

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:
of a Dispute Between	:
	: Case 87
POLK COUNTY JOINT COUNCIL LOCAL 774,	: No. 50749
AFSCME, AFL-CIO	: MA-8373
	:
and	:
	:
POLK COUNTY	:
	:

Appearances:

Mr. Steve Hartmann, Staff Representative, on behalf of the Union.
Mr. Thomas Wishman, Personnel Director, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "County", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Balsam Lake, Wisconsin, on December 9, 1994. The hearing was not transcribed and both parties waived the filing of briefs in lieu of oral argument. I there issued a bench decision, which this Award augments.

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

ISSUE

Whether grievants David M. Moore, Janet Moore, Dorene Hendrickson, and John Hole were entitled to sick leave for January 18, 1994, under Article 8.01 of the contract, and if so, what is the appropriate remedy?

DISCUSSION

This dispute stems from the County's decision on January 18, 1994, 1/ to close down its Courthouse and annex because of severe cold, a decision which was first announced in the late afternoon of the previous day. 2/

The four grievants herein all requested sick leave for January 18 and did not report for work. Their requests were all denied pursuant to Section 2.8 of the County's work rules which provide:

. . . .

2.8 Policy for Closure of County Offices Due to Inclement Weather:

The Sheriff, in consultation with the County Board Chairman, will determine the need to close the County

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- 1/ Unless otherwise stated, all dates hereinafter refer to 1994.
 - 2/ Certain employes in the Clerk's office and janitors did report to work that day.

offices due to bad weather. In such instances the following policies will apply:

- A. If the closing is announced in WXCE and WCCO radio stations before 7:30 a.m. employees will receive no pay for the day, subject to "E" below.
- B. If the closure occurs between the hours of 7:30 a.m. and 12:30 p.m. those employees reporting to work as scheduled will receive 1/2 day of pay, subject to "E" below.
- C. When the closure occurs after 12:30 p.m. those employees reporting to work as scheduled will receive a full day's pay.
- D. Those employees failing to report to work as scheduled will be paid for hours actually worked, subject to "E" below.
- E. Employees may apply earned comp time, accrued vacation, or their floating holiday to receive a full days pay.
- F. This policy applies only to County employees working at the Courthouse, Center Building, and the Balsam Lake Municipal Building; excluding janitors.

. . .

In addition to the aforementioned policy, the County's Personnel Director in a November 12, 1991, memo informed all County department heads on how the County's closure policy should operate, including a proviso to the effect that employees can use vacation, compensatory, or holiday time during such closures.

Under this policy, the County refuses to pay for any sick leave sought for a day that its operations are closed because of inclement weather. This same policy, though, allowed employees to use vacation, compensatory, or holiday time on January 18 so that they could be compensated for their absences if they so chose.

The County does not dispute that grievants David Moore, Janet Moore, Hendrickson, and Hole were ill that day, as the record shows that:

- 1. Hole missed about 2.2 hours work on January 17 because of an inner ear infection which caused him to see a doctor who gave him a prescription. Hole received sick leave pay for his January 17 absence and he subsequently worked on January 19.
- 2. Janet Moore had a sinus infection which caused her to see a doctor on January 20. She worked on January 19 because she had to work on certain checks which had to be issued that day.
- 3. David Moore had a sinus infection which caused him to miss an hour's work on January 17 and to see a doctor that day. He received sick leave for that time. Moore also missed about 3.7

hours of work on January 19 for which he received sick leave pay.

4. Hendrickson had an infection on January 17 which caused her to miss work that day and to schedule a doctor's appointment on January 18, but which was subsequently cancelled. She missed work on January 19.

This marked the first time that employees ever sought sick leave during a closure caused by inclement weather. In addition, there is no evidence that the parties ever bargained over this issue in either contract negotiations or when the Company originally promulgated Section 2.8 of its policy, ante.

As I ruled at the hearing, the resolution of this issue centers on two opposing principles: on the one hand, the County has a legitimate desire to make sure that employees do not try to rip off the system by making bogus sick leave claims on the days that the County closes its facilities because of inclement weather; on the other hand, employees have a right to receive sick leave when they in fact are sick pursuant to Article VIII of the contract. It states:

ARTICLE VIII - SICK LEAVE

Section 8.01 Sick leave shall be considered to be an excused absence from work with pay due to illness or injury that occurs outside the employment of the County and not covered by the Worker's Compensation Act.

