

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**GRAND CHUTE LOCAL, WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**

and

**TOWN OF GRAND CHUTE**

Case 18  
No. 58422  
MA-10953

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Appearances:

**Mr. Mark R. Hollinger**, Attorney at Law, Wisconsin Professional Police Association/LEER Division, appearing on behalf of the Union.

Herrling, Clark, Hartzheim and Siddall, Ltd., by **Attorney Charles D. Koehler**, appearing on behalf of the Town.

**ARBITRATION AWARD**

Grand Chute Local, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, herein the Association, 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. The Town of Grand Chute, herein the Town, concurred with said request and the undersigned was designated as the arbitrator. Hearing was held in Grand Chute, Wisconsin, on April 12, 2000. There was no stenographic transcript made of the hearing. The parties completed the filing of post-hearing briefs on May 26, 2000.

**ISSUES**

The parties stipulated to the following issue:

Did the Employer, i.e., the Town, violate the collective bargaining agreement by crediting each employee's sick leave bank with one day per month at the end of each month, rather than at the beginning of each month?

The parties further stipulated that if the contract was violated, then the grievant, Mark Eyestone, is owed 8½ hours of sick leave pay and other employees will be credited with a day of sick leave on the first day of each month beginning with February of 1999.

### **BACKGROUND**

At the end of December of 1998, Eyestone had a balance of 3 hours of accumulated sick leave. On January 22, 1999, Eyestone was off work on sick leave. He was paid for 3 hours and was not paid for the remaining 5½ hours of his scheduled shift on January 22. On February 5, 1999, Eyestone was off work on sick leave. He was paid for 7½ hours and was not paid for the remaining 1 hour of his scheduled shift on February 5. On March 6, 1999, Eyestone was off work on sick leave. He was paid for all 8½ hours of his scheduled shift. On March 8, 1999 Eyestone was off work on sick leave. He was paid for 1 hour and was not paid for the remaining 7½ hours of his scheduled shift on March 8.

On February 16, 1999, Eyestone filed a grievance wherein he requested paid sick leave for the 5½ hours of his shift on January 22 for which he was not paid on the basis that sick leave should be credited on the first day of each month. The Town denied the grievance on the basis that sick leave is earned at the end of the month, rather than at the beginning of the month.

Under the 1994-96 contract between the Town and the Association, each full-time employe was credited with 12 days of sick leave on January 1 of each year.

### **RELEVANT CONTRACTUAL PROVISIONS**

1994-96 contract

Section 18.01: Full-time employees shall be entitled to annual sick leave of twelve (12) days with pay.

1997-98 contract

Section 18.01: Full-time employees shall be entitled to accumulate sick leave at one (1) day per month.

### **POSITION OF THE ASSOCIATION**

The contract neither defines the word *accumulate* nor indicates the point in time when the day of sick leave is accumulated. It is clear that the parties had no mutual understanding of

the time of the month when sick leave is credited to an employe's account. The parties are in agreement that, under the prior contract, the employes accumulated their 12 days of sick leave at the beginning of the year. Thus, it has been the past practice to credit sick leave to the employe at the beginning of the contractually designated period for sick leave accumulation.

The Town proposed to change Section 18.01 during the negotiations for the 1997-98 contract. Therefore, any ambiguity should be construed against the Town. Further, the Town's interpretation of the language creates a forfeiture and should be avoided.

### **POSITION OF THE TOWN**

The Town argues that the word *accumulate* means that some time has to pass before the one day of sick leave is accumulated and that period of time is one month. The concept of accumulating a day per month is inconsistent with the theory that the first day of each month could be used as a sick day.

Under the standards of contract construction, all words should be given their plain meaning. Any ambiguity in the language should be construed against the drafter. The contested language was drafted by the Association. All parties acknowledged that the Town's objective was to bring the sick leave policy in line with the policy for the rest of the Town's employes, essentially meaning that a month had to go by before a sick leave day was accumulated, or, in other words *earned*. The two words, accumulated and earned, are the same for all practical purposes because they both involve a time component of one complete month and the concept of acquiring this right on a period of time basis. The contract clearly states that period of time to be one month.

### **DISCUSSION**

There is no dispute over the fact that the Town proposed to change the language in Section 18.01 so that employes would be entitled to accumulate sick leave at the rate of one day per month, rather than being credited with twelve days of sick leave at the beginning of each calendar year and that the parties agreed to the accumulation of one day per month. The dispute is over whether the parties agreed the one day of sick leave would be credited to an employe's account at the beginning of each month or at the end of each month. The contested language is clearly ambiguous, since it could support either interpretation. Therefore, it is necessary to look beyond the language to resolve the dispute.

During the negotiations for the 1997-98 contract, the Town proposed that the sick leave policy be changed to provide that each full-time employe would earn one day of paid sick leave at the end of each month worked by the employe, which would be the same as the Town's policy for the rest of its employes. Although a copy of said policy was not entered as evidence

at the hearing, there was no testimony or evidence to contradict the testimony of the Town's witnesses concerning the terms of the policy. Scott Steinke, a member of the Association's negotiating team during those negotiations, testified that the Town told the Association that it wanted to apply the same policy to the police officers as was applied to the other Town employees. Steinke further testified that the Association never agreed to the Town's position and, instead, the parties agreed that one day of sick leave would be credited to an employee's account at the beginning of each month, as the Association requested, and that the Association ratified said contract based upon that belief. Thus, according to Steinke, the Town got the change to a day per month, but at the beginning of the month rather than at the end of the month as initially sought by the Town. However, two members of the Town's team during those negotiations testified that the Association's team never stated such a belief during said negotiations. Therefore, the Town believed that the Association had agreed to the Town's interpretation of the revised Section 18.01 and to its intent to have the police officers accumulate sick leave in the same manner as the other employees of the Town accumulated sick leave. Steinke initially testified that the Association agreed to the Town's proposed language for a revised Section 18.01 without changing the language therein. However, Steinke subsequently testified that, while the Town had proposed the change in Section 18.01, another Association representative had drafted the tentative agreements, including Section 18.01, which were included in the 1997-98 contract, and Steinke was not sure that Section 18.01, as drafted, then read the same as the Town's proposal. The Town's negotiator testified that he did not propose any specific language for a revised Section 18.01, but merely stated the intent of the change and that the Association representative then drafted the specific language.

The undersigned is persuaded that the Town did not agree to credit a day of sick leave to each employee at the beginning of each month. Rather, it is concluded the Town made clear to the Association its intent that each employee would be credited with a day of sick leave at the conclusion of each month, but that the Association never told the Town that it would not agree to such a sick leave policy unless the day was credited at the beginning of the month rather than at the end of the month. Similarly, there is no evidence to show that the Association ever advised the Town that the wording of Section 18.01, which the Association representative drafted, would fail to result in the same policy as governed the other employees of the Town. If the Association had intended that the new Section 18.01 would credit the sick leave at the beginning of each month, then it should have made that intent clear to the Town. By failing to do so, the Association can't now successfully contend that it believed the Town had agreed to credit the sick day at the beginning of each month.

Based on the foregoing, the undersigned enters the following

**AWARD**

That the Town did not violate the collective bargaining agreement by crediting each employe's sick leave bank with one day per month at the end of the month, rather than at the beginning of each month; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 26<sup>th</sup> day of June, 2000.

Douglas V. Knudson /s/

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Douglas V. Knudson, Arbitrator