BEFORE THE ARBITRATION BOARD

In the Matter of the Arbitration of a Dispute Between

HARTFORD POLICE UNIT EMPLOYEES UNION, LOCAL 1432A, affiliated with DISTRICT COUNCIL 40, AFSCME, AFL-CIO

and

CITY OF HARTFORD (POLICE DEPARTMENT)

Case 56
No. 61177
MA-11832

(Yogerst Grievance)

Appearances:

Mr. Lee W. Gierke, Staff Representative ,Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 2236, Fond du Lac, Wisconsin 54936-2236, appearing on behalf of Hartford Police Unit Employees Union.

Davis & Kuelthau, S.C., by **Attorney Roger E. Walsh,** 111 East Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202-6613, appearing on behalf of the City of Hartford.

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, Hartford Police Unit Employees Union, Local 1432A, AFSCME, AFL-CIO (hereinafter referred to as the Union) and the City of Hartford (hereinafter referred to as the Employer or the City) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen of its staff to serve as Chair of an Arbitration Board to hear and decide a dispute concerning the City's denial of a vacation request by Marlene Yogerst. The undersigned was so designated. A hearing was held on March 31, 2003, in Hartford, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The parties submitted post-hearing briefs and reply briefs, the last of which were received on May 27, 2003, whereupon the record was closed.

Now, having considered the testimony, exhibits, other evidence, contract language, arguments of the parties and the record as a whole, the Arbitration Board makes the following Award.

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To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUES

The parties were unable to stipulate to the issues before the Arbitration Board and agreed that the Board should frame the issues in its Award. The Union states the issues as:

> 1. Did the City violate the labor agreement and its own written policy when it unreasonably denied Marlene Yogerst a vacation day for July 5, 2002?
>
> 2. If so, what is the appropriate remedy?

The City believes the issues to be:

> 1. Did the City violate Section 8.02(A) and/or Section 9.02 of the collective bargaining agreement when, on February 5, 2002, it denied Marlene Yogerst's January 31, 2002 request for a vacation day/floating holiday off on July 5, 2002?
>
> 2. If so, what is the appropriate remedy?

The Arbitration Board believes the issues may be appropriately stated as follows:

> 1. Did the City violate Section 8.02(A) and/or Section 9.02 of the collective bargaining agreement when it denied Marlene Yogerst's request for a day off for July 5, 2002?
>
> 2. Did the City violate the terms of the work rules and regulations made pursuant to Article III, specifically the 1988 vacation memo, when it denied Marlene Yogerst's request for a day off for July 5, 2002?
>
> 3. If the City violated Section 8.02(A), and/or Section 9.02, and/or the work rules and regulations, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

. . .

ARTICLE III – MANAGEMENT RIGHTS

3.01 The Union recognizes the prerogatives of the Employer to operate and manage its affairs in all respects in accordance with its responsibility, and the powers or authority which the Employer has not specifically abridged, delegated or modified by other provisions of this Agreement are retained exclusively by the Employer. Such powers and authority, in general, include, but are not limited to the following:

A. To determine its general business practices and policies and to utilize personnel, methods and means in the most appropriate and efficient manner possible;

B. To manage and direct the employees of the Employer, to make assignments of jobs, to determine the size and composition of the work force, to determine the work to be performed by the work force and each employee, and to determine the competence and qualifications of the employees;

. . .

G. To make reasonable rules and regulations for the conduct of its business and of its employees.

. . .

ARTICLE VIII – PAID HOLIDAYS

. . .

8.02 Floating Holidays: In addition to the holidays listed in Section 8.01 above, employees shall receive five (5) floating holidays, provided, however, that an employee hired on or after July 1 shall be eligible for only two (2) floating holidays in the calendar year in which he/she is hired. In the case of the Detective, Police Administrative Assistant and Clerk-Typist, floating holiday time shall equal a total of 40 hours for the five (5) days; in the case of Patrol Officer and Communications Officers, floating holiday time shall equal a total of 42.5 hours for the five (5) days. Part-Time Communications Officers floating holidays shall be one half (1/2) of that received by full-time Communications Officers.

