSCME, on behalf of the Union.  
Mr. Warren P. Kraft, City Attorney, on behalf of the City.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "City", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Oshkosh, Wisconsin, on October 6, 1994. The hearing was not transcribed and the parties presented oral argument in lieu of briefs. I there issued a bench decision which this Award augments.

ISSUE

Since the parties were unable to jointly agree on the issue, I have framed it as follows:

Is the City required under Article XIII of the contract to grant sick leave for the travel time incurred by employes traveling out of the local area for medical treatment when such treatment is on a self-referral basis and, if so, what is the appropriate remedy?

DISCUSSION

Grievant Ralph Boushele, a City employe for about 26 years, works in the City's Park Department.

On May 27, 1994, 1/ he underwent prostrate surgery at the Marshfield Clinic in Marshfield, Wisconsin. Boushele elected on his own to seek medical treatment at the Marshfield Clinic, without a doctor's referral, because he was concerned that his local doctor in Oshkosh might not be providing him with proper medical care over such a specialized matter.

The City does not dispute Boushele's right under the collective bargaining agreement to seek such a second opinion, as it has fully paid for all of his treatment at the Marshfield Clinic pursuant to the health care plan it has negotiated with the Union which enables employes to pick their own doctors. The City similarly does not suggest that Boushele did not need the surgery he received, and nor does it contest Boushele's right to receive sick leave for the approximately two weeks that he missed work while he recuperated from his surgery. Furthermore, the City acknowledges that it would have paid for such travel time to Marshfield if Boushele had received a doctor's referral.

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1/ All dates hereinafter refer to 1994.

Instead, the City only contests Boushele's right to receive sick leave for the 3 1/4 hours travel time he incurred on May 20 going to and from the Marshfield Clinic for a pre-operation check up. The City thus argues that while it was obligated to grant Boushele 2 3/4 hours of sick leave for the actual time spent seeing his doctor that day, it is not required under Article XIII of the contract to pay travel time when, as here, there has been a self-referral and a trip to a doctor who is not located nearby. It therefore refused to pay for such travel time, thereby causing Boushele to take 3 1/4 hours of compensatory time to cover such travel.

The Union, in turn, contends that the contract does not permit the City to deny such travel time; that Boushele received permission from his supervisor to use sick leave for such travel; and that a past practice establishes that the City in the past has granted sick leave for such travel time. As a remedy, the Union requests that Boushele be granted sick leave for such travel time and that he be awarded 3 1/4 hours compensatory time to make up for the compensatory time he was forced to use on May 20.

As I ruled at the hearing, there is no merit to the City's position since employees have the right to visit any doctor of their choice for a second opinion pursuant to the standard health plan it has negotiated with the Union. This right is protected in Article XV of the contract, entitled "Insurance", which provides:

Hospitalization and Medical Benefits: The employer shall provide health coverage equal to the level of benefits available to the employees under the HMP program in effect during 1990. Effective pay period 1, 1991, employees shall contribute \$10 per month towards the premium for the single plan and \$30 per month for family coverage.

. . .

Indeed, the City itself recognizes this basic fact since it has paid for all of Boushele's medical expenses at the Marshfield Clinic and since it has stipulated that it would have been required to pay for such travel time if Boushele had received a doctor's referral to the Clinic.

The only limitations on the use of sick leave is thus contained in Article XIII of the contract which states in pertinent part:

. . .

Sick Leave: All employees shall be entitled to sick leave credits on the following basis:

All regular full time, probationary and seasonal employees of the employer shall accumulate sick leave with pay at the rate of One (1) working day for each month of service. For purposes of this section leave of absence without pay shall not be considered service.

Unused sick leave credits shall accumulate to a maximum of one hundred and fifty (150) work days. Employees qualified to receive sick leave compensation shall receive such compensation at the rate of their regularly scheduled hour's pay at the employee's regular rate of pay for each day of absence.

An employee may use sick leave with pay for absence necessitated by injury or illness, exposure to

contagious disease when confirmed by a physician. Routine doctor and dental exams shall be scheduled on off-duty time whenever possible. In order to qualify for a sick leave payment an employee must:

- a. Report prior to the start of each work day to his department head or supervisor for his absence.
- b. Keep his department head informed of the condition if the absence is more than three (3) working days.
- c. Submit a doctor's certificate for such absence if in excess of three (3) working days. The certificate must state the kind and nature of sickness or injury and whether the employee has been incapacitated for said period of absence.
- d. Apply for such leave according to the procedure established by the employer.

Employees suspected of abusing sick leave privileges may be required to submit a medical certificate to substantiate each absence, of claimed illness, regardless of duration. This requirement [sic] will not be invoked without first advising the employee of his questionable sick leave record and giving him an opportunity to improve. If there is no improvement, the employee will be advised, in writing, that all future requests for sick leave, must be supported [sic] by a medical certificate. This requirement will be periodically reviewed with the employee, at least once each ninety (90) days, and determination will be made, if this requirement is to continue. Employees shall be given written notification as to their status within seven (7) calendar days of this review.

Sick leave shall be regarded by all supervisors and employees as valuable, free health and welfare insurance which, in the best interest of all employees, should not be used unless really needed. Sick leave is not a "Right" like vacation: It is a privilege, to be used carefully.

. . .

Under this language, then, employees are entitled to sick leave if they meet four conditions; i.e., that they daily report their absences; that they keep the department head informed of their condition; that they submit a doctor's certificate under certain circumstances; and that they apply for sick leave under the proper procedure established by the City.

These are the only conditions which must be met to receive sick leave. As a result, there is no provision whatsoever to the effect that sick leave will not be granted to employees who refer themselves to doctors who do not practice in the Oshkosh area. Employees therefore have the right to go to whichever doctors they choose.

This right, of course, is not unfettered. Employees selecting such doctors must, of course, otherwise comply with all of the requirements of the

health insurance plan and they also must follow the procedures set forth in Article XIII, ante. Furthermore, they cannot travel anyplace on earth on the basis of a mere whim or caprice - which is a legitimate fear advanced by the City which suggests that employes may want to travel to Mexico for laetrile treatment. This, though, is not the case, which is why the City cannot deny Boushele a contractual benefit merely because it is concerned that other employes may abuse this privilege in the future.

It therefore suffices to state here that employes are entitled to be paid sick leave for any reasonable travel time incurred within Wisconsin's borders going to and from a doctor's appointment, as well as any reasonable travel time involving the Mayo Clinic which sits just outside Wisconsin's borders. 2/ Travel involving any other out-of-state destinations is not raised in this grievance and therefore can be handled on a case-by-case basis at a later time.

Accordingly, it is my

AWARD

1. That the City is required under Article XIII to grant sick leave for travel time incurred by employes traveling out of the local area for medical treatment when such treatment is on a self-referral basis.

2. That as a remedy to the contractual breach here, the City shall credit grievant Boushele with 3 1/4 hours compensatory time and it shall deduct 3 1/4 hours of sick leave from his sick leave bank.

Dated at Madison, Wisconsin this 13th day of October, 1994.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator

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2/ Contrary to the Union's claim, I find that there is no established past practice surrounding this issue since the record establishes that management in the past was unaware that Boushele and any other employes had referred themselves to doctors who did not practice in the local area. Boushele's immediate supervisor, Jeffrey Basler, similarly had no such knowledge when he initially approved Boushele's sick leave requests.