

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**CITY OF EVANSVILLE**

and

**TEAMSTERS LOCAL UNION NO. 579**

Case 371  
No. 65007  
MA-13084

(Forstrom Grievance)

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**Appearances:**

**Mr. Timothy C. Hall**, Attorney, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, WI 53212 on behalf of Teamsters Local 579 and the Grievant.

**Mr. Thomas R. Crone**, Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, P.O. Box 1664, Madison, WI 53701-1664, on behalf of the City of Evansville.

**ARBITRATION AWARD**

The parties jointly requested that Arbitrator Sharon A. Gallagher hear and resolve a dispute between them regarding the correct amount of accumulated sick leave Grievant Paul Forstrom should have been credited with toward health insurance premiums upon his retirement on