BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LANGLADE COUNTY (HIGHWAY DEPARTMENT)

and

AFSCME, COUNCIL 40, LOCAL 36, AFL-CIO

Case 79
No. 56613
MA-10351

Appearances:

Ruder, Ware & Michler, S.C., by **Attorney Jeffrey T. Jones,** Suite 700, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of the Employer.

Wisconsin Council 40, AFSCME, AFL-CIO, by **Mr. David Campshure**, 1566 Lynwood Lane, Green Bay, Wisconsin 54311, appearing on behalf of the Union.

ARBITRATION AWARD

Langlade County, hereinafter referred to as the Employer or the County, and Local 36, AFSCME, Wisconsin Council 40, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances arising thereunder. The Union made a request, with the County concurring, that the Wisconsin Employment Relations Commission designate a Commissioner or member of its staff to hear and decide a grievance filed by the Union. The undersigned was so designated. The hearing was transcribed, the parties filed exhaustive post-hearing briefs and reply briefs, and the record was closed on December 22, 1998.

This case was one of three involving the same parties, all heard on the same date before the same arbitrator. (See Stipulations, # 2)

ISSUE

The parties reached a stipulation to a statement of the issue:
Did the County violate the parties' collective bargaining agreement when it refused to pay the grievant's sick leave and vacation on March 19, 1998? If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 4 – MANAGEMENT RIGHTS

The County possesses the sole right to operate County government and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to the following:

A. To direct all operations of the County;

B. To establish reasonable work rules and schedules of work, in accordance with the terms of the Agreement;

. . .

E. To relieve employees from their duties because of lack of work or for other legitimate reasons, in accordance with the terms of this Agreement;

F. To maintain efficiency of County government operations entrusted to it;

. . .

H. To introduce new or improved methods or facilities;

I. To change existing methods or facilities;

. . .

K. To determine the methods, means and personnel by which County operations are to be conducted;

L. To take whatever reasonable action is necessary to carry out the functions of the County in situations of emergency;

. . .

ARTICLE 7 – GRIEVANCE PROCEDURE

. . .

F. Arbitration

. . .

3. Arbitration Procedures: The arbitrator selected or appointed shall meet with the parties at a mutually agreeable time to review the evidence and hear testimony relating to the grievance. Upon completion of this review and hearing, the arbitrator shall render a written decision to both the County and the Union, which shall be final and binding on both parties. The arbitrator shall (sic, not) modify, add to or delete from the expressed terms of the Agreement.

. . .

ARTICLE 10 – VACATIONS

. . .

B. A week's vacation for all employees in the Highway Department shall be computed on a basis of forty (40) hours per week. The employees may, if they desire to, use their vacation in periodic times throughout the year in lieu of lost time due to inclement weather, lack of work, etc.

. . .

D. The number of employees on vacation within a given classification at any given period shall be determined by the department head.

E. Choice of vacation time, within a given classification, shall be by seniority. Employees shall give the department head at least fifteen (15) days advance notice of the desired vacation time, except in cases of emergency where the employee needs vacation due to unusual circumstances, or in cases of lack of work as outlined in Subsection B above.

. . .

ARTICLE 11 – SICK LEAVE

A. Each full-time employee shall earn one (1) day of sick leave for each month in which payment is received and all unused sick leave shall be cumulative to a maximum of one hundred and ten (110) days.

. . .

C. Any employee off work on sick leave shall be paid an amount equal to the same number of hours worked on that day, but not to exceed a maximum of eight (8) hours. . . .

. . .

ARTICLE 12

A. The employees in the Highway Department shall work eight (8) hours per day, Monday through Friday, forty hours per week.

B. The hours of work shall be 7:00 a.m. to 12:00 noon, and 12:30 p.m. to 3:30 p.m., Monday through Friday. Employees starting work at 7:00 a.m. shall work until 3:30 p.m.

. . .

Article 13 – HOURS OF WORK AND CLASSIFICATIONS

A. The employees in the Highway Department shall work eight (8) hours per day, Monday through Friday, forty (40) hours per week.

B. The hours of work shall be 7:00 a.m. to 12:00 noon, and 12:30 p.m. to 3:30 p.m., Monday through Friday. Employees starting work at 7:00 a.m. shall work until 3:30 p.m.

. . .

ARTICLE 22 – OVERTIME PAY

A. Employees shall be paid at the rate of time and one-half (1 ½) for all hours worked in excess of forty (40) hours per week. Sick leave, vacation and holidays shall be considered as time worked when computing overtime payment. (Emphasis added).

