

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**CALUMET COUNTY LAW ENFORCEMENT EMPLOYEES UNIT,
WPPA/LEER DIVISION**

and

CALUMET COUNTY

Case 104
No. 57694
MA-10725

Appearances:

Mr. Richard Thal, General Counsel, Wisconsin Professional Police Association/LEER Division, appearing on behalf of the Union.

Mr. Charles Carlson, President, Riley, Dettmann, Kelsey & Carlson, LLC, appearing on behalf of the County.

ARBITRATION AWARD

Calumet County Law Enforcement Employees Unit, WPPA/LEER Division and Calumet County are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Union requested, and the County agreed, that the Wisconsin Employment Relations Commission appoint an arbitrator from its staff to hear the Oosterhouse sick leave grievance. The Commission appointed Thomas L. Yaeger, a member of its staff, pursuant to that request. Hearing in the matter was held on October 5, 1999, in Chilton, Wisconsin. The parties waived closing arguments and submitted the case for decision based upon the record and opening statements.

ISSUE

The parties were unable to stipulate to a statement of the issue and left the issue statement to be determined by the undersigned.

Did the County violate Article XIII of the parties' collective bargaining agreement by requiring the grievant to use a day of vacation, rather than a sick leave day, on March 19, 1999? If so, what is the appropriate remedy?

BACKGROUND

On March 19, 1999, the grievant, Oosterhouse, was a radio operator in the County's Sheriff's Department. She had been employed by the County since April 25, 1994. As a radio operator assigned to the 11:00 p.m. shift, her duties included answering 911 and regular calls, and dispatching officers, ambulances and fire departments. Grievant testified that her duties require her to be calm and alert, be able to assess the needs of the caller, and obtain the appropriate information completely and accurately to insure the caller's and officers' safety.

On March 18, 1999, at 4:45 a.m. grievant and her husband were notified that her husband's grandmother, whom grievant was very close to, had died from a heart attack. Grievant was scheduled to attend a stress management seminar during the day on the 18th. Before leaving for the class, she called the Department to request her scheduled 11:00 p.m. Friday work shift off to attend the grandmother's wake. She spoke with the on-duty radio operator, Casper, because there was no supervision on duty at the time she called (approximately 6:00 a.m.). Grievant and Casper, in their discussion, concluded funeral leave was not permitted for the death of a grandparent-in-law. Grievance then told Casper she was requesting the day off as sick leave. Casper asked grievant if she would take a vacation day on the 19th if management did not grant her sick leave. Grievant testified she responded to Casper that she would use a vacation day if that was the only paid absence time available for her to use, but that she wanted to use a sick leave day.

Casper relayed the grievant's request to Captain Rusch when he reported for duty on the 18th. Rusch then passed grievant's request on to Lieutenant Hocks when he reported for duty at noon on the 18th. Rusch and Hocks discussed grievant's request, and Rusch directed Hocks to grant grievant compensatory time or a vacation day because she was not eligible for funeral leave. Rusch testified that grievant never talked with him or Hock about her request, that he never considered whether she was ill because he understood her request to be for funeral leave, and does not recall Casper telling him grievant was requesting sick leave. He testified that April 1, 1999, when the instant grievance was filed, was when he first learned grievant requested sick leave for the 19th. Rusch also testified that based upon the facts as he understood them, at the time of the hearing, he did not dispute it would have been inappropriate for grievant to work her scheduled 11:00 p.m. shift on the 19th.

The grievance was denied by the County and appealed to arbitration.

PERTINENT LANGUAGE

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ARTICLE XIII – LEAVES

13.01 Sick Leave

A. No employee shall be absent from the job unless for unavoidable circumstances without first notifying the Employer. All employees shall earn one (1) day of sick leave per month to a maximum of twelve (12) days per calendar year. Total sick leave accumulation shall not exceed one hundred twenty (120) days. Said leave shall continue to be earned when employees are on any paid leave authorized under the provisions of this Agreement. Sick leave can be used only in the case of sickness on the part of the individual, except that an employee can use up to one (1) day of sick leave per incident for the required attendance on the part of their immediate family. Immediate family shall mean: mother, father, spouse, son or daughter (including step-parents and step-children). Sick leave will be administered in accordance with the Wisconsin Family Leave Act.

B. Upon retirement an employee shall receive one month's paid insurance for every six (6) days of unused accumulated sick leave.

13.02 Funeral Leave – An employee will be allowed three (3) working days leave with pay for the death of the employee's spouse, mother, father, son, daughter, step-mother, step-father, step-son, or step-daughter.

An employee will be allowed up to three (3) working days leave with pay for the death of the employee's brother, sister, step-brother, or step-sister, mother-in-law, or father-in-law. An employee will be allowed one (1) working day of leave with pay for the death of the employee's grandparent, grandchild, uncle, aunt, niece, nephew, daughter-in-law, son-in-law, brother-in-law, or sister-in-law. The last working day for which funeral leave shall be granted, as defined in this paragraph, is the day after the funeral.

This section means that an employee is entitled to funeral leave as provided above for the death of the relative of his spouse only when the deceased relative is the spouse's mother, father, brother or sister. Funeral leave shall not be available for the death of relatives of an ex-spouse (s).

13.03 All leave requests (vacations, sick, funeral, personal, etc.) shall be submitted to the Lieutenant on duty. If a Lieutenant is not on duty, then the request shall be submitted to the Department Head.

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POLICY AND PROCEDURE MANUAL

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Q. ABSENCE FROM DUTY:

1. Reporting Sick For Duty:

a. Officers shall report in sick only when they are suffering from an illness which prevents them from properly performing their assigned duties or when an emergency exists in the home or with the immediate family.

b. When possible, officers shall notify a supervisor at least two hours before the beginning of their assigned shift that they are unable to come to work because of reasons explained in section (a).

2. When an officer is suffering from an illness or condition which prevents proper performance of duty or when an emergency exists in the home or immediate family, such officer shall promptly notify a supervisor of the intended absence from duty. Conditions of mental health or severe stress which would interfere with performance of duty is proper medical reason for absence from duty.

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DISCUSSION

Article 13.03 of the parties' collective bargaining agreement provides that "all leave requests" are to be submitted to the Lieutenant on duty. However, in the instant case there was not a Lieutenant or Department head on duty when the grievant called into the Department at about 6:00 a.m. on the 18th. Further, the County did not have a procedure in place whereby grievant or any other bargaining unit employe calling in to request leave could make her/their request to a command officer or Department head when one was not available in the Department. Consequently, grievant communicated her request to the radio operator on duty at the time.

A prior non-precedential grievance settlement agreement entered into between the parties in November, 1998, set forth the County's belief that it has the right to require proof of a claimed physical or mental condition, asserted by an employee as the basis for requesting sick leave, contemporaneous with the employee's request. It argues in this case that because Rusch was not aware of grievant's request for sick leave on the 19th, and only became aware when the instant grievance was filed, he was deprived of the opportunity to assess whether to require grievant to produce proof of the asserted condition. It concludes, therefore, that it is now inappropriate to grant grievant a sick leave day for the 19th.

The reason Rusch and Hocks did not have the opportunity to decide whether to require grievant to produce proof in support of her request for sick leave was not the fault of the grievant. Rather, the lack of any policy/procedure providing for grievant to be put in touch with a command staff officer in the absence of a Lieutenant or another management representative when the Department Head is unavailable, led to management's alleged misunderstanding of grievant's request. Assuming the radio operator did not accurately convey grievant's request to Rusch, it is not grievant who must bear responsibility for the alleged miscommunication. Rather, the County must assume that responsibility inasmuch as it did not provide grievant with a means by which to communicate her request directly to a Lieutenant, Department Head or other designated Command Staff Officer.

Thus, through no fault of grievant, the County, apparently, was unaware until the instant grievance was filed that grievant was requesting sick leave for the 19th. The grievant, Rusch and Hocks did correctly determine her husband's grandmother's death did not qualify her for funeral leave on the 19th. Consequently, the only question remaining is whether grievant qualified for sick leave.

The departmental Policy and Procedure Manual makes provision for when an employee should "report in sick," and necessarily be eligible to be absent on sick leave.

2. When an officer is suffering from an illness or condition which prevents proper performance of duty or when an emergency exists in the home or immediate family, such officer shall promptly notify a supervisor of the intended absence from duty. Conditions of mental health or severe stress which would interfere with performance of duty is proper medical reason for absence from duty.

Grievant's testimony established the closeness of her relationship to her husband's grandmother, and the consequential emotional distress of the grandmother's unexpected death. The wake was to be in the evening of the 19th when grievant was scheduled to begin work at 11:00 p.m. Even Rusch's testimony confirmed that he was of the opinion, at the time of hearing, grievant should not have worked on the 19th. Consequently, the facts existing on the

19th, coupled with the Department's Policy and Procedure Manual, make it clear grievant was eligible to request and receive the 19th off work on sick leave. Thus, the County violated Article XIII of the contract by requiring grievant to use vacation or comp time on the 19th even though she requested and was eligible to be absent from work that day on sick leave.

Based upon the foregoing and the record as a whole, the undersigned enters the following

AWARD

The County did violate Article XIII of the parties' collective bargaining agreement by requiring the grievant to use a day of vacation, rather than a sick leave day, on March 19, 1999. To remedy this violation the County shall immediately change the grievant's vacation and sick leave balances by adding a day of vacation to her vacation balance, and subtracting a day of sick leave from her sick leave balance.

Dated at Madison, Wisconsin, this 3rd day of January, 2000.

Thomas L. Yaeger /s/

Thomas L. Yaeger, Arbitrator