BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

RHINELANDER CITY EMPLOYEES,
LOCAL 1226, AFSCME, AFL-CIO

and

CITY OF RHINELANDER

Case 80
No. 54680
MA-9755

Appearances:
Mr. David Campshure, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.
Mr. Philip Parkinson, City Attorney, appearing on behalf of the City.

ARBITRATION AWARD

The Union and the City were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to resolve a grievance. A hearing, which was not transcribed, was held on April 30, 1997, in Rhinelander, Wisconsin. Afterwards, the parties filed briefs and the Union filed a reply brief, whereupon the record was closed on June 18, 1997. Based on the entire record, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

> Did the City violate the parties' collective bargaining agreement when it denied the grievant, Joe Ruffie, use of one day of sick leave on June 27, 1996? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISION

The parties' 1995-96 collective bargaining agreement contained the following pertinent provision:

ARTICLE 9 - EMPLOYEE BENEFITS

A. SICK LEAVE

. . .

6. Employees may use their accumulated sick leave in the event of serious illness or injury or an approved personal illness or injury of one of his immediate family, that makes it necessary that he be absent from his job. Immediate family for purposes herein shall be defined as husband, wife, children and parents of the employee or his wife. Each request for such leave must be approved by the Mayor.

FACTS

The Union represents a bargaining unit which includes, among others, public works employes. Joe Ruffie, the employe involved herein, is a veteran public works employe. This case involves Ruffie's request for a day of sick leave.

The facts are not in dispute. About 6:30 p.m. on June 26, 1996, 1/ Ruffie was called at home and informed that his son, Duane, had injured his hand in an on-the-job accident at his employment in Three Lakes and had been transported to the hospital in Eagle River for medical treatment. Duane Ruffie is 34 years old, not married, and lives alone. Ruffie and his wife immediately left their home in Rhinelander and drove to the Eagle River hospital. When they arrived there, they were informed that Duane had a deep cut on his thumb which had severed several tendons. They were further informed that due to the extent of the injury, Duane would need to be treated by a specialist at the hospital in Woodruff. Ruffie and his wife then drove Duane from the hospital in Eagle River to the hospital in Woodruff. After being admitted to the Woodruff hospital, Duane had surgery on his thumb beginning about 10:00 p.m. Following the surgery, the medical decision was made to keep Duane at the hospital overnight. Since Duane would not be released from the hospital until the next day, Ruffie and his wife decided to return home by themselves. They left Woodruff about 12:15 a.m. and arrived back home in Rhinelander about 1:00 a.m., exhausted.

1/ All the dates referenced hereinafter occurred in 1996.

One consequence of Duane staying at the hospital overnight was that someone had to pick him up from the hospital the next day and take him home. After considering who could do this, Ruffie decided there was no one but he and his wife who could transport Duane home from the hospital. In making this decision, Ruffie considered having his wife drive alone to pick up Duane, but rejected that possibility because she has rheumatism which sometimes affects her ability to drive. Ruffie therefore decided he would take the next day off and drive in to Woodruff with his wife, pick up Duane from the hospital, and take him home.

Early the next morning Ruffie called his supervisor, Public Works Director Gary Knutson, and requested to use a day of sick leave for the day. Ruffie told Knutson that he was tired from the events of the previous night and that he had to drive to Woodruff that day to pick up Duane from the hospital and bring him home. Knutson responded to Ruffie's request by saying in effect that Duane was old enough to take care of himself. Knutson also told Ruffie to take vacation for the day, not sick leave.

Ruffie did not work that day (June 27). Thus, he was absent from work. He and his wife drove to Woodruff that morning to pick up their son from the hospital. When Duane was released from the hospital about 10:00 a.m., he was ordered to not drive home himself. Ruffie then drove Duane back to Rhinelander. That afternoon Ruffie drove Duane to Sugar Camp, where Duane lives. Ruffie and his wife then drove to Duane's place of employment in Three Lakes, picked up his (Duane's) car, and drove it back to his home in Sugar Camp.

On July 23, Ruffie made a short written request to Mayor Gordon Waldvogel to use a day of sick leave for his absence on June 27. The Mayor responded by asking Ruffie for a more detailed reason for the sick leave request. Ruffie subsequently submitted a two-page account of the facts previously referenced. On September 10, the Mayor denied Ruffie's request for a sick day for June 27. In his written response, the Mayor stated: "I do not feel that sick leave is warranted at this time. A day of vacation may be more appropriate."

Ruffie later grieved the City's categorization of his June 27 absence as vacation rather than sick leave. When this grievance was being processed, Mayor Waldvogel told Union President John Zatopa that he (the Mayor) felt that employes should use their vacation to cover absences before using sick leave.