A. Scheduling: Floating holidays may be taken in increments of four (4) hours or more at the beginning or end of each shift. The floating holiday shall be taken off at a time mutually agreed between the employee and the Chief of Police or the Chief's designee. If a request for a floating holiday is denied,

the reason for said denial shall be given in writing. No Officer will be granted a vacation day or a floating holiday after another Officer has been denied the same day off as a floating holiday. Officers shall continue to use the present practice of signing off in the selection of floating holidays. No Communications Officer will be granted a vacation day or floating holiday after another Communications Officer has been denied the same day off as a floating holiday.

. . .

ARTICLE IX - VACATIONS

. . .

9.02 Scheduling: Vacation schedules are to be worked out and approved by the Chief of Police or Chief's designee. An employee's length of service in the department will be respected in the selection of time for vacations. The seniority for the part-time Communications Officers will be determined on a full-time equivalency. Vacation may be taken in increments of four (4) hours or more at the beginning or end of each shift.

. . .

BACKGROUND

The Employer provides general governmental services to the people of Hartford, Wisconsin. Among these services is the operation of a Police Department. The Union is the exclusive bargaining representative of the Department's non-exempt employees, including full-time and part-time employees in the classifications of Detective, Patrol Office, Police Administrative Assistant, Communications Officer, Clerk-Typist, and Parking Enforcement Aide. The Grievant, Marlene Yogerst, has been with the Department since 1997. She started as a Parking Enforcement Aide and was promoted to Clerk-Typist in July of 1999. She replaced Patrice Moratz, who promoted to Administrative Assistant at roughly the same time. Moratz had been hired as the Clerk-Typist when the position was originally created in 1993.

The Clerk-Typist is responsible for transcribing the narrative tape recordings prepared by officers on their cases, as well as general clerical work. Some cases are classified as "hot reports" which demand immediate attention and have priority over all other work. These include custodial cases, where someone has been jailed and the District Attorney requires a report by noon; mental commitments where the materials must be provided as soon as possible to the County Corporation Counsel; Juvenile Intakes; and Domestic Disputes. When either Moratz and Yogerst is absent, the other covers the necessary work.

At the beginning of January, 2002, Moratz requested July 5th off. Her request was approved. Later that month, the Grievant put in a request to take June 27th through July 5th off. Her request was approved, except for July 5th. That day was denied because Moratz had already asked for that day, and had greater seniority. The instant grievance was filed, asserting that she should have been given the day off, pursuant to a July 27, 1988 memo from the then-Chief of Police regarding scheduling of time off:

TO: ALL POLICE PERSONNEL
FROM: DAVID C. HENRY, CHIEF OF POLICE
SUBJECT: VACATIONS, TIME REQUESTED OFF, ATTENDING MEETINGS

EFFECTIVE DATE: JULY 27, 1988, THIS MEMO RESCINDS ALL OTHER MEMO'S RELATED TO THE ABOVE.

1. All requests for time off must be received by me NO LESS THAN FOUR DAYS (4 days) before the day(s) requested off. (With the exception of short notice day) It is the responsibility of the Officer wanting the day off to see that the shift is covered and to check with the senior Officer. If the shift cannot be covered without overtime the day will be denied. That officer still must submit the Request for Time Off slip.

   It is the sole responsibility of the individual who wants off to see that the slip is signed and turn [sic] in to me.

2. When a vacation day or floating holiday is requested and there are personnel on vacation as to cause a shortage, that day will be denied. However, if a person is taking an extended vacation of four (4) or more days in a row the days will be granted and overtime will be called in.

3. If a senior Officer denies a request form he MUST post his off day request at that time.

4. No less than four (4) hours of vacation will be approved., either the first four (4) hours of the shift or the last four (4) of the shift.

5. No member of the Hartford Police Department will be allowed during working to leave to attend any meetings, unless it is to present a program, Ref; Police Services.

In July, Yogerst worked on Monday, July 1 and Tuesday, July 2nd, took 8 hours of floating holiday on Wednesday, July 3rd and 8 hours of regular holiday time on July 4th. On the 3rd and 4th she and her family were vacationing in Waupaca. She and her husband drove

back to Hartford at 4 a.m. on the 5th and she worked 4 hours in the morning. She had a couple of hot reports to complete, which took about 90 minutes, and then she worked on routine tasks for the balance of the morning. She requested and was approved for 4 hours of vacation in the afternoon, and returned to the family vacation.

At the arbitration hearing, Yogerst testified that the only duties of her job that absolutely had to be performed when she was absent were the hot reports, and that these could be prepared by either the Parking Enforcement Aide or the officers. She stated her training for the job consisted of about a half day with Moratz, though she conceded that she already had background typing reports from her work as a dispatcher in other departments. She also said that she had offered to cross-train the Parking Enforcement Aide to do the reports, but that Chief refused her request, explaining that he was not sure such cross-training was desirable. Yogerst recalled one occasion when Moratz took a day off and she called in sick, and the officers and supervisors prepared the hot reports themselves.

Lieutenant Thomas Horvath, the operations commander for the Department, testified at the arbitration hearing that he denied Yogerst's request for July 5th off because Moratz was already scheduled off for the day and the Department's policy was not to allow both the Administrative Assistant and the Clerk-Typist off on the same day, since they cover one another's duties. Horvath stated that speed and accuracy were important in the production of reports, particularly hot reports, where the deadlines are imposed by outside agencies, such as the District Attorney. Yogerst and Moratz are the only two skilled typists in the Department. Horvath dismissed the notion of trying to cross-train the Parking Enforcement Aide to cover typing duties, since the problem of both Yogerst and Moratz wanting the same day off only comes up once a year or so, and it was unlikely that the Aide would retain the skills from year to year.

Horvath stated that the 1988 memo was still in effect, but that it was issued at a time when there was only a single clerical employee, and thus there was no need to address conflicting demands for time off among clerical employees. Likewise, there was only one Communications Officer per shift at that time, and days off were always covered with overtime. The memo was intended to apply only to sworn personnel, and was written in that fashion. Horvath conceded that both the Communications Officers and the Parking Enforcement Aide are required to do some typing as part of their jobs.

Chief Thomas Jones testified at the arbitration hearing that there have been only two occasions when both Yogerst and Moratz were off on the same day. In the Spring of 2002, Moratz was off and Yogerst called in sick. He decided to have officers and supervisors do the hot reports, since that was the only option he had. He personally prepared one of the reports, and it took him two hours. The second occasion when both were off was the afternoon of July 5, 2002, when he let Yogerst use four hours of floating holiday because the priority work was finished and he wanted to accommodate her to the extent that he could. Jones noted that Yogerst had an essentially identical grievance in 2000 over her request for July 3rd, that the City denied the grievance and it was never processed through to arbitration. In the subsequent round of bargaining, the Union did not make any proposals regarding the scheduling of time off for the Clerk-Typist.

Yogerst testified in rebuttal that the 2000 grievance was not pursued because the then-staff representative felt it would be better to address the issue in negotiations. She noted that the Chief had discussed the possibility at that time of looking into cross-training the Parking Enforcement Aide. When she tried to follow up on the cross-training idea in November or December, the Chief said he had decided against it. She spoke to the Union officers about the matter but they said the proposals for bargaining had already been presented, and that they could not add proposals at that late date.

Additional facts, as necessary, are set forth below.

ARGUMENTS OF THE PARTIES

The Union's Initial Brief

The Union takes the position that the Grievant is clearly entitled to take four or more consecutive days off, without regard to whether Moratz is off at the same time. The plain language of the 1988 memo settles the matter in the Grievant's favor: ". . . if a person is taking an extended vacation of four (4) or more days in a row the days will be granted and overtime will be called in." This memo was issued pursuant to the labor agreement's clause granting the City the right to make reasonable rules and regulations. As such, it is just as binding on the City as if it were a provision of the contract itself. This is not a case where the Union demands that the City go without needed coverage of Yogerst's work. The Union presented several options for the City, including cross-training the Parking Enforcement Aide and the Communications Officers, but the City arbitrarily dismissed these options. It is clear from the record that other employees, including officers and supervisors, are entirely capable of doing hot reports when necessary. While it may be inconvenient for the City to cover work with other employees, that will always happen when people are off. The memo recognizes that inconvenience and expense may be incurred, but provides for the possibility of overtime to cover the work. Inconvenience is not a reason for denying the Grievant her right to use benefit time.

The Union points out that the bulk of Yogerst's work is routine and can be made up if it is not completed on a particular day. The hot reports are the only urgent matters that she deals with, and these constitute a very small portion of the workload. Yogerst estimated, without contradiction, that the number varied, but averaged one hot report per day, with Monday being the only predictably busy day. Given that July 5th was Friday, immediately following a holiday, it was foreseeable that there would be little likelihood of urgent reports being required on that day. The balance between the City's likely needs for typing and the Grievant's clear right to use benefit time should have been struck in her favor, and the City's refusal to do so constituted an arbitrary act, in violation of the contract.

The Union dismisses the City's citation of a 2000 grievance over this same issue. The Union is not required to arbitrate every dispute. It was clear to the City that the Union was in disagreement with its position in 2000, and after deciding not to arbitrate, the Union continued

to pursue the matter through informal discussions with the Chief over cross-training. The fact that the Chief subsequently backed away from the cross-training alternative cannot give rise to an inference that the Union somehow intended to acquiesce in the City's position on this issue.

The City has not changed the policy on vacations issued in 1988, and that policy clearly gives the Grievant the right to a multi-day vacation, no matter who else is off work. There was no compelling operational need to deny Yogerst's request for July 5th, since it is clear that available personnel could have covered an urgent reports. The request was made six months in advance, giving the City plenty of time to prepare options for covering all eventualities. Mechanically applying a rule to deny a vacation request is inconsistent with the negotiated rights of the employees. For these reasons, the Union asks that the grievance be granted, and that the Grievant be granted a meaningful remedy, in the form of an additional vacation day.

The City's Initial Brief

The City takes the position that the grievance is without merit and should be denied. The collective bargaining agreement, in both Sections 8.02 and 9.02, clearly requires the approval of the Chief for time off requests. The denials here were based on the greater seniority of Patrice Moratz, the only other employee who can perform the necessary clerical functions for the Department. These reasons were presented in writing, and were entirely reasonable. Thus, there can be no violation of the collective bargaining agreement and no remedy for the Grievant.

The City notes that the Management Rights clause gives it the authority to regulate the granting of vacation and floating holiday requests and that the Chief's policy in this matter is plainly a reasonable regulation. The 1988 memo relied upon by the Union is inapposite. The memo is still in effect, but by its terms it only covers sworn personnel and does not apply to clerical employees. The memo was issued before there were two clerical employees and thus there had been no need to regulate the requests for time off among clerical employees. When the second clerical position – Clerk-Typist – was created in 1993, the Department adopted a policy of only allowing one clerical off at a time, based on seniority. That policy governs clerical employee time off requests and it has been consistent and clear since 1993. The policy for clericals is reasonable and, though unwritten, well known to the clericals. It is reasonable because Moratz and Yogerst are the only two employees with the typing and clerical skills to cover one another's positions. That the policy is well known is demonstrated by the fact that the Grievant has had her time off requests run through Moratz, so that Moratz can use her seniority to trump a given request if she wishes. That alone should have made it clear to the Grievant that her time off requests were contingent on the senior employee's preferences. In addition to that, however, the Grievant had a previous grievance on this same issue, and the City's policy would have been crystal clear to her at that time. Plainly, the Grievant knew that her time off requests were not governed by the 1998 memo.

The policy of not allowing both clerical employees off at the same time is reasonable on its face. As noted, they are the only skilled typists available. The incident in the Spring of 2001, when Yogerst called off sick and Moratz was on vacation, amply demonstrates the need for the policy. On that occasion, officers and supervisors prepared hot reports and the job occupied a great deal more of their time than would have been required for Yogerst to do the job. While the City can respond in such an emergency by having other occupational groups perform the clerical work, it is also entitled to rely on its clear and reasonable policy of not crossing occupational lines for coverage in non-emergency situations.

The City repeats that the Grievant previously grieved this issue in 2000 and dropped the grievance after it was denied. The Union was clearly on notice of the City's position, but it failed to even raise the issue in negotiations over the 2001-2003 contract. Negotiations continued well after the Chief made it clear that he would not pursue cross-training options, still without mention of this issue. The Grievant's remedy is to seek a change in the contract language. She was aware of that in 2000 and she failed to pursue that avenue. She cannot now obtain in arbitration what she has previously failed to obtain through grievances and negotiations. For all of these reasons, the grievance should be denied.

The Union's Reply Brief

The Union disputes the City's claim that it has acted reasonably and within the bounds of the contract in denying the Grievant's right to use time off. Again, the use of substitute personnel for the Grievant when she is gone is inconvenient and not as efficient for the City. However, that is inherent in the absence of the usual worker. It is not some unusual event, peculiar to the Grievant's job, and it is not a sufficient reason to deny her time off requests. The fact is that the City can get the work done if the Grievant and Moratz are both gone and it has no good operational reason for its stubborn refusal to allow both to be gone at the same time on an occasional basis.

The City's claim that the 1988 memo only applies to sworn personnel is only that – a claim, unsupported by any evidence. The memo, by its terms, applies to all police personnel and the Grievant and Moratz are obviously police personnel. Nothing in the substance of the memo suggests that its scope should be limited to sworn officers and the Arbitration Board should reject the City's attempt to simply rewrite its own policy when it finds it inconvenient.

The City's reliance on the 2000 grievance is misplaced. The decision not to proceed to arbitration was a reasonable effort to work things out informally, something that should be applauded rather than penalized. The fact remains that the City was fully aware that the Union and the Grievant did not agree with the City's view of the system for scheduling time off and the decision to pursue the matter by other means cannot be held against the Grievant now.

The City's Reply Brief

The City asserts that the Union's entire case relies on a mistake of fact – that the 1988 memo applies to clerical employees. The memo repeatedly makes reference to "officers" requesting time off and when it was issued it could only have applied to officers. Again, there was only one clerical employee and then, as now, the Communications Officers would always have to be replaced using overtime. Moreover, attempting to apply the memo to clerical employees leads to absurd results. The provision that the Union relies upon calls for the use of overtime to cover multi-day time off requests. Among police officers and communications officers, this plainly means that a fully qualified police officer would cover for another police officer or a fully qualified communications officer would cover for a communications officer. In the clerical ranks, however, if both clerical employees are scheduled off, the City would be required to pay overtime to call in an unqualified employee from another classification. That is a ridiculous interpretation and the Arbitration Board should not mandate a ridiculous act by the City.

The Union's argument that the City should have cross-trained personnel to cover for the Clerk-Typist's vacations suggests that City is required to do whatever is necessary to grant her time off. That is not the case. There is nothing in the contract that requires cross-training and it is nether practical nor efficient to do so. Training a back-up for one day's work each year would not be a reasonable use of City resources, as the skills would certainly erode each year as the required typing skills went unused. The Union also assumes that the backup would not have requested time off on the same day as the Grievant and ignores the possibility that the Grievant and Moratz might make overlapping requests for multi-day vacations, leaving the City without a qualified clerical employee for extended periods of time.

The City has made and enforced a reasonable policy, based on operational concerns. The policy recognizes seniority as the basis for granting time off requests and the Grievant as the less senior employee feels at a disadvantage. That is not a sufficient basis under the contract to overturn the City's policy. Thus, the grievance should be denied.

DISCUSSION

The issue before the Arbitration Board is whether the City was within its rights in requiring that the Grievant not take time off on the same days that Patrice Moratz, the other clerical employee in the Police Department, has scheduled time off. The contract itself speaks to the scheduling of floating holidays and vacations. In the area of floating holidays, the contract merely states that "The floating holiday shall be taken off at a time mutually agreed between the employee and the Chief of Police or the Chief's designee. If a request for a floating holiday is denied, the reason for said denial shall be given in writing." In the area of vacations, the contract also provides for mutual agreement: "Vacation schedules are to be worked out and approved by the Chief of Police or Chief's designee. An employee's length of service in the department will be respected in the selection of time for vacations."

Neither contract provision appears to bear on this grievance, in that each allows for a denial by management, so long as the reasons are stated in writing, in the case of floating holidays, and seniority is respected, in the case of vacations. The Union does not allege a violation of this express language – the reasons for the denial were given in writing, and Moratz is the senior employee. Rather, the Union's argument follows two prongs related to the exercise of Management's Rights. The first is that Management has exercised its right to make a policy for scheduling time off and that the existing policy should have led to approval of the Grievant's request. The second prong is that Management has exercised its rights in an arbitrary fashion by adopting a policy of refusing to let the Grievant take time off at the same time as Moratz.

The 1988 Policy

The Chief of Police issued a policy in 1988 governing time off requests. One provision of the policy says that requests for time off will be denied, if the request would require overtime because of previously approved leaves. That provision has an exception, however: ". . . if a person is taking an extended vacation of four (4) or more days in a row the days will be granted and overtime will be called in." The Grievant's request was for six work days in a row off work, and the Union claims this policy entitled her to approval of the request, despite the fact that Moratz was already off. The City responds by arguing that this policy only applies to police officers and is irrelevant to this grievance.

The Union is correct in observing that the 1988 policy is addressed to "All Police Personnel" and that the terms of the policy do not contain any express exclusion for clerical employees. That said, the body of the policy is plainly directed to police officers. It repeatedly makes reference to "officers" and sets forth procedures, such as the employee's obligation to see that the shift is covered, that have not been followed in the clerical ranks. Its provisions are likewise not easily applied to Communications Officers, even though if the Union were correct, they too must be covered by the policy. It is undisputed that the policy was issued before the second clerical position was filled, so it cannot be said that the City issued this policy with the clerical employees in mind.

Some provisions of the policy could be applied to the clerical employees and there is no reason that the City could not, if it so chose, make a policy for clerical employees that guaranteed them the right to take extended vacations. The fact that such a policy could be made does not mean that it has been made. The record evidence persuades the Arbitration Board that the 1988 policy was intended to apply to sworn personnel, that City has never consciously chosen to extend this policy to non-sworn personnel and that the policy has never been applied to non-sworn personnel. The Grievant's reliance on the policy to support her grievance is therefore misplaced.

Arbitrary Action

The City has retained the right to regulate the workforce and its operations and to make reasonable rules for that purpose. The City asserts that it has a policy, made pursuant to that right, of not allowing both clerical to be gone at the same time. The Union assails that policy as arbitrary and as unreasonably restricting the Grievant's negotiated time off benefits.

The right to make rules and manage the affairs of the City does not extend to taking actions that are arbitrary or capricious, nor to the making of facially unreasonable rules. However, an action is not arbitrary or unreasonable simply because a reasonable person could make a different choice. The test is whether a reasonable person could not have made the choice in question. Here, the City has made a judgment that there must be clerical coverage for hot reports and that both clerical employees will not be allowed to use leave at the same time. They have given the senior employee preference for days off. That is not an unusual decision, nor is it some sort of sub rosa means of denying the Grievant the benefit of the time off provisions of the contract. Certainly, it restricts her ability to use leave time whenever she chooses, at least until she becomes the senior clerical employee, but few time off provisions allow unfettered choice to the employee. Almost all factor in the operational needs of the Employer as well.

The Union suggests, of course, that the Employer's citation of operational need for having either the Clerk-Typist or the Administrative Assistant on duty is overstated and points to the availability of the Parking Enforcement Aide or a Communications Officer as a backup and to the ability of officers and supervisors to type their own reports. Certainly, the Parking Enforcement Aide or the Communications Officer could be cross-trained to transcribe hot reports, but the City makes the reasonable point that cross-training for a once a year event is not likely to provide any lasting skills for the backup or lasting benefit to the City. The training would have to be repeated each year, at a minimum. The benefit to the City from this cross-training is not readily apparent. The Aide does not need clerical level typing skills for her job, nor does the Communications Officer. The City could reasonably conclude that the time and expense of cross-training were warranted in order to always have a clerical backup available, but it could just as reasonably conclude that the benefit was not worth the investment. 1/

1/ It also bears mentioning that cross-training the Parking Enforcement Aide poses problems if both Moratz and the Grievant want to take overlapping multi-day vacations. Presumably, the Aide has duties that should be performed, and pulling her in to do the Grievant's work means that her job duties are left undone. The multi-day vacation also raises questions if the Aide wishes to use vacation at the same time. She is not in the clerical vacation group, so she should have the right to take vacation without respect to the Grievant's plans.

Using police officers and/or supervisors as clerical backup is also possible. However, it is plainly not an efficient use of resources, other than as an emergency step. If it were, the City would not created the Clerk-Typist position in the first place. All of the options suggested

by the Union require the City to take personnel from other occupational groups, personnel who are not required to have the core skills of the Clerk-Typist and plug them into her job so that she may take vacation at the same time as the senior clerical. The City could choose to do these things, but it is not required to take every step possible to accommodate the Grievant in order to avoid violating the contract.

The City's policy of not allowing both clerical employees off at the same time is within the range of reasonable choices that can be made for managing leave time in the clerical ranks. It is consistent with the collective bargaining agreement's leave time provisions. While the policy places some limitations on the Grievant's ability to schedule vacations, it does not cross the line to arbitrary or unreasonable action. The City was within its rights to make the decision it made, and the Grievant's only recourse is to the bargaining table to seek a change in the contract language.

On the basis of the foregoing, and the record as a whole, the Arbitration Board has made the following

AWARD

1. The City of Hartford did not violate Section 8.02(A) and/or Section 9.02 of the collective bargaining agreement when it denied Marlene Yogerst's request for a day off for July 5, 2002;

2. The City of Hartford did not violate the terms of the work rules and regulations made pursuant to Article III, specifically the 1988 vacation memo, when it denied Marlene Yogerst's request for a day off for July 5, 2002;

3. The grievance is denied.

Dated at Racine, Wisconsin, this 16th day of October, 2003.

Daniel Nielsen /s/
Daniel Nielsen, Neutral Chair

I concur:

Gary Koppelberger, City Representative to the Arbitration Board Date: 8/26/03

I dissent:

Thomas Wishman, Union Representative to the Arbitration Board Date: 10/16/03

DISSENTING OPINION

In the Matter of the Arbitration of a Dispute Between

CITY OF HARTFORD

and

HARTFORD POLICE UNIT EMPLOYEES UNION, LOCAL 1432A, affiliated with DISTRICT COUNCIL 40, AFSCME, AFL-CIO

Case 56
No. 61177
MA-11832

(Marlene Yogerst Vacation Grievance)

By Panel Member Tom Wishman

Upon review of the majority opinion offered in this case I find that I must dissent, based on the following analysis:

Although I do not disagree with the majority opinion with regard to the right or ability of the City to adopt a rule allowing only one employee off on vacation at a time, it is my belief that no such rule exists in a form that employees can rely on. In fact, the only guidance that employees in the department have is the policy set forth in the Chief's 1988 memo. While it is clear that the references therein are to sworn officers, the memo is addressed to all department personnel, and there is nothing in the memo to indicate that it would not otherwise be applied to non-sworn employees in the department. Furthermore, the City makes a point of saying that at the time the memo was issued, there was only one employee in the clerical division, and therefore no need to address the issue of vacation scheduling. That is true, but it is also true that when the City hired another person to work in the clerical unit, it did not adopt any work rule contrary to the 1988 rule that would apply to them. On the contrary, in an instance where a prior work rule had been in place whose application worked to the City's benefit one would reasonably assume that the City would argue that to expect it to revisit all of its prior memos and work rules to specifically accommodate the addition of staff in the department would be unreasonable. I would agree. Therefore, I believe that the 1988 memo does apply in this case.

For this reason, I believe the analysis of the majority opinion fails, and I must respectfully dissent.

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