

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WINNEBAGO COUNTY (SHERIFF'S DEPARTMENT)

and

**PUBLIC SAFETY PROFESSIONAL
DISPATCHERS' ASSOCIATION, LOCAL 501**

Case 361
No. 62589
MA-12356

(Danula Grievance)

Appearances:

Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., 206 South Arlington Street, Appleton, Wisconsin 54915, on behalf of the Association.

John A. Bodnar, Corporation Council, Winnebago County, 448 Algoma Boulevard, P.O. Box 2808, Oshkosh, Wisconsin 54903-2808, on behalf of the County.

ARBITRATION AWARD

According to the terms of the 2001-03 collective bargaining agreement between Winnebago County (County) and Public Safety Professional Dispatchers' Association Local 501 (Association), the parties jointly requested that Sharon A. Gallagher be designated as impartial arbitrator by the Wisconsin Employment Relations Commission to hear and resolve a dispute between them regarding whether Dispatcher Kimberly Danula should have been allowed to cancel vacation on June 7, 2003 and substitute funeral leave therefor. Hearing in the matter was held at Oshkosh, Wisconsin on September 24, 2003. No stenographic transcript of the proceedings was made. The parties agreed to send their initial briefs directly to each other with a copy to the Arbitrator postmarked November 24, 2003. The parties waived reply briefs. The Arbitrator received the last document from the parties on November 25, 2003, whereupon the record herein was closed.

ISSUES

The parties stipulated that the Arbitrator should decide the following issues herein:

Did the Employer violate the terms and conditions of the collective bargaining agreement when the Employer denied Dispatcher Kimberly Danula's request for funeral leave on June 7, 2003?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 9 - HOLIDAYS

9.1 – Paid Holidays. Each permanent employee shall be entitled to ten (10) paid holidays per year (82.5 hours) to be taken as floating holidays. Such holidays are to be provided on a pro-rata basis during the first and last partial years of employment at the rate of one (1) day for each five (5) weeks of completed service. A holiday day shall be defined as eight and one-fourth (8-1/4) hours.

9.2 Employees, at their option, may elect to receive pay for the above holidays in December of each year.

ARTICLE 10 – VACATION

10.1 - Vacation. Each permanent employee shall be entitled to paid vacation time off in accordance with the following:

- Ten (10) days after one (1) year of continuous service.
- Fifteen (15) days after five (5) years of continuous service.
- Twenty (20) days after ten (10) years of continuous service.
- Twenty-two (22) days after twenty (20) years of continuous service. [Effective 01/01/99]
- Twenty-four (24) days after twenty (20) years of continuous service. [Effective 01/01/00]
- 10.2 – Earnings, Use and Payout. Employees shall earn vacation as of January 1 of each year, and such vacation must be used during that calendar year. Vacation may not be carried over from year to year. Employees shall be paid at the end of the year for all unused vacation time. A vacation day shall be defined as eight and one-fourth (8.25) hrs.

10.5 – Scheduled Vacation. Employees shall select their vacation on the basis of seniority in accordance with the selection procedure set forth in Appendix “A”, and attached hereto.

10.6 – Unscheduled Vacation. Employees shall select their unscheduled vacation on a first-come-first-serve(sic) basis in accordance with the selection procedure set forth in Appendix “A”, and attached hereto.

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ARTICLE 12 – FUNERAL LEAVE

12.1 In the event of a death in an employee’s immediate family, the employee shall be eligible for a maximum of three (3) days of funeral leave for purposes of attending the funeral; such leave can be taken from the day of the death through to the day following the funeral. Regularly scheduled work hours occurring during such period shall be compensated for in the form of paid time off.

12.2 An employee’s immediate family shall be defined as the employee’s spouse, child, stepchild, parent, stepparent, brother, sister, father-in-law, or mother-in-law.

12.3 One (1) day of funeral leave shall be granted to an employee to attend the funeral of a grandparent, brother-in-law, sister-in-law, uncle, aunt, grandchild, niece or nephew. The day of the funeral leave shall be the day of the funeral. Regularly scheduled work hours occurring on this day shall be compensated for in the form of paid time off. Employees working shifts other than the day shift may designate the shift hours ending during the day of the funeral or the shift hours beginning during the day of the funeral as the hours eligible for the paid time off.