Requests for sick leave are usually handled by the department head and the Mayor is not involved. Prior to the instance involved herein, there has only been one other instance in this bargaining unit where an employe's request for sick leave was decided by the Mayor. In that instance, the employe asked for two days of sick leave and the Mayor approved one day. That matter was not grieved.

The record indicates that Ruffie had 60 days of accumulated sick leave in his sick leave

account at the time of the above-referenced request. Ruffie has never been accused of or disciplined for sick leave abuse.

POSITIONS OF THE PARTIES

The Union contends the City violated the collective bargaining agreement when it denied the grievant a day of sick leave for June 27, 1996. According to the Union, the Mayor's decision to deny the grievant sick leave was unreasonable. It makes the following arguments to support this contention. First, the Union argues that the grievant's request for family sick leave met the requirements established in Article 9, A, 6 for same, to wit: that there be a serious injury to a member of the employe's immediate family that required him to be away from the job. The Union believes that the fact that the grievant's son is an adult who does not reside with the grievant is irrelevant. The Union submits that since the grievant satisfied the contractual requirements, he had a contractual right to use family sick leave on June 27. Second, the Union asserts that the Mayor's stated reason for denying the day of sick leave (i.e., that "a day of vacation may be more appropriate") was tenuous and subjective. As the Union sees it, the agreement does not give the Mayor the right to dictate whether sick leave or vacation may be more appropriate for an absence. Third, the Union notes that the agreement does not specify that requests for sick leave be placed in writing, yet the Mayor nevertheless demanded an explanation of the reason for the request here. The Union believes that demand was inappropriate because it was not required by the contract and because requests for sick leave are often made with little or no advance notice, are sometimes confidential in nature, and generally easy to verify. Fourth, the Union calls attention to the fact that the grievant had no history of abusing sick leave and had 60 days of accumulated sick leave available in June, 1996. Finally, the Union asserts that the Mayor did not offer any significant reason for denying the grievant the use of his contractual (sick leave) benefit. The Union argues that the foregoing points establish that the Mayor's action in denying the request for sick leave was arbitrary and capricious. In order to remedy this alleged contractual breach, the Union asks the arbitrator to sustain the grievance and order the City to deduct one day from the grievant's accumulated sick leave balance and reinstate one day of vacation.

The City contends it did not violate the collective bargaining agreement when it denied the grievant a day of sick leave for June 27, 1996. According to the City, the grievant was not entitled to use sick leave for that day to pick up his son from the hospital. With regard to the applicable standard of review, the City avers at the outset that the contractual language involved (Article 9, A, 6) does not establish a standard for reviewing the Mayor's denial of sick leave. The City contends that since no standard is contractually established, the arbitrator should not use the standard proposed by the Union, namely an arbitrary and capricious standard. The City argues in the alternative that if the arbitrator does apply an arbitrary and capricious standard, the Mayor's denial of sick leave still passes muster. It makes the following arguments to support this contention. First, the City notes that the day which Ruffie requested sick leave for (June 27) was not the day of Duane's injury and surgery, but rather was the following day. In the City's view, this was significant because it believes Duane's medical emergency had passed by then. Second,

the City asserts it was not medically necessary for Ruffie to be absent on June 27 because the only thing that happened that day was that Ruffie picked up Duane from the hospital and took him home. Finally, the City asserts that just because Ruffie was up to 1:00 a.m. the night before and was tired the next day does not warrant a day of sick leave. Given the foregoing, the City contends the denial of the grievant's requested sick leave did not violate the contract. It therefore requests that the grievance be denied.

DISCUSSION

Ruffie missed work on June 27 because he picked up his son that day from the hospital and brought him home. That absence is currently categorized as a vacation day. He seeks, via this grievance, to convert that absence's categorization from vacation to sick leave. The City opposes converting the one-day absence from vacation to sick leave. In their view, sick leave was not warranted under the circumstances. Thus, the issue here is whether the City complied with the contract or violated same when it denied the grievant's request for a day of sick leave for June 27, 1996.

My analysis begins with a review of the pertinent contract language. Inasmuch as this is a sick leave dispute, it follows that the applicable contract language would be in the sick leave article. In this contract, the sick leave provision is found in Article 9, A. A review of Article 9, A reveals that most of the provision deals with absences involving employe illness or injury. All that language is irrelevant here, though, because this dispute does not involve an employe's illness or injury. Instead, this dispute involves an employe's family member's illness or injury. The provision dealing with an employe's family member's illness or injury is Article 9, A, 6. It provides as follows:

> Employees may use their accumulated sick leave in the event of serious illness or injury or an approved personal illness or injury of one of his immediate family, that makes it necessary that he be absent from his job. Immediate family for purposes herein shall be defined as husband, wife, children and parents of the employee or his wife. Each request for such leave must be approved by the Mayor.