. . .

(Emphasis added).

STIPULATIONS

At the August 27, 1998 hearing, the parties (further) stipulated to the following general facts:

1. On March 19, 1998, the Langlade County Highway Department employees were involved in snow removal work. Ron Meyer, one of the employees, started work at 4:00 a.m., he quit work at 2:00 p.m. and he wished to use sick leave until 3:30 p.m., which would be his normal quit time. That request was (subsequently) denied (by the Highway Commissioner). On the same date, Don Strobel, another bargaining unit employee, started work at 2:30 a.m., worked until 1:30 p.m., and wished to use 2 hours of vacation time until 3:30 p.m. That request was denied (by the Highway Commissioner). Again, 3:30 p.m. would be Mr. Strobel's normal quit time. (Tr. 1)

2. The testimonies given in the three hearings conducted on August 27, 1998 (Case 79, No. 56613 MA-10351; Case 80, No. 56614, MA 10352; and Case 81, No. 56615, MA-l0353) are included in the records of all three matters. (See transcript of hearing of Case 80, No. 56614, MA-10352 at 21).

BACKGROUND

This matter consists of the grievances of two employes of Langlade County Highway Department, Ron Meyer and Donald Strobel, Jr. Each is a member of the bargaining unit.

Normal weekday working hours for Highway Department employes run from 7:00 a.m. to 3:30 p.m. When snowfalls are heavy, selected employes are normally required to report to work several hours before the normal starting time of 7:00 a.m. for the purpose of plowing snow. Each employe with snowplowing responsibilities has an assigned snowplowing route.

Snowplowing routes generally require at least eight hours to ten hours to complete. Due to their early morning start, Highway Department employes are usually able to complete their snowplowing responsibilities well before the normal end of the workday at 3:30 p.m.

Under the practice followed by the Highway Department, an employe who had completed his snowplowing responsibilities before the normal end of the working day and had worked at least eight hours on his snowplowing shift, was given the option of a) being excused from further work and going home or b) if work was available (and it generally was), working until the normal quit-time of 3:30 p.m. Inasmuch as employes received premium pay of time and one-half for all hours worked over 40 per week, time worked over eight hours on any given day would generally end up being compensated on an overtime basis.

On March 19, 1998, Ron Meyer was called into work at 4:00 a.m. or three hours before his normal starting time. He had also plowed snow for most of the day on March 18. Mr. Meyer finished his snowplowing responsibilities on March 19th at approximately 2:00 p.m. When he finished plowing snow, he complained of a backache to his supervisor, requested permission to go home on sick leave, and was granted the sick leave he requested. Mr. Meyer requested sick leave compensation computed at the overtime-premium rate of time and one-half, for the time between the time he left and the normal daily quitting time of 3:30 p.m. Mr. Meyer's claim for sick leave pay based on the overtime-premium rate was subsequently denied by the Highway Commissioner.

Mr. Meyer reports that on a previous similar occasion he had finished plowing snow, complained of a headache, and received permission to go home on sick leave. On that occasion Mr. Meyer received payment for his sick leave at the premium overtime rate of time and one-half.

Donald Strobel, Jr., currently classified as an Operator/Loader, is 51 years old with 30 years experience as a Langlade County Highway Department employe. On March 19, 1998, Mr. Strobel was required to report into work for snowplowing responsibilities at 4:00 a.m. Mr. Strobel completed his snowplowing responsibilities at approximately 1:00 p.m. Mr. Strobel advised two supervisors that he was going home, but did not specifically request vacation time. It does not appear that his supervisors made any comment in response. Mr. Strobel's subsequent claim for two hours of vacation pay at the premium overtime rate of time and one-half was subsequently denied by the Highway Commissioner.

Both Mr. Meyer and Mr. Strobel requested an explanation from the Highway Commissioner as to why the request of each for overtime-premium pay had been denied. In separate conferences with each, the Highway Commissioner explained that both he and the Chairman of the Langlade County Highway Committee had concluded that members of the bargaining unit were abusing their contractual rights pertaining to sick leave and vacation by claiming the overtime premium pay. Accordingly, they determined to honor no further claims of that nature.