12.4 An employee who serves as a pallbearer shall be granted one day of funeral leave on the day of the funeral only.

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APPENDIX A PROCEDURES GOVERNING THE SCHEDULING OF VACATIONS AND OTHER TIME OFF

1. **Scheduled Vacation.** In the fall of each year, employees may schedule their vacation for the upcoming year in accordance with a selection process that involves vacation picks that rotate on the basis of seniority. The selection process may involve up to six picks per employee depending upon the amount of vacation available and the number of picks desired. Not all vacation must be scheduled as part of this process. Any vacation balance shall be treated as unscheduled vacation.

1.1 Selection Process. Starting with the most senior employee on a shift, each employee on a shift may make up to two vacation picks. The process then repeats itself with a second pair of picks followed by a third pick, if eligible. (Only employees with twenty (20) years of seniority shall be eligible for a sixth pick.) A pick may consist of between one and four consecutive work days. (If an employee requests four work days plus more days before or after their days off, this will be considered two picks.) The first and second picks are of the same weight.

1.1.1 No more than two persons (equal to 16.5 hours) may be scheduled off for vacation on any given shift. Only one person per shift may be scheduled off for vacation during the period consisting of the day before the start of EAA through the last day of the convention.

1.1.2 The 4th and 5th shift employees will be slotted with 2nd and 3rd shifts respectively for vacation picks one through six. The employee in the flexed split shift will be slotted with 2nd shift for vacation picks one through six.

1.1.3 Vacation requests must be punched with the date and time and submitted to the Communications Manager. If an employee does not submit a request by the sign-up date, the employee forfeits his pick(s) for that turn in the picking rotation.

2. Unscheduled Vacation and the Scheduling of Other Time Off. Employees may schedule vacation (half days or whole days), holiday time and compensatory time throughout the year on a first-come-first-served basis. Approval of time off requests shall be governed by the following:

2.1 Requests for time off (sic) may be submitted no more than two months prior to the requested date. All such requests shall be subject to the approval of the Communications Manager or by the DIC in her absence and shall be based upon the rules contained herein. In the absence of both, the substitute DIC shall act on their behalf.

2.2 No more than two employees per shift (equal to 16.5 hours) shall be allowed off with pay at one time except when provision 2.4.1 applies.

2.2.1 An employee scheduled to attend school or training as a trainee shall be counted as one of two employees scheduled off from a given shift.

2.2.2 An employee scheduled to attend regular meetings (e.g. Domestic Abuse; the Police/Fire EMS subcommittee, etc.) or an employee assigned to serve as a trainer, shall not be counted as one of the two employees scheduled off from a given shift.

2.2.3 An employee on an extended leave of fourteen consecutive days' duration or longer shall not be counted as one of the two employees scheduled off from a given shift.

2.3 Time off will be prioritized by the date and time stamped on the request and shall not be prioritized based upon the amount of time off requested.

2.4 If the fourth and fifth shift employee requests time off and is already filling a vacancy, that employee's request would be considered to be a second request against the shift that the employee is filling.

2.4.1 If a 4th or 5th shift employee requests time off as a first request, that employee will be granted time off and the request shall not be counted against the first, second or third shifts.

2.5 Only one fourth and fifth shift employee may be granted time off when assigned to the fourth and fifth shift (not filling in on first, second, or third shift.)

3. **Cancellation of Vacation.** In the event that an employee chooses to cancel vacation that has been scheduled, only days at the beginning of the selection or at the end of the selection, or the entire selection itself may be canceled. Granted vacation picks must be canceled at least seven (7) days prior to the first requested day. Any exception to this provision must be granted at the sole discretion of the Communications Manager.

4. **Voluntary Cancellation of Time Off Requests, Except Scheduled Vacation Picks.** Employees may cancel any request for time off (compensatory time and any other time off requests, other than scheduled vacation picks with at least twenty-four (24) hours' notice.

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FACTS

Kimberly Danula has been employed by the Winnebago County Sheriff's Department for the past 13 years as a Dispatcher. On November 18, 2003, Danula made a contractual vacation pick by seniority (pursuant to Appendix A and Article 10 of the contract) for her fourth week of vacation, to be off on June 4 through 7, 2003. Danula's supervisor approved her vacation pick.

On June 4, 2003, Danula began her fourth week of vacation. On that day, sometime before 5:30 p.m., Danula received a call from her family indicating that her father's sister had died and that the funeral would most likely occur on June 7th. Sometime in the late afternoon prior to 5:30 p.m., Danula left a voice mail message on her supervisor's (Communications Manager Biggar) answering machine requesting funeral leave for June 7th. Sometime after 5:30 p.m. Danula spoke to Biggar on the phone and indicated that her aunt's funeral would likely be on June 7th and Danula requested that her vacation for June 7th be cancelled and that she be allowed to substitute funeral leave for that day. Later in the evening, Danula called Biggar again and confirmed that her aunt's funeral would be on June 7th. 1/

1/ Danula's aunt's funeral did occur on June 7, 2003 and Danula attended that funeral.

The Association presented testimonial and documentary evidence regarding how scheduled and unscheduled vacation days as well as traded work days can be cancelled in the County. For example, on June 7, 2003, Dispatcher Gina Paulson arranged to trade shifts with Deputy Tammie Voekel-Fox. 2/ The evidence showed that from June 12 through June 14 Dispatcher Gina Paulson was granted funeral leave for her father-in-law's funeral (3 days allowable under Article 12) even though she had previously arranged a series of trades for June 12 and 13, 2003 with other employees. These trades had been approved by management before June 12th (Union Exhibit 1). On June 14th Paulson had also arranged a trade which was approved by management before June 12 for the first one-half of her shift, and Paulson had also requested and received management approval to take the second half day on June 14th as a paid holiday. Paulson did not have any scheduled vacation covering the period of her three-day funeral leave and she notified the County of her request for three days of funeral leave pursuant to Article 12, on or about Tuesday, June 3, 2003, at which time she also

requested the cancellation of her trades on June 12 through 14 and the cancellation of one-half day paid holiday on June 14th. 3/

2/ Trades in the County Sheriff's Department are voluntarily arranged between employees but they must be approved by management so that no overtime pay liability is created thereby. It is understood that until worked by another employee who has agreed to trade shifts, the regularly assigned employee is responsible to work their shift. Approved trades must be cancelled at least 24 hours before the trade date.

3/ Paulson's funeral leave occurred after Danula's request for funeral leave was denied by the County.

Under the labor agreement and past practice, if there are not already two employees on paid time off on a shift, the County will grant a request for a paid holiday. Such a request cannot be made more than 60 days or less than 24 hours before the date on which the holiday is requested. Employees must request to cancel a scheduled vacation pick at least seven days before the start of the vacation picked by the employee pursuant to Section 12.3. Funeral leave is not vested; it is not paid out annually and it is only paid when eligible employees request funeral leave pursuant to Article 12 and such funeral leave is granted by the County.

County Payroll and Benefits Manager Mary Polishinski stated that the County has had a past practice of denying employee requests to substitute one form of paid leave for another form of paid leave and it has denied requests to substitute funeral leave for other forms of paid leave in this and the other bargaining units. 4/ Polishinski admitted that employees may certainly cancel one form of paid leave and later request another form of paid leave if they do so according to the time limitations specifically stated in the contract and Appendix A. Polishinski stated that if an employee becomes ill while on vacation, the employee cannot substitute sick leave for vacation after the employee's vacation has begun and the time for cancellation has expired. The parties stipulated that if an employee is on a regular off day, the employee cannot request and receive funeral leave therefor.

4/ The other unit contracts are not identical to the contract in this case and the language from those other bargaining units' contracts was not placed in the record in this case.

Polishinski stated that Paulson was allowed to cancel her trades for June 12 through June 14 and the one-half day paid holiday she had requested because she requested such cancellation long in advance. In contrast, Polishinski stated that Danula's request to cancel her scheduled vacation pick for June 7th was done late in the day on June 4, after Danula's requested vacation had begun. Thus, Danula's request to cancel was received less than seven days before the start of her vacation as required by Appendix A.

Polishinski stated that she was unaware that Communications Manager Biggar had allowed employees to cancel scheduled vacation picks less than seven days prior to the start of their vacation. Union Vice President, Karla Lee, stated that Biggar has allowed employees to cancel vacation days and vacation picks less than seven days prior to the commencement of the vacation selected. Lee stated that Biggar allowed Danula to cancel July 4th as a vacation day with only two days' notice of cancellation. However, Lee did not give any other specific examples to support her assertions on this point.

5/ The other unit contracts are not identical to the contract in this case and the language from those other bargaining units' contracts was not placed in the record in this case.

On June 12, 2003, the Association filed a grievance on behalf of Grievant, Danula, which stated that the County's actions in refusing to allow Danula to cancel her scheduled vacation for June 7 and substitute funeral leave therefor violated Article 3 – Management Rights of the labor agreement “because the Employer's actions are an unreasonable application of management authority.” The grievance also sought that the County should immediately change Danula's records to reflect that June 7, 2003, was a funeral leave day, to restore one day of vacation to the Grievant's vacation bank and that the County be ordered to cease and desist from further violations of this nature.

POSITIONS OF THE PARTIES

Association

The Association urged that the collective bargaining agreement requires that employees receive one day of paid funeral leave for the attendance at the funeral of an extended family member, such as an aunt. Here, the Grievant originally submitted a vacation request form for June 4 through June 7, 2003 and that request was approved. The Grievant's aunt passed away in early June, 2003, and the Grievant asked for one day of funeral leave to attend her aunt's

funeral. The Association noted that the date of her aunt's funeral was out of the Grievant's control. As the contract states that funeral leave "shall be granted" for the funeral of an extended family member such as an aunt, the Grievant's request to cancel her vacation request and substitute funeral leave was reasonable.

The Association noted that the County has allowed other employees to change their vacation requests for other kinds of leave after the Grievant was denied her request to change from vacation to funeral leave for June 7, 2003. In this regard, the Union noted that Dispatcher Gina Paulson had requested shift trades and/or paid holiday time off during the period June 7 through June 14, 2003. Paulson was allowed to cancel her trades and to cancel a partial paid holiday on June 12 through June 14, 2003, in order to attend the funeral of her father-in-law.

The Association urged that although that Appendix A states that employees can cancel vacation at the beginning or end of the vacation pick, or they can cancel the entire vacation pick if they do so at least seven days prior to the first requested day off, Communications Manager Biggar can use her sole discretion to grant exceptions to the seven-day notice requirement. As Biggar did not require the seven-day advance notice of cancellation of vacation in Paulson's situation, Biggar should have granted the Grievant the same consideration for her one-day funeral leave request, as a matter of courtesy.

Finally, the Association noted that the County would not be adversely affected if the Association were to prevail in this grievance – that no economic loss would be suffered by the County and that the Grievant Kimberly Danula would not receive any extra pay not otherwise due her. Therefore, the Association urged that the grievance be sustained and that Danula's vacation bank should be restored by one day.

County

The County argued that the labor agreement and a clear and consistent past practice support its arguments in this case. In this regard, the County noted that Section 12.3 of the labor agreement states that one day of funeral leave shall be granted to an employee to attend the funeral of an extended family member such as an aunt, but that the day of funeral leave must occur on the day of the funeral and only if "regularly scheduled work hours" occur on the day of the funeral shall these work hours be compensated with paid time off. In this case, Kimberly Danula had no regularly scheduled work hours on June 7, 2003, the day of the funeral of her aunt. Danula attempted to cancel her vacation for June 7th on June 4th and therefore did not give the County the required seven days notice prior to the first vacation day off (June 4, 2003).

The County urged that any exception to the seven-day notice rule is solely in the discretion of Communications Manager Biggar and that Biggar declined to use her discretion to cancel Danula's vacation at the time Danula requested cancellation. Furthermore, the County noted that Appendix A, paragraph 4, states that employees can cancel any requested time off, except scheduled vacation picks, if they do so with at least 24 hours notice. In the County's view, this language in paragraph 4 of Appendix A requires a conclusion that all vacation pick cancellations must be made with at least seven days notice prior to the commencement of the vacation unless the Communication Manager agrees to an exception.

In regard to past practice, the County noted that County Payroll/Benefits Manager Polishinski stated that it has been the County's consistent practice (since at least 1975) to refuse to allow employees to cancel vacation picks once the vacation has commenced if the employee wishes to use another type of leave instead of vacation. Polishinski stated that it was her recollection that four or five requests like Danula's had been made in the past and that all had been denied by the County. As Danula was never scheduled to work on June 7th and Biggar never agreed to cancel Danula's vacation for that day, the County urged that the grievance should be denied and dismissed in its entirety.