This clause provides that employes can use their accumulated sick leave for either their own "serious illness or injury" or an "illness or injury" of an "immediate family" member "that makes it necessary that he be absent from his job." The quote marks used in the preceding sentence highlight the three elements necessary for family sick leave: 1) there must be an "illness or injury", 2) which involves an "immediate family" member, 3) "that makes it necessary that he be absent from his job."

It is apparent from the last line of Article 9, A, 6 that the use of family sick leave is not

automatic because it has to be approved by the Mayor. In this case, the Mayor denied the requested family sick leave. Given that denial, the threshold question here is what standard of review the arbitrator is to use for reviewing the denial of family sick leave. On its face, Article 9, A, 6 does not contain such standard. Thus, that particular provision is silent concerning the applicable standard to be used for reviewing the denial of family sick leave. That being so, the undersigned has found it necessary to look elsewhere in the sick leave provision to see if a standard of review is contained anywhere else. It is. Three paragraphs before Article 9, A, 6 it provides as follows:

> Disapproval of sick leave use by the department head shall not be arbitrary or capricious.

This sentence establishes an arbitrary and capricious standard for reviewing the denial of employe sick leave by department heads. Since the parties intended for that standard to apply to the denial of employe sick leave by department heads, they must have intended that same standard to apply to the denial of family sick leave by the Mayor since the two acts are so similar in nature. Consequently, the undersigned will use an arbitrary and capricious standard for reviewing the Mayor's denial of family sick leave for the grievant.

Based on the foregoing rationale, I find that Ruffie's absence on June 27 qualifies for family sick leave within the meaning of Article 9, A, 6. To begin with, there is no question that the reason Ruffie was absent that day was because he spent the day picking up Duane from the hospital in Woodruff and bringing him home. Since Duane is the grievant's son, he qualifies as an "immediate family" member within the meaning of the clause. The fact that Duane is a 34 year old adult who lives by himself does not somehow disqualify him from the provision's coverage. Second, Duane's cut thumb constitutes an "injury" within the meaning of the clause since it required surgery as well as being hospitalized overnight. While the City correctly notes that by the next day (June 27) the immediacy of Duane's thumb injury had passed, the fact remains that Duane was still hospitalized at the start of the day for same. Third, it was "necessary" for Ruffie to "be absent from his job" on June 27 due to the following circumstance. The hospital's medical staff would not let Duane drive himself home from the hospital. This meant that someone else had to pick him up and drive him home. The grievant felt he was the only person who could do that (i.e., pick up Duane and take him home). The City did not show otherwise, so there is no basis in the record for finding that someone else other than the grievant could have picked up Duane at the hospital and brought him home. Thus, the grievant had to do it. Since the grievant had to drive to Woodruff that day to pick up Duane, he could not do that and be in Rhinelander at work at the same time. As a result, it is held that his absence from work that day was "necessary" within the meaning of the clause. Having found that the grievant met all three of the elements contained in Article 9, A, 6 for family sick leave (i.e., that there be 1) an "illness or injury", 2) which involves an "immediate family" member, 3) "that makes it necessary that he be absent from his job"), it follows that his request for family sick leave should have been granted. I find it was arbitrary and capricious for the Mayor to deny the grievant's request for family sick leave for June 27.

The subjective nature of the Mayor's decision to deny the grievant's request for family sick leave was also illustrated in a verbal exchange the Mayor had with the Local Union President when this grievance was being processed. In that verbal exchange, the Mayor said he felt that employes should use their vacation to cover work absences before using sick leave. The problem with this is that there is no such requirement in the contract. Vacation and sick leave are separate contractual benefits and employes can take them independent of one another. This means that employes do not need to use vacation to cover work absences before they use sick leave. Since the contract does not contain a requirement that an employe must use their vacation to cover work absences before they can use family sick leave, the City cannot unilaterally institute such a requirement. Thus, if an employe satisfies the three elements of Article 9, A, 6, as is the case here, the employe can use family sick leave for the work absence even if, as is the case here, the employe could also have used vacation for the work absence.

Having held that the grievant was entitled to family sick leave on June 27, 1996, the City violated the contract when it denied him same. In order to remedy this contractual breach, the City shall deduct one day from the grievant's accumulated sick leave balance and add one day to his vacation balance.

In light of the above, it is my

AWARD

That the City violated the parties' collective bargaining agreement when it denied the grievant, Joe Ruffie, use of one day of sick leave on June 27, 1996. In order to remedy this contractual breach, the City shall deduct one day from the grievant's accumulated sick leave balance and add one day to his vacation balance.

Dated at Madison, Wisconsin, this 25th day of July, 1997.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator