

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**LAKEVIEW EMPLOYEES LOCAL 1403,
WCCME, AFSCME, AFL-CIO**

and

LaCROSSE COUNTY

Case 171
No. 57152
MA-10530

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Robert B. Taunt, Personnel Director, LaCrosse County, appearing on behalf of the County.

ARBITRATION AWARD

Lakeview Employees Local 1403, WCCME, AFSCME, AFL-CIO, herein the Union, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and to decide a dispute between the parties. LaCrosse County, herein the County, concurred with said request and the undersigned was designated as the arbitrator. Hearing was held in LaCrosse, Wisconsin, on April 6, 1999. No transcript was made of the hearing. Post-hearing briefs were exchanged on June 29, 1999. On July 12, 1999, the undersigned was informed that the parties had agreed not to file reply briefs.

ISSUES

The Union framed the issues as follows:

Did the County violate the collective bargaining agreement, and specifically Section 17.04.1, by limiting the number of employees who exchange workdays and/or by limiting the number of employees who have other employees work for them? If so, what is the appropriate remedy?

The County framed the issues as follows:

Has LaCrosse County violated the collective bargaining agreement by denying the use of a benefit day by an employee when there were uncovered work shifts? Has LaCrosse County violated the collective bargaining agreement by denying the “give away” of days by employees? If there is a violation, what remedy is appropriate?

The parties stipulated that the undersigned would frame the issues in his award. The undersigned believes the following to be an accurate statement of the issues:

Did the County violate the contract either by limiting the number of employees who seek to use a benefit day and have other employees work for them, or, by denying the giving away of work time by employees? If so, what is the appropriate remedy?

BACKGROUND

The County operates the Lakeview Health Center. The instant matter involves three employees of Lakeview. Two of those employees, Jane Hendrickson and Jane Wiemerslage, requested to have time off on December 26, 1997, which was a scheduled work day for both of the employees. The third employee, Nancy Smith, requested to have time off on January 1, 1998, which was a scheduled workday for her. Each of the three employees had arranged for another employee to work their shift on the day on which the employee requested to be off. At the time the requests for time off were submitted, all three grievants were working on the day shift. On her request for time off form, Wiemerslage requested to take a benefit day (holiday) on December 26, 1997, and she indicated that Victoria Hanke would work in her place. On her request for time off form, Hendrickson requested the use of a benefit day (holiday) on December 26, 1997, and indicated that another employee, Rebecca Vostad, would work in her place. On her request for time off form, Smith requested the use of a benefit day (holiday) on January 1, 1998, and indicated that another employee, Kelly K., would work in her place. All three of the requests were denied on the basis of an existing staff shortage. Each of the employees grieved the denial.

In addition to Section 17.04 of the contract, the County has had a scheduling policy at the Lakeview facility since March of 1987, and the current version of the policy has been in effect since November 30, 1994. Certain parts of that policy provide for a maximum of 5 time off requests per AM/PM shift on Monday through Friday and 2 requests per AM/PM shift on Saturday, Sunday and Holidays from resident aides, which was the job classification held by all three of the grievants in December of 1997. The policy also allows employes to exchange work days within a posted schedule, if they find another employe to make the exchange. The policy further states that while exchanges are allowed, days may not be given away. Said policy has been communicated to the Union both verbally and in writing.

An employe can seek to get time off in the following ways: (1) Trades of work time with another employe are not denied by the County when the proper procedure is followed, since trades are not restricted by staff shortages; and, (2) Requests for the use of an accrued benefit day, such as a vacation day or a holiday, and naming another employe who is willing to work the requesting employe's shift, although approval of these situations may be contingent on staffing levels. An employe is not allowed to give away shifts.

When the requests from Hendrickson and Wiemerslage were received, there were 6 uncovered shifts on days (reduced to 3½ through telephone contacts and volunteers prior to December 26), 3 uncovered shifts on PM's and 1 uncovered shift on nights for December 26, 1997.

When the request from Smith was received, there were 4 uncovered shifts on days (reduced to 0 through telephone contacts and volunteers prior to January 1), 3 uncovered shifts on PM's and a ½ uncovered shift on nights for January 1, 1998.

POSITION OF THE UNION

The Union contends that an employe may be willing to work extra hours to help a co-worker, whereas the same employe may not be willing to work extra hours if asked by management. The contract does not have a mandatory overtime provision, therefore, employes, who are called to ask if they will work extra hours, have the ability to turn down the overtime. Thus, the situation could arise where an employe has found a co-worker to work in the employe's place, but the first employe's request to use an accrued benefit day is denied because of alleged staff shortages and the co-worker can refuse the extra work when called by management. Under this scenario the County has not gained because the co-worker did not come in to work to help alleviate the shortage and the employe has lost by not being allowed to use a holiday. The Union requests the arbitrator to sustain the grievances and to allow employes to replace themselves with off-duty personnel while they are utilizing accrued paid time.

POSITION OF THE COUNTY

The County contends that none of the grievances come under Section 17.04 of the contract, because said provision applies only to an exchange of workdays by employees, whereas none of the situations grieved herein involved an exchange or trade of workdays.

Section 2.01 of the contract reserves to the County the right to adopt and enforce reasonable rules and regulations. The County's policy limiting the number of requests for time off by shift and prohibiting the giving away of work days falls within the language of Section 2.01, since those limitations are necessary to ensure adequate staffing to care for the residents. The County does allow employees to request time off by using a benefit day and submitting the name of another employee who has agreed to work the time off. Those requests may be approved if adequate staffing levels can be attained. If staffing levels are not adequate, then the requests are denied. The staffing levels were not adequate on either of the dates in question, consequently the requests were denied. At the time the requests were denied, the day shift on December 26 had 6 vacancies. The County made extensive efforts to find adequate staff for the dates in question. However, on December 26, the day shift still was forced to work with 3½ vacant positions. Further, even the employee who had indicated she would work for Wiemerslage apparently was not available due to car trouble. At the time the requests were denied, there were 4 vacancies on the day shift for January 1. The County was able to fill those vacancies only by the start of that shift. When the County accepts a proposed replacement for an employee who is requesting time off, then the pool of potential replacements from which vacancies are filled becomes even smaller. The County should not be required to approve proposed replacements. The grievances should be denied.

RELEVANT CONTRACTUAL PROVISIONS**ARTICLE II****ADMINISTRATION**

2.01 Except as otherwise provided for in this Agreement, the County retains the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right . . . to adopt and enforce reasonable rules and regulations.

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ARTICLE XVII**HOURS**

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17.04 EXCHANGE OF WORKDAYS

17.04.1 An employee may arrange with another employee to change days off for social or business reasons. If an employee does arrange with a co-worker to exchange days off, it must be with an employee who is within one's own department and the same classification. The agreement, in writing, to exchange days off must state the days each will be off and on duty, signed by participating parties and must be given prior recommendation by immediate supervisor with final approval by the Administrator.

DISCUSSION

Each of the grievances filed in this matter alleges that the County violated Section 17.04.1 of the contract by denying the employee's request to change work hours with another employee. It was the uncontradicted testimony of the Lakeview administrator that trades of work hours are approved on a regular basis as long as the employees involved know the job duties and meet the requirements set forth in Section 17.04.1 and, further, that such trades are not restricted by the number of people who either are scheduled to work or call in an absence. However, the evidence shows that in the instant matter the three grievants were each seeking to give away a shift, rather than seeking to trade hours of work with other employees. Section 17.04.1 does not cover those situations where an employee is seeking to give away hours of work.

The County has a policy governing requests by employees to use accrued paid benefit days for the purpose of taking time off. Said policy has been in effect for a number of years and has been communicated to the Union. The testimony and the exhibits support a finding that the policy is a reasonable one and that the County's administration of the policy has been reasonable. The County has the right to maintain adequate staffing levels and to deny time off requests based on those levels. It also is reasonable for the County to base its denial of a request for time off on the status of the staffing level at the time the request is made, rather than waiting until the day requested off to either grant or deny the request, although the County clearly has the authority to change its decision after the initial denial if the staffing level subsequently becomes adequate and if the employee still desires to have the time off. While the employee submitting the time off request can propose a replacement, the County is not required to grant the request on that basis. The County retains the responsibility for trying to find qualified replacements. In the instant matter, the County made reasonable efforts to find sufficient staff which would have made it possible to grant the time off requests. In addition, prior to receiving the requests for time off from the three grievants, the County already had denied requests from other employees to be off on the dates at issue herein.

Based on the foregoing, the undersigned enters the following

AWARD

That the County did not violate the collective bargaining agreement either by limiting the number of employes who seek to use a benefit day and have other employes work for them, or, by denying the giving away of work time by employes; and, that the grievances are denied and dismissed.

Dated at Madison, Wisconsin, this 7th day of October, 1999.

Douglas V. Knudson /s/

Douglas V. Knudson, Arbitrator