DISCUSSION

Appendix A provides the procedure whereby unit employees select vacation. Appendix A specifically states that a vacation pick "must be cancelled at least seven (7) days prior to the first requested day" of vacation. The only exceptions to this rule by the contract are when Communications Manager Kathy Biggar, grants a vacation cancellation in her "sole discretion". It is significant that the contract does not state any reasons upon which the Communications Manager must grant cancellation exceptions.

In the instant case, Dispatcher Danula made a fourth vacation pick in accord with Appendix A procedures covering the four days from June 4 through June 7, 2003. It was not until late in the afternoon of June 4th, after Danula had begun her fourth week of vacation, that she requested of Biggar that she be allowed to cancel her vacation for June 7th and to substitute funeral leave therefor. Thus, the facts undisputedly showed that Danula requested to cancel her vacation on June 4th, less than seven days prior to the commencement of her four-day vacation pick. In these circumstances, the only means by which Danula could get her vacation cancelled and a substitution of funeral leave therefor would have been if Communications Manager Biggar decided, in her sole discretion, to allow such cancellation/substitution. Biggar refused to accommodate Danula.

The Association has argued that Danula had a right, pursuant to Article 12, to receive one day of funeral leave for her Aunt's funeral. This is not strictly true. Although it is correct that unit employees are "eligible" for one day of funeral leave for an aunt's funeral, only if the funeral itself falls on a day when the employee has "regularly scheduled work hours" (Section 12.3) can the employee request funeral leave and be paid therefor. Because Danula had a scheduled vacation pick covering June 4th through June 7th, she was not scheduled to work and she had no regularly scheduled work hours on June 7th. Therefore, Danula did not meet all eligibility criteria under Article 12 to receive one day of funeral leave to attend her aunt's funeral in these circumstances.

The Association pointed to Dispatcher Paulson to support its assertion that Danula should have been allowed to cancel her June 7th vacation and substitute funeral leave therefor as Paulson did regarding the funeral of her father-in-law. I disagree. The facts show that Paulson did not have a scheduled vacation pick during the three-day period when she requested funeral leave. Rather, Paulson had arranged several trades and she had one half day of approved holiday leave during this period of time. Appendix A specifically states that employees can cancel any request for time off "other than scheduled vacation picks" with at least 24 hours notice. Paulson cancelled her trades and approved holiday more than 24 hours in advance of the commencement of her funeral leave and she requested three days of funeral leave for the appropriate time period. In addition, it stands undisputed on this record that until a trade is actually worked by another employee, the scheduled employee remains responsible to work the date. Thus, Paulson was scheduled to work (and had regularly scheduled work hours) June 12th through 14th unless and until someone else worked those dates on a trade for her. In these circumstances, the Paulson example does not support the Association's arguments herein.

The Association has also argued that by past practice, Communications Manager Biggar should have used her discretion and granted Danula's request to cancel her scheduled vacation pick for June 7th and substitute funeral leave for that day. The Association pointed to only two specific exceptions granted by Biggar - the Paulson example (June 12-14) described above and Danula's request to cancel vacation she had scheduled on July 4th with two day's advance notice, both of which occurred after Danula made her request to substitute leave on June 4th. The Paulson exception was granted by Biggar pursuant to the express language of Appendix A, item 4.

The Danula exception for July 4th was granted by Biggar pursuant to her sole discretion in Appendix A, item 3. As Biggar did not testify herein, we do not know what factors or considerations Biggar may have found persuasive in granting the July 4 Danula exception. It is significant that the Association submitted no evidence to show Biggar's decisions regarding

Paulson and Danula were arbitrary, capricious, discriminatory or otherwise unreasonable. Finally, the Association argued that the grievance should be granted because the County would suffer no economic loss were the grievance sustained. This reason is insufficient, standing alone, to grant a grievance.

In all of the circumstances of this case no violation of the labor agreement or any relevant past practice has been proven herein and I issue the following

AWARD

The Employer did not violate the terms and conditions of the collective bargaining agreement when the Employer denied Dispatcher Kimberly Danula's request for funeral leave on June 7, 2003. The grievance is therefore denied and dismissed in its entirety.

Dated at Madison, Wisconsin, this 23rd day of January, 2004.

Sharon Gallagher /s/

Sharon Gallagher, Arbitrator

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