Section 8.02 Employees shall accumulate sick leave as follows:

A. All regular full-time, regular part-time and regular seasonal employees shall earn sick leave at the rate of one (1) day of each month of employment;

B. Unused sick leave shall carry over and be added to the next year's accumulation until a maximum of one-hundred and twenty (120) days of unused sick leave has accumulated;

C. Sick leave for regular part-time employees and regular seasonal employees shall be computed on a prorated basis.

Section 8.03 Upon retirement, forced retirement due to disability or in the event of death, the employee or his/her estate shall receive one lump sum payment for one-half (1/2) of the remaining unused sick leave in the employee's account, not to exceed a total of forty-five (45) days.

In lieu of the above lump sum payment, employees may elect to have up to 67% of their accumulated sick leave cash equivalent applied towards the payment of health insurance premiums. In the event of the death of the employee before the cash payment equivalent is exhausted, the remaining portion shall be paid to the estate of the employee, or used to purchase continuing health insurance protection, at the family's option.

Section 8.04 Employees having reached the maximum sick

leave accumulation limit shall have their account balanced according to the days used and earned in that calendar year.

Section 8.05 In order to qualify for such sick leave, an employee must report that he/she is sick, not later than one-half (1/2) hour before the earliest time for which he/she is to report to work. In the event an employee becomes sick during the working hours, he/she shall notify his/her supervisor before leaving work. Employees may use sick leave for minor children up to age eighteen (18). Employees may use sick leave for dependent handicapped children and for spouse's illness with a doctor's statement.

Section 8.06 Employees shall be paid while on sick leave at a rate equal to the number of daily hours established for their position, excluding overtime and shift differential pay except for employees regularly employed on a shift which requires shift differential pay.

Section 8.07 Each employee on sick leave is subject to a visit by a County representative. A doctor's statement of illness may be requested for the third consecutive day of illness and if requested, must be furnished before sick leave is paid.

Section 8.08 Any employee who is found to have violated any sick leave regulation is subject to discipline by the Employer.

Section 8.09 Employees who have reason to anticipate the use of sick leave such as elective surgery, shall whenever possible, give at least two (2) week's notice. Such notice shall give an estimated length of absence from duty.

Section 8.10 Seniority shall continue to accrue during a sick leave absence due to illness or injury.

There is nothing in this language which in any way states that sick leave should not be granted when the County closes its facilities because of inclement weather. As a result, employees under Section 8.01 have the right to receive this contractual benefit irrespective of such closures when they in fact are sick, as were all of the grievants here.

It is true that the County's policy provides otherwise. However, that policy was never negotiated with the Union and it therefore cannot negate the clear language of Article 8.01 which was negotiated. Indeed, the arbitrariness of the County's position can be seen by the fact that an employee who may have had open heart surgery on January 18 would not have received sick leave for that day. Such an arbitrary result simply flies in the face of Article 8.01 which provides that sick leave must be paid in those circumstances.

As a result, all of the grievants herein are entitled to sick leave for January 18. Their sick leave accounts therefore shall be changed to reflect that fact and they shall have returned to them whatever compensatory, vacation, or holiday time they were forced to use on that day.

However, it should be added that this decision turns on the very narrow facts of this case showing that the grievants had doctors' appointments on

either January 17, 18 or 19 and that they, indeed, were sick on January 18. As a result, the County in the future is not required to grant sick leave when it closes its facilities because of inclement weather unless:

1. The employees affirmatively show they were ill, with the burden of proof resting with the employees and;
2. Employees are under a doctor's care and/or have a doctor's appointment on either the days before or after the closing, or on the actual date of the closing itself and;
3. Employees provide written documentation of their illness even if it is less than three days' duration. 3/

If employees fail to meet all three of these criteria, no sick leave need be granted.

In light of the above, it is my

AWARD

1. That the County violated Article 8.01 of the contract when it failed to grant sick leave to grievants David M. Moore, Janet Moore, Dorene Hendrickson, and John Hole;

2. That the County will take the remedial action noted above.

Dated at Madison, Wisconsin this 28th day of December, 1994.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

3/ Such written notification during times of inclement weather supersedes Section 8.07 of the contract which does not require written notification until an employee's third consecutive day.