POSITIONS OF THE PARTIES

Union

Grievant Meyer: The Union notes that 1) the County did not refute that Grievant Meyer received premium sick leave pay on another occasion in which the facts were similar to those of Meyer's instant case, 2) the County does not deny that Meyer's supervisor gave Meyer permission to use sick leave on March 19, 1998, and 3) that Meyer acted in good faith. Under these circumstances, the Union argues it was inappropriate for Highway Commissioner Every to deny premium sick leave payment to Meyer.

The Union further contends that there is no contractual provision that permits the County to send employees home after eight hours of work, but before the normal end of the workday. According to the Union, there is always enough work to keep employees busy until the end of the workday. Thus, argues the Union, had Meyer been feeling well enough to work an additional one and a half hours of March 19, 1998 he would have worked until 3:30 p.m. and received the premium rate of pay for overtime.

The Union analogizes the existing situation to a hypothetical one in which Meyer had reported into work at 7:00 a.m., but left due to illness at 1:30 p.m. Under the hypothetical facts, the Union argues, Meyer would be entitled to two hours of sick leave pay. Applying the same theory to the facts of the existing situation, says the Union, entitles Meyer to one and a half hours of sick leave pay computed at the overtime premium rate.

Grievant Strobel: The Union describes Strobel as tired after plowing snow for eleven hours. Based on Strobel's fatigue and his desire to get some sleep, he advised his supervisors that he was going home, and claimed two hours of vacation time at the premium overtime rate of pay.

According to the Union, Strobel had established the practice of leaving work prior to 3:30 p.m. on those occasions when he had reported to work early and put in an eight-hour day. In those instances, according to the Union, Strobel typically took vacation time or sick leave and claimed the premium overtime rate of pay.

The Union acknowledges that Highway Commissioner Every had previously advised Strobel of his disapproval of Strobel's using sick leave to go home prior to 3:30 p.m. after plowing snow for eight hours. The Union notes, however, that Strobel does not recall that Commissioner Every ever indicated disapproval over use of vacation time instead.

The Union points to past instances that occurred on December 4, 1997, January 15, 1998, and January 23, 1998 where Strobel received premium overtime pay for usage of either sick leave or vacation time when taken under the same circumstances as existed on March 19, 1998.

The Union highlights the last sentence of Article 9, Section B of the parties agreement: "The employees may, if they desire to, use their vacation in periodic time throughout the year in lieu of lost time due to inclement weather, lack of work, etc." According to the Union, Strobel's practice of using vacation after working eight hours serves as an interpretational guide to that contract provision.

The Union discounts the five time cards introduced into evidence by the County from which it appears that bargaining unit employees had reported to work prior the normal workday starting time, worked eight hours, and left work without using any vacation or sick leave time. The Union believes this merely indicates that Article 9, Section B gives employees the option of using or nor using vacation in such situations. That, says the Union, is all the Strobel did, and he is thus entitled to two-hours of vacation pay at the premium overtime rate.

Employer

The Employer asserts that the Union's claims on behalf of Grievants Meyer and Strobel are without merit. The Employer believes it is vested with the contractual right to alter the employees' daily work schedule. Under this circumstance the Employer argues that the grievants were not entitled to utilize sick leave/vacation after completion of their snow plowing assignments, but before the normal 3:30 p.m. quit time because, in effect, the Employer had modified the daily work schedule. Under the modified work schedule, the Employer's argument runs, the mandatory workday ended with the completion of snow plowing duties (if eight hours had been completed). Thus, says the Employer, while employees could choose to remain until 3:30 p.m., they were not required to do so.

Moreover, the Employer notes that no provision of the Collective Bargaining Agreement specifically prohibits Langlade County from altering the employee's daily work hours. Inferentially, however, according to the Employer other provisions of the Agreement imply that the Employer may establish a different work schedule.

Furthermore, the Employer cites the Management Rights article of the Agreement that expressly allows the Employer to "direct all operations of the County, establish reasonable work rules and *schedules of work* (emphasis included), relieve employees from their duties because of lack of work or other legitimate reasons, maintain efficiency of County government operations, introduce new or improved methods or facilities, change existing methods or facilities, and determine the methods, means, and personnel by which County operations are to be considered."

The Employer claims this broad language certainly vests the County with the right to temporarily alter the employee's work schedule, noting that even the Union concedes this right.

The Employer highlights testimony from Grievant Meyer as indicating that although Meyer had never previously gone home after completing his snow plowing responsibilities, he knew that some employees did leave the work site before the normal 3:30 p.m. quit time after finishing their snow plowing route. The Employer also cites similar testimony from Grievant Strobel, with the additional element that Strobel knew that employees who did so were neither disciplined, and nor paid for the time between finishing their route and 3:30 p.m.

The Employer asserts that because the grievants were not required to remain at work until 3:30 p.m. they were not entitled to use sick leave or vacation time when they went home prior to 3:30 p.m. The Employer argues that a condition precedent to the use of either sick leave or vacation time is that the employee would otherwise required to be at work.

The Employer quotes Article 11, Paragraph C: "(a)ny employee off work on sick leave shall be paid an amount equal to the same number of hours worked on that day." (Emphasis included) The Employer notes that Paragraph D of the same Article states that "(a)ny employee who is off work under sick leave for three (3) or more days shall present a certificate from a doctor . . ." (Emphasis included) According to the Employer, "the fact that these provisions address sick leave usage when an employee is 'off work' indicates that the parties did not intend that an employee would be entitled to use sick leave when the employee was not required to be at work."

The Employer pursues the point: "(s)ince the Grievants were not required to continue working until 3:30 p.m., it is axiomatic that the Grievants were not entitled to utilize sick leave and vacation until 3:30 p.m. To conclude otherwise, says the Employer, leads to the unreasonable result that employees who are sick or employees who simply wish to utilize vacation for additional pay purposes may do so during any non-work hours.

Moreover the Employer argues as to the Strobel grievance, Grievant Strobel did not follow the vacation scheduling procedures and on this ground alone is not entitled to his claimed vacation time. The Employer explains that under the parties' Agreement employees are required to provide fifteen days advance notice of their desire to use vacation and their department head (Highway Commissioner) has the authority to determine the number of employees on vacation at any time. Inasmuch as the Agreement also provides that the

arbitrator should give the language of the contract effect as written and shall not modify, add to, or delete from it, the fifteen day advance notice provision should be enforced by the arbitrator, the Employer believes.

The Employer concedes that Article 10, Paragraph B allows employees to use their vacation at periodic times during the year in lieu of lost time due to inclement weather or lack of work. The Employer further agrees that Paragraph E of the same Article provides a waiver of the fifteen-day advance notice of vacation requirement in cases of emergency or in cases of lack of work. But, asserts the Employer, these paragraphs are still subject to Paragraph D of Article 10 that grants the Highway Commissioner the authority to determine the number of employees on vacation at any given time.

In any event, the Employer points out that there was no lost time on March 19, 1998 due to inclement weather or lack of work. Therefore, the provisions of Paragraphs B and E simply do not apply.

Finally, the Employer argues that the grievants' attempt to manipulate the terms of the labor agreement to obtain what the Employer regards as unearned overtime pay should be rejected. The Employer acknowledges the provisions of Article 22 govern the computation of overtime. The Employer emphasizes the last sentence of that Article: "Sick leave, vacation and holidays shall be considered as time worked when computing overtime pay."

According to the Employer, this provision means that sick leave, vacations and holidays are considered when determining how many hours any employee has worked in a given week solely for purposes of computing overtime. But, contends the Employer, this is entirely different from what the grievants are attempting. The Employer views the grievants' respective requests to utilize sick leave and vacation as " . . .simply an attempt to earn additional unearned compensation by converting the straight time wage rate paid for sick leave and vacation to the overtime pay rate."

The Employer insists that except where restricted by the agreement the allocation of overtime is an exclusive right of management, and cites hornbook authority in support of this proposition.

Union Response

The Union believes the County's contention that it has the contractual right to temporarily alter the employees' normal daily work hours is an overstatement of the facts in evidence. The Union asserts that while the County has the right to call employees into work prior to the normal starting time of 7:00 a.m., the County does not have the right to send employees home after they have completed eight hours of labor. In other words, according to the Union the County can only lengthen the workday by an early call-in of bargaining unit employees; it cannot require employees to leave after they have worked eight hours.

The Union describes the Employer's argument that Grievant Strobel failed to comply with the vacation selection procedure as ludicrous. The Union views Article 10, Section B of the parties' collective bargaining agreement as authorizing Strobel's vacation claim. According to the Union, since Strobel had the option of either going home (without additional pay) or remaining until 3:30 p.m., there must have been a lack of work. Since Article 10, Section B is allows employees to use vacation time in lieu of lost time due to inclement weather or lack of work, the Union argues Strobel's vacation claim falls within that description.

The Union scores the County for 1) ignoring the fact that Strobel informed two supervisors that he was going home, and 2) not addressing or rebutting Strobel's established past practice of taking sick leave or vacation time when his eight hours work span ended prior to 3:30 p.m.

As to Grievant Meyer, the Union notes that the Employer did not refute that Meyer's request for sick leave on March 19, 1998 was initially granted by his supervisor.

Finally, the Union asserts that nowhere in the parties' labor agreement is there a provision that vacation and sick leave cannot be used if overtime will result. That, according to the Union, is what the Employer is attempting to accomplish.

Employer's Reply

The Employer takes issue with the Union's contention that the County may not send its employees home after eight hours of work, but before the normal quit time of 3:30 p.m. The Employer believes it has the contractual right to alter the employees' daily work hours and that the Union has recognized this right. The Employer further reemphasizes its belief that on March 19, 1998 the grievants were fully aware that they were not required to remain at work until 3:30 p.m. once they had finished their snow plowing duties.

The Employer believes that grievants were attempting to convert the payment of sick leave and vacation from straight time to time and one-half. The Employer justifies its denial of sick leave and vacation pay to the grievants as in accord with its contractual right to control overtime costs.

The Employer argues that if the grievances in this matter are sustained the Employer will be unable to control overtime costs in those instances where its workforce is required to report to work early to plow snow. Logic mandates that an employer be able to control its overtime costs, according to the Employer.

DISCUSSION

The arguments of each party have included learned dissertations on whether the collective bargaining agreement between them permits the Employer to alter the daily work

schedule of bargaining unit employees. The advocates for each side have ably propounded their respective positions as to this matter.

It seems to me, however, the Strobel grievance may be resolved on far narrower grounds that were also advanced by the respective advocates for the parties.

Grievant Strobel: In the case of Grievant Strobel, several facts emerge as determinative.

Article 10, Subsection E of the collective bargaining agreement of the parties provides, *inter alia*, that employees give the department head at least fifteen days advance notice of the desired vacation time. Section D of the same article provides that the department head (Highway Commissioner) shall determine the number of employees on vacation within a given classification at any given period.

Undisputed is the fact that Grievant Strobel did not submit his vacation request fifteen days in advance of his desired vacation time. Obviously, under this circumstance advance approval by the Highway Commissioner was impossible.

It is true that Article 10, Subsection E provides an exception to the fifteen-day notice provision " . . . where the employee needs the vacation due to unusual circumstances, or in cases of lack of work as outlined in Subsection B above." However, Grievant Strobel did not claim any particular need for vacation due to any unusual circumstances. Undoubtedly he was tired. But any fatigue he was experiencing does not appear particularly unusual under the circumstances. Neither did it require a vacation leave. Since Strobel had already put in a full day's demanding work, he knew he was permitted simply to go home.

Moreover, it does not appear that Strobel even advised his supervisors that he intended to take vacation. The testimony indicates that after he completed his snowplowing route, Strobel simply announced to two supervisors that he was going home. Nothing in the record suggests either supervisor approved a vacation request from this employee because none was made.

Article 10, Subsection B of the parties' collective bargaining agreement does permit vacation usage " . . . in periodic times throughout the year in lieu of lost time due to inclement weather, lack of work, etc.". It seems clear, however, that these factors do not apply in Strobel's case. Indeed, the inclement weather that had existed earlier in the day had produced more work, not a lack of work. Consequently, there was more, not less work time available to bargaining unit employees, including Strobel.

Under all of the circumstances, it is obvious that Strobel failed to comply with the vacation request procedures contained in the collective bargaining agreement of the parties. His failure is fatal to his grievance.

I do not question Strobel's good faith in requesting the March 19 vacation time. Apparently, in earlier, separate instances he had received vacation approval under circumstances similar to those of the instant matter. However, given the clear, unambiguous language with which the vacation procedures are set forth in the collective bargaining agreement, the fact that the Employer chose to waive them in separate, earlier instances does not render them inoperative or create a past practice that supercedes them.

Grievant Meyer: Grievant Meyer's sick leave claim stands in a different light. As with Strobel, a few facts are determinative. In Meyer's case, however, these facts lead to a different result.

Of considerable significance to me is the fact that Meyer's requested sick leave was approved by his supervisor. Unlike Strobel who simply announced his departure to two supervisors, Meyer explained his physical problem to his supervisor and requested sick leave. The request was granted. Had the sick leave request not been granted, Meyer may well have chosen to "tough it out" and remain at work until the normal quit time at 3:30 p.m., or he may have elected simply to go home early.

For that matter, Meyer's supervisor also had the option of suggesting an informal light-duty status for Meyer for the remaining one and a half hours of work, but chose not to. Instead, he considered Meyer's request, apparently deemed it reasonable, and granted it.

I find other factors persuasive, as well.

Article 22, Paragraph A of the parties' collective bargaining agreement expressly provides that sick leave be included in the computations of weekly overtime premium pay. The contract does not except sick leave granted during an employee's normal hours of work on those days when the employee has already worked 8 hours and sick leave would put the employee in an overtime status.

Moreover, unlike a request for vacation, there is no advance notice requirement for sick leave. Thus, unlike Grievant Strobel, Meyer had no contract-mandated procedure to follow.

Furthermore, Meyer's request for sick leave on March 19, 1998 appears to have been made in good faith. On one previous occasion after finishing a full day of plowing snow, but before 3:30 p.m., Meyer complained of a headache and was allowed to take sick leave (at overtime rates) to go home. The record suggests, however, that Meyer's usual practice was to work to the normal day's-end quit time of 3:30 p.m., even on days when he started early.

Certainly Meyer's sore back seems a plausible enough condition for him to have incurred following two long days of snow plowing. In fact, avoiding further physical exertion at that point may have been a medically prudent measure for Meyer to take instead of risking an exacerbation of the injury by remaining at work. In any event, the Employer has not suggested (nor do I) that Meyer was not suffering from a sore back when he requested sick leave. Sick leave abuse is not a part of this case.

On March 19, 1998, Meyer knew that there was work available until 3:30 p.m., as was usually the case. He also knew he had the option of performing it, based on a well established past practice of the parties. Under these circumstances it seems probable to me that Meyer had an expectation of working until the normal quit time of 3:30 p.m. But for his back injury and the approval of his sick leave request I believe he would have done so.

Certainly Meyer's expectation was soundly based. It is undisputed that the parties considered the post-snowplowing time (up to 3:30 p.m.) to be part of the normal workday, even after eight hours had been worked by some of the employees. It seems clear that Meyer was aware of this practice. If not in strict compliance with contract language, the arrangement is at least not inconsistent with the provisions of Article 12, Paragraph B.

Both Paragraphs A and B of Article 12 are instructive:

> A. The employees in the Highway Department shall work eight (8) hours per day, Monday through Friday, forty hours per week.
>
> B. The hours of work shall be 7:00 a.m. to 12:00 noon, and 12:30 p.m. to 3:30 p.m., Monday through Friday. Employees starting work at 7:00 a.m. shall work until 3:30 p.m. (Emphasis supplied)

In summary, once an employee has logged an 8-hour day, the decision as to whether or not to grant sick leave is at the Employer's discretion. However, based on a well-established past practice of the parties not inconsistent with any contract language, if Meyer's request for sick leave had been denied, the option of remaining at work or going home (without sick leave) belongs solely to Meyer. While Section B, above, does not prevent the Employer from calling employees into work prior to 7:00 a.m., neither does it permit the Employer to send employees home prior to 3:30 p.m. merely because they have worked 8 hours.

Certainly the Employer's attempts to control its overtime costs represent responsible management. However, I am not persuaded that sustaining this grievance will render the County helpless in controlling its overtime costs.

In the first place, whimsical or unnecessary sick leave can constitute sick leave abuse for which there may be serious discipline consequences to the guilty employee. Second, as previously noted, while the parties' agreement does not permit the Employer to send employees home before 3:30 p.m. merely because they have completed 8 hours of work, once an employee completes an 8-hour work day, under the terms of the collective bargaining agreement the Employer has the discretion to grant or deny a sick leave request from that employee.

Moreover, there appears to be a certain "self-policing" element with respect to the use of sick leave that is not immediately apparent with respect to vacation usage. Most employees understand that sick leave is a benefit not unlike a safety net, but whimsical or unnecessary utilization of this benefit will weaken or eliminate it to the potential, severe economic detriment of the employee who has done so and his family.

Based on the factors cited above, I sustain Meyer's grievance.

AWARD

Grievant Donald Strobel Jr.: The grievance of this employee is dismissed.

Grievant Ron Meyer: The grievance of this employe is sustained. The Employer is directed to make the grievant whole by paying him the overtime-premium rate of pay for the one and one-half hours of sick leave taken by the grievant on March 19, 1998.

Dated at Madison, Wisconsin this 12th day of March, 1999.

A. Henry Hempe /s/
A. Henry Hempe, Arbitrator

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