BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION,
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION,
FOR AND ON BEHALF OF ITS AFFILIATE LOCAL 315,
BROOKFIELD DISPATCHERS AND CLERICAL ASSOCIATION**

and

CITY OF BROOKFIELD

Case 120
No. 60402
MA-11602

Appearances:

Ms. Shana R. Lewis, Cullen, Weston, Pines & Bach LLP, Attorneys at Law, 122 West Washington Avenue, Suite 900, Madison, Wisconsin 53703, appearing for Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, for and on behalf of its Affiliate Local 315, Brookfield Dispatchers and Clerical Association, referred to below as the Association.

Ms. Nancy L. Pirkey, Davis & Kuelthau, S.C., Attorneys at Law, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202, appearing on behalf of City of Brookfield, referred to below as the City or as the Employer.

ARBITRATION AWARD

The Association and the City 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 parties jointly requested that the Wisconsin Employment Relations Commission appoint Richard B. McLaughlin, a member of its staff, to serve as Arbitrator to resolve a grievance captioned by the parties as No. 01 416, filed "on behalf of the membership." Hearing on the matter was held on January 30, 2002, in Brookfield, Wisconsin. Sarah A. Reinicke prepared a transcript of the hearing, and filed it with the Commission on February 13, 2002. The parties filed briefs and reply briefs by April 1, 2002.

ISSUES

The parties' did not stipulate the issues for decision. I have determined the record poses the following issues:

Did the City violate the Agreement when it denied Patricia Zingale's request to use compensatory time for her shift on September 30, 2001?

If so, what is the remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE VI – HOURS OF WORK

. . .

Section 6.03 - Switch of Work Days: Employees who wish to switch their work days with another employee who is qualified shall obtain permission from their supervisor. No overtime is to be incurred as a result of the switch. Any switch that takes place may not involve more than three people, provided that not more than two people will be allowed to fill the void created on one end of the switch. It is the responsibility of the switching parties to ensure that payback is accomplished.

ARTICLE VII - PREMIUM PAY

. . .

Section 7.02 – Compensatory Time Off: Compensatory time off may be accumulated up to a maximum of forty (40) hours at any one time and may be taken off after a written request has been submitted to the Chief of Police or the Chief's designee as provided below. Such request shall be subject to the approval of the Chief of Police or the Chiefs designee and dependent upon staffing requirements. An employee desiring to use compensatory time shall give written notice of at least five (5) calendar days, but not more than forty-five (45) calendar days prior to the desired date, providing, however that in case of emergency, the notice may be less than five (5) calendar days and may be oral, if ratified subsequently by writing. If it appears thirty (30) days prior to a particular day that there are more applicants for the day than can be granted in the opinion of the Chief, no further applications shall be received and the

designation or designations of whom is to be granted the day as a compensatory off day shall be on the basis of bargaining unit seniority. Vacation requests shall have priority over requests for holidays or compensatory time off. Holiday and compensatory time off requests shall be treated equally. Compensatory time off which is on the books as of January 1st of each year which has not been approved for time off shall be paid on the next regular pay check at the previous year's rate. However, an employee may submit a written request to carry over compensatory time but it must be approved by the Chief of Police or his designee prior to the first of the year.

. . .

Section 7.05 – Authorized Overtime for Communications Personnel:

(a) Whenever overtime is authorized by the Employer with less than five (5) days notice, the following procedure will occur.

1. Ask for volunteers of the Dispatchers working to extend their shift by having one person work four (4) hours over and one person come in four (4) hours early. . . .
2. If no one volunteers to work, the Employer shall assign a (qualified) Dispatcher with the least amount of seniority . . .

(b) Whenever overtime is authorized by the Employer more than five (5) days in advance, the following procedure will occur.

1. Whenever a dispatch vacancy occurs, and overtime is authorized, the Employer shall post the overtime schedule . . .

ARTICLE VIII – HOLIDAYS

. . .

Section 8.03 – Procedure for Selecting the Holidays Listed in Section 8.01 and the Floating Holidays listed in Section 8.02: All the holidays referenced in Section 8.01 and the two (2) floating holidays referenced in Section 8.02(10) can be taken off at any time during the year after a written request has been submitted to the Chief of Police or the Chief's designee as provided below. Such request shall be subject to the approval of the Chief of Police or the Chief's designee and dependent upon staffing requirements. . . .

ARTICLE IX – VACATIONS

. . .

Section 9.03 – Vacation Selection: Employees wishing to guarantee a vacation selection may do so by making their selection on a calendar provided by the Employer for this purpose prior to February 1st. Employees shall select at least one (1) five (5) day vacation block. The remainder of the vacation entitlement may be selected in blocks of not less than one (1) day. Conflicts will be resolved by granting the request of the senior employees.

Vacation . . . requests shall be in writing and submitted to the Chief of Police or the Chief's designee as provided below and shall be subject to the approval of the Chief of Police or the Chief's designee and dependent upon staffing requirements. . . .

ARTICLE XXVIII – MANAGEMENT RIGHTS

Section 28.01 – Exclusive Rights: The Association recognizes the right of the Employer and the Chief of Police to operate and manage its affairs pursuant to law, and the exclusive right of the Chief of Police to promulgate reasonable departmental rules and procedures which do not relate to or impact on mandatorily bargainable issues. The following rights are among those reserved for management consistent with the terms of this agreement and applicable City, State and Federal laws.

(a) To direct the operations of the Police Department.

. . .

(i) To determine the need for and to schedule overtime.

BACKGROUND

The Association filed the grievance on September 4, 2001 (references to dates are to 2001, unless otherwise noted), alleging a City violation of Section 7.02 for denying Patricia Zingale's request for "four hours comp time off for Sunday, September 30." The grievance form asserts "the City made no attempt at determining the availability of other dispatch staff before denying the request."

The facts are essentially undisputed. In July, Zingale and her sister began to plan a baby shower to celebrate the birth of Zingale's baby. Zingale reviewed work schedules, and determined that the City had scheduled three dispatchers for her shift on September 30. She spoke with other dispatchers, and concluded that staffing for September 30 was sufficient to permit her to use comp time. She and her sister then planned the shower for that date.

The City has authorized twelve positions to staff its dispatch center. At the time of the arbitration hearing, the City had eleven dispatchers. The City uses three shifts for the dispatchers who staff the dispatch center. Day watch runs from 7:00 a.m. until 3:00 p.m. Early watch runs from 3:00 p.m. until 11:00 p.m. Late watch runs from 11:00 p.m. until 7:00 a.m. For the summer including her baby shower, Zingale worked the day shift.

Joseph Amodeo, the City's Director of Services, is responsible for shift assignments. Lead Dispatcher Ann Riedelbach assists him with the creation of the work roster. Riedelbach typically works the second shift, but worked the day shift for much of the summer of 2001. In 2001, the City changed from a 5/2 work cycle to a 4/2 work cycle. Early in the year, Riedelbach recreated the work schedules to place dispatchers into their off groups. These groups define the "2" off-day portion of the 4/2 cycle, and are set months in advance. Changes inevitably occur. The City posts work schedules in a roster that uses a single page for each calendar day. These schedules are posted for at least one month beyond a current calendar month.

The City maintains minimum staffing for the dispatch center. Two dispatchers per shift is the minimum staffing level. Typically, the City assigns four dispatchers per shift. Regular days off and various forms of leave mean that the City typically has a maximum of three dispatchers per shift actually on duty.

Contractually, employees cannot submit a comp time request more than forty-five days prior to the requested time off. On August 16, 2001, Zingale submitted a written request to use four hours of comp time on September 30. Sergeant Joe Mozina responded to the written request on August 30. He completed the request form by noting "Denied Staffing." Prior to making the written denial, Mozina reviewed the roster and determined that two dispatchers were available for duty on September 30. To grant the request would, therefore, drop the center below minimum staffing. He did not speak with other dispatchers, nor did he take any other action to attempt to find a replacement for Zingale. Typically, Mozina responds to a written request for comp time by recommending denial or approval and forwarding the recommendation to Amodeo for final determination. In any event, neither employee typically takes action beyond checking the roster if the roster shows that granting a request drops the center below minimum staffing.

After Zingale started the planning process for the baby shower, a series of events occurred that affected September 30 staffing levels. Brenda Wenzel, another day watch dispatcher, started a Family Medical Leave in July to permit her time off due to the birth of a child. Wenzel had requested the leave in January, seeking time off from mid-July through mid-October. The City approved the leave, and filled the day watch vacancy by moving Riedelbach onto the day watch. On August 1, a dispatcher then in training resigned without notice. On the same day, Riedelbach submitted a written request to change her already approved vacation. Amodeo approved the requested change the following day. The net effect of the change was to make September 30 the fifth day of Riedelbach's scheduled week of vacation. The effect on Zingale was that Riedelbach became unavailable for minimum staffing purposes on September 30. Thus, when Mozina reviewed the roster to respond to Zingale's request, granting it would have dropped the center below two dispatchers on the day watch.

When Zingale learned that her comp time request was denied, she discussed the matter with Amodeo. Amodeo informed her that she should attempt to switch shifts with another dispatcher. She responded that her pregnancy made a switch difficult. Her ability to return the switch was difficult to plan given the uncertainty of a pregnancy as well as the uncertainty of the timing of her maternity leave. She attempted to work out a switch with other dispatchers, but determined to speak with Amodeo again. During the second conversation, she asked whether the City would approve overtime for the second half of her shift if she worked the first half. She viewed this request to be similar to one granted Dispatcher Rauenbeuhler earlier in the year, and argued that denying the request worked a hardship on her. Amodeo was not, however, willing to approve overtime as she requested, informing her that hardship cases turned on unforeseeable events. Ultimately Zingale found another dispatcher with whom to switch shifts, and she was able to attend her September 30 baby shower. She made the request to switch shifts on September 26. The City approved it, completing the paperwork for the approval process on September 30.

Amodeo testified that the City calls overtime to permit employees to take comp time only due to unforeseen and exigent circumstances. He did not believe the baby shower posed such circumstances. He testified that Zingale had been involved in two instances that warranted the authorization of overtime to permit her use of comp time. On May 14, 2000, the City granted Zingale comp time when her husband, a police officer, was injured while on duty. To cover her absence, the City called in another dispatcher on overtime. On October 22, 2000, Zingale requested to use comp time on October 23 to attend to her mother, who had experienced complications during surgery. The City approved the use of comp time and called in overtime to cover her absence.

Amodeo estimated that the City receives roughly one dispatcher comp time request per work day. Mozina testified that he receives one to two requests per work week. The City denied fewer than five percent of the comp time requests made in calendar year 2000, and

something less than fifteen percent of the requests made in calendar year 2001. The City may deny previously approved comp time when unanticipated circumstances force center staffing levels below two dispatchers per shift, but attempts to avoid this as a general practice.

The City honors dispatcher requests to take vacation in a one-week block, and regularly incurs overtime to permit this. Amodeo added that he does not normally use overtime to permit the taking of a single vacation day, although he did approve the use of overtime to grant Rauenbeuhler's request to append a day of vacation to a one-week block. The City does not authorize overtime to permit the use of comp time or a floating holiday absent exigent circumstances. Mozina once called dispatchers to assist a switch between dispatchers when an unanticipated request for sick leave threatened the previously authorized comp time of a dispatcher who had made plans relying on the approval.

Further facts will be set forth in the **DISCUSSION** section below.

THE PARTIES' POSITIONS

The Association's Initial Brief

After a review of the evidence, the Association contends that Zingale complied with express contract provisions when she submitted her comp time request to Mozina, who denied the request due to staffing concerns. This focuses the grievance on the phrase "dependent upon staffing" in Section 7.02.

The phrase is ambiguous regarding "what action, if any, is required of the parties." There is, however, no clear contractual requirement that employees determine the availability of staffing prior to making a comp time request. Section 7.02 "does not include language requiring that an employee seek a replacement for his or her shift rather than using earned compensatory time." Nor does the section make this action a prerequisite to a comp time request. Since Section 7.02 did not include the requirement, there is a solid basis to infer that no such requirement exists.

Nor do other contract provisions establish the requirement. Section 7.05 states that the City "may post overtime in a variety of circumstances, and for a variety of reasons, including to allow an employee to use earned compensatory time." This does not support the City's action "to place this burden on her." City policy to post overtime only for "five-day vacations and FMLA leave" has no contractual basis. Section 6.03 permits shift switching, but "does not suggest that it is an alternative to using earned compensatory time." That an employee has responsibility to repay for a switched shift made the alternative onerous to Zingale, who "was pregnant and would soon be on FMLA leave to take care of her new baby."

Past practice is unhelpful. Mozina testified he has, on occasion, phoned dispatchers to assist in switching shifts. Amodeo has posted overtime to permit dispatchers to add a day to scheduled vacation to create a one week block. Thus, City practice in applying Section 7.02 is inconsistent. Nor is City practice clearly enunciated, readily ascertainable over a period of time or mutually accepted by the parties. To enforce City policy as binding would produce the absurd result of favoring untimely requests. It follows that there is no binding practice to resolve the application of Section 7.02 to the grievance.

Relevant arbitration precedent suggests that "dependent upon staffing" demands "more of the City than simply looking at the schedule." The City "could contact employees . . . to determine whether any other employee is available to serve as a replacement . . . or the City could post overtime."

Section 28.01 demands that the City exercise its management rights in a fashion that cannot be characterized as arbitrary or capricious. The City's exercise of discretion in assisting employees with comp time requests turns, according to Amodeo, on "exigent circumstances." However, the evidence shows "exigent circumstances" means no more than that "some dispatchers received special treatment and some did not." Thus, City policy has no basis in Section 28.01.

Section 28.01 is a strong management rights clause, and imposes not just authority, but responsibility on the City. Thus, the City must be held responsible to determine the availability of staffing to permit comp time usage. Since Zingale was able to use comp time, no financial remedy is needed in this case. However, the Union "requests a cease and desist order" that "the City may not unilaterally import a provision into the contract that requires dispatchers to seek their own replacements rather than use earned compensatory time."

The City's Initial Brief

The City states the issues for decision thus:

> Whether the City violated Section 7.02 of the collective bargaining agreement when it denied the Grievant's request for comp time on September 30, 2001 due to staffing needs of the Department.
>
> If so, what is the appropriate remedy?

After an extensive review of the evidence, the City contends that the language of Section 7.02 "is very plain and unambiguous", providing "discretion to the Chief of Police or his designee to decide when comp time requests should be granted." The language also clearly makes comp time requests "dependent upon staffing requirements."

The Association's attempt to undercut this language has no support in the evidence. The City's minimum staffing level of two dispatchers per shift is undisputed, and acknowledged by Zingale's attempt to schedule her baby shower on a day when three dispatchers had been scheduled. Her request, however, was invalidated by two events. The first was the use of FMLA by one dispatcher and the second was Riedelbach's use of one week of vacation. These two events meant "the City could not grant the Grievant's request for comp time without either dropping below its minimum staffing levels or incurring overtime to cover the shortage."

Nothing justifies placing the burden of finding a replacement on the City. The contract contains no "language which imposes such a burden" by giving "dispatchers the unrestricted right to take compensatory time off" or by requiring "the City to incur overtime . . . so that a dispatcher may take their requested compensatory time off." Nor does the contract require the City "to make phone calls seeking volunteers to cover the requested time off."

Nor is there evidence of practice to support the Association's claim. The Rauenbuehler case "involved adding one additional day to a 1-week block of vacation" and the City will honor such requests. The City will not call in overtime to permit the use of comp time except in exigent circumstances. A baby shower does not meet this standard and the Association's request effectively seeks that "the personal plans or desires of employees override public safety and the efficient and effective operation of the Department." The request seeks an absurd result. What evidence there is of past practice indicates only that the dispatcher's request was for an unforeseen event that would "qualify for FMLA leave due to the serious health condition of the employee or a family member." Thus, the Association's request lacks contractual and factual support.

Nor can the City's denial be characterized as arbitrary or capricious. Maintaining minimum staffing is recognized as a valid employer interest in arbitration precedent. The City's attempt to "protect public safety and to efficiently operate the Department" cannot be faulted. The City concludes by requesting that "the grievance be denied and dismissed."

The Association's Reply Brief

The Association argues that the City's policy treats requests to use single vacation days in the same manner as comp time requests. Thus, its action toward Rauenbuehler belies its assertion that the Association cannot offer examples demonstrating City authorization of overtime to cover single day leave requests. In fact, Amodeo's testimony establishes that "he has posted overtime for dispatchers seeking to use compensatory time, holiday hours, and single vacation days." Nor can these instances be distinguished from Zingale's request. To adopt City assertions of an "exigent circumstances" policy condones the absurd result of favoring "the employee who submits an untimely request rather than the employee who plans

ahead." Viewed as a whole, the evidence establishes the reasonableness of Zingale's request to be treated consistently with other dispatchers who successfully requested City assistance in securing staffing to accommodate a comp time request.

The City's arguments fail to rebut the Association's proof that the City acted arbitrarily and capriciously when it denied Zingale's request. There is no dispute that the City acts reasonably to assure minimum staffing levels. The weakness in the City's case "occurred when it failed to interpret and apply Section 7.02 in a uniform and consistent manner." More specifically, "the City failed to interpret consistently the phrase *dependent upon staffing*. Mozina and Amodeo testified that they have undertaken affirmative action on behalf of dispatchers who were seeking time off. Zingale's request seeks no more than this.

The City's commitment to minimum staffing can not, in any event, relieve it from its obligation to take affirmative steps to determine if minimum staffing can be met before it denies a comp time request. As established by relevant arbitration authority, the City can contact employees directly to secure a replacement or post overtime "to provide an incentive for employees to serve as a replacement." Active use of these options should make it easier for the City to maintain minimum staffing levels.

Nor do Zingale's personal reasons for the comp time request have any direct bearing on City conduct: "The issue is not whether the minimum staffing level imposed by the City is proper, but which party has the responsibility for determining the availability of the staff, the employer or the employees." The evidence establishes that the City "must explore staffing availability before denying an employee's request to use earned compensatory time."

The City's Reply Brief

The City contends that the Association mistakenly argues "that the City is requiring employees to first seek a replacement before requesting compensatory time off." In fact, the "City has never placed such a requirement on the dispatchers." Rather, the City reviews each request, "then either grants or denies the request based on staffing needs." That the City informs employees of the possibility of switching shifts under Section 6.03 is a courtesy, not a mandate. The evidence establishes that the City has never required an employee to secure a replacement prior to making a comp time request.

Nor will the evidence establish a contractual basis to require the City to seek replacements prior to acting on a comp time request. The Association's arbitration precedent is distinguishable because it rests on entirely different language from a consent agreement.

Association arguments that the City could post overtime to accommodate Zingale's request ignore that the management rights clause permits the City to determine "when overtime will be incurred" and that the issue "is whether the contract requires the City to incur overtime under these facts." Pushed to its logical conclusion, the grievance seeks the "patently absurd" result that "the City should hire more staff so that whenever an employee wishes to take a day off, other employees are immediately available to cover that shift." This position lacks any contractual or factual basis. Nor is there any basis for the Association's assertion that the City's denial of Zingale's request is arbitrary and capricious. The Association's critique of the City's "exigent circumstances" policy ignores that Zingale has twice been a beneficiary of the policy and that the purpose of overtime is to respond to unforeseeable circumstances. Even ignoring inaccuracy in the Association's characterization of Amodeo's testimony, there is no persuasive basis to support its assertion of City inconsistency in calling overtime.

The Association mischaracterizes the evidence regarding past practice. Over a two year period, the City acted on three hundred eighty six comp time requests, granting all but eighteen. This "creates a past practice on the circumstances by which compensatory time off will be approved or denied." Zingale's conduct establishes common knowledge of minimum staffing levels. In spite of Association arguments to the contrary, the evidence establishes a practice regarding when "the City may deny requests off to meet its minimum staffing levels of two (2) dispatchers per shift." Zingale herself had a prior comp time request denied without filing a grievance. The Rauenbuehler situation shows no more than the consistency of "the City's practice of approving overtime to grant an employee's request for a 5-day block of vacation." Further evidence cited by the Association falls short of establishing inconsistency on the City's part, thus establishing the propriety of the City's "application of minimum staffing requirements to decide requests for compensatory time off." The City concludes by requesting that the "grievance be dismissed with prejudice."

DISCUSSION

I have adopted the Association's statement of the issues. There is not, in my view, a great deal of difference between the parties' statements. The City's is more detailed, focusing on Section 7.02. The Union's appropriately notes that the application of Section 7.02 draws on other contract provisions.

Section 7.02 is the interpretive focus. On its face, the section establishes that comp time usage at a specific time is not guaranteed. The first sentence establishes that comp time "may be taken" upon written request. This makes its usage at a specific time something less than an entitlement.

The second sentence of Section 7.02 makes comp time usage "subject to . . . approval" by the Chief or the Chief's designee. Other references underscore the exercise of discretion. The fourth sentence of Section 7.02 closes the application process if "there are more applicants for the day than can be granted in the opinion of the Chief." The use of the plural "applicants" coupled with the Chief's "opinion" underscores that there is a discretionary process potentially covering several applicants.

The second sentence further establishes that the discretion includes "staffing requirements." The combination of "dependent upon" with "staffing requirements" establishes that comp time usage will not jeopardize the dispatch center's operation. The agreement links, but separates "staffing requirements" and supervisory approval. This means the supervisory discretion is not restricted to staffing requirements. Thus, the first two sentences of Section 7.02 make comp time usage an act of discretion. Staffing considerations are a valid, but not the sole, consideration within that discretion.

This discretion has contractual limits. Under Section 28.01, the City must act consistent with external law and "the terms of this agreement." Beyond this, the section establishes that the City and the Chief can "promulgate reasonable departmental rules and procedures." There is no indication that the policies testified to by Amodeo have been "promulgated," and it may be impossible to codify them. In any event, the discretion at issue here is the decision to grant or to deny an individual request. Section 28.01 remains applicable. It would be an unpersuasive reading of that section to conclude that City discretion to deny comp time is broader under unwritten policies than under promulgated rules. Thus, the City's case-by-case exercise of discretion under Section 7.02 must be reasonable.

Against this background, the specific exercise of discretion by City representatives in denying Zingale's request must be examined. In my opinion, the circumstances surrounding Zingale's request establish that the City's denial was a reasonable exercise of the discretion granted under Section 7.02.

From Mozina's initial denial through Amodeo's meetings with Zingale, City representatives based their conduct on the minimum staffing policy. There is no dispute regarding its existence or reasonableness. Zingale's review of the roster prior to establishing the shower date manifests that the parties accept the policy as fundamental to center staffing.

The City's denial does not rest solely on Mozina's initial review of the roster for September 30. Zingale met with Amodeo twice to flesh out the basis for the denial. The dispatch center was, by the first week of August, understaffed based on the resignation of a trainee and on Wenzel's leave. Without regard to the resignation, the trainee had not yet acquired sufficient proficiency to count toward minimum manning. Wenzel's leave, although expected, moved Riedelbach to the first shift. Her August 1 vacation change meant she could

not count toward minimum staffing on the day watch for September 30. Section 7.02 expressly mandates that vacation requests "shall have priority over . . . compensatory time off." Thus, the City's approval of the vacation change cannot be faulted. Its conclusion that granting Zingale's request would put it below minimum staffing has a valid contractual basis rooted in circumstances not traceable to the City's creation.

The Association contends that the City could have authorized overtime to grant the request. The issue here, however, is not whether the City could do so, but whether the contract compels it to. The Association has not established a persuasive contractual basis for the asserted compulsion. Section 7.05 and Section 28.01(i) make the approval of overtime a discretionary act on the City's part. Section 7.02 specifies a pay out for unapproved comp time. This undercuts the contention that the City was under a clear contractual compulsion to authorize the overtime sought by Zingale to cover her comp time usage.

Nor is there an established basis in past practice for the asserted compulsion to authorize overtime or to poll staff. Mozina's assistance to a dispatcher who made plans based on previously approved comp time does not bear directly on Zingale's request. Mozina assisted a dispatcher based on an unforeseen illness of another dispatcher. The dispatcher Mozina assisted had made plans in reliance on already approved comp time. Zingale's request was for a foreseeable event planned prior to the request for approval of comp time. This does not make supervisory assistance contractually improper or a bad idea, but highlights that Mozina's conduct in that matter is distinguishable from this grievance. The binding force of past practice is rooted in the agreement manifested by the parties' conduct, and Mozina's conduct in one case has no clear bearing on this one. Beyond this, the language of Section 6.03 cautions against drawing the City into employee switches.

The Rauenbuehler situation can, as the Association notes, be considered City action on a single day of vacation. However, "(v)acation requests", under Section 7.02, "shall have priority over requests for . . . compensatory time off." Rauenbuehler, unlike Zingale, made a "vacation request." The single day was, in any event, appended to an existing one-week block, and Section 9.03 notes the significance of one-week blocks. This contractual basis is stronger than that the Association asserts for Zingale.

The strength of the Association's contractual argument is that the reference to "dependent on staffing" in Section 7.02 implies active consideration of staffing by the City. From the Association's perspective, this can involve the polling of staff or the authorization of overtime. The City's view, taken to its extreme, is that the mechanical consideration of the roster to determine minimum staffing is sufficient to comply with Section 7.02.

On the broadest contractual level, neither party's view, if taken to its extreme, is unequivocally grounded in the labor agreement. The Association's has the weakest contractual ground. Its reading of "dependent on staffing" affords no evident basis to deny a comp time request. An order to report coupled with overtime can secure staffing. Thus, any comp time request can arguably be granted. Such a view is not reconcilable to the discretion granted the City under Sections 7.02, 7.05 or 28.01. Polling of the staff is a less onerous demand, but is at best implied from the reference to "dependent on staffing." The broad implication is difficult to apply specifically. When should supervisors poll staff? The City can receive one or more comp time requests per day. Even if restricted to denials based on minimum staffing, it is less than evident what the polling implies. When must the City authorize overtime? Can a supervisor "suggest" a shift switch?

The City's view that mechanical consideration of the roster to determine minimum staffing levels complies with Section 7.02 has contractual support, since Section 7.02 expressly makes comp time usage "dependent on staffing." However, this view breaks down if pushed to its extreme. As noted above, Section 7.02 demands the exercise of a discretion that includes, but is not limited to, staffing considerations. Mechanical consideration of the work roster ignores the full range of discretion authorized by Section 7.02. Similar considerations establish that the City could not condition the granting of comp time on employee effort to secure a shift switch. The exercise of discretion granted in Section 7.02 is rooted on City, not employee, action.

In sum, Section 7.02 makes the granting of comp time usage a discretionary act by the Chief or the Chief's designee, and makes staffing a relevant and potentially determinative consideration. On the facts posed by the Zingale grievance, the City's actions are reasonable. The City did not create the circumstances putting it below minimum staffing for September 30. City approval of Riedelbach's vacation change preceded Zingale's request, and, in any event, has contractual priority over it. Nothing in Section 7.02 or Section 7.05 grants a basis to compel the City to authorize overtime for September 30. There is, then, no proven violation of the labor agreement.

Zingale's request is effectively a claim for individual equity. The claim has some persuasive force viewed as a matter of fact. The celebration of a birth is a one-time event, and Zingale had the comp time reserve to cover it. She planned it well in advance, and checked the work roster before committing to a day. However, even ignoring the contractual basis for the claim, the facts do not unequivocally establish the claim for equity. The evidence does not address why comp time was the form of leave requested. Nor is it evident why the shower needed to fall on a work day. Presumably, the weekend was best for guests, and weekends for most people follow a 5/2 schedule, not a 4/2. If, however, the date turned on the convenience of a particular guest, or if the date could have fallen on a non-scheduled work day, the claim for equity is less compelling. No conclusions are possible on this record, but these considerations highlight that the force of the claimed equity is less than self-evident.

More significantly, however, the claim for equity lacks a solid contractual basis. The Association asserts the denial of the request leads to the absurd result of favoring untimely requests over timely requests. This overstates City policy. That the City responds to unforeseeable absences differently than to foreseeable absences is a reasonable distinction. The Association's view also ignores that Zingale's plans predate City approval. Section 7.02 mandates that requests be made "not more than forty-five (45) calendar days prior to the desired date." Her reliance on City approval of the request predated the contractually set period for making the request. The contract specifies the timing of the requests and the act of discretion necessary to approve the request. Arguably, accepting the Association's case could read both out of existence.

Another grievance regarding City denial of comp time is pending, and the case-by-case review undertaken above cannot address facts beyond those in evidence. This reflects that the City's implementation of Section 28.01 and 7.02 turns on a case-by-case basis. Whether it is possible or desirable to address comp time usage as a departmental rule must be left to the process envisioned in Section 28.01. Unless an arbitrator is to assert authority reserved to the parties, the discretion established by Section 7.02 must proceed on a case-by-case basis.

That the City acts based on its minimum staffing policy does not, standing alone, violate the "dependent on staffing" reference. Section 7.02 calls for the exercise of supervisory discretion and states that staffing is a relevant and potentially governing consideration. Rote City reliance on the minimum staffing policy exposes it to two levels of risk. The first level is that under Section 28.01 City policy must be consistent with the terms of the agreement. Thus, the minimum staffing policy cannot be applied to defeat other contractual rights, such as comp time usage. The second level of risk is that to the extent the City relies solely on the minimum staffing policy to address a comp time request, it exposes itself to the risk that specific circumstances may show its rote application is not reasonable regarding an individual request.

The degree of that risk must be left to the parties to evaluate regarding other facts. In this grievance, even though the City totals the number of comp time requests differently than I do, the evidence does not indicate reason to believe that City actions toward Zingale eliminated or impermissibly curtailed comp time usage. As noted above, her conferences with Amodeo demanded that the City consider the specifics of her request against its minimum staffing policy. Her request was for a valid reason, and her concern for the day understandable. This cannot change the fact that the absence was foreseeable or that compelling the use of overtime to cover it lacks a persuasive contractual basis.

AWARD

The Employer did not violate the Agreement when it denied Patricia Zingale's request to use compensatory time for her shift on September 30, 2001.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 15th day of May, 2002.

Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator

RBM/gjc
6374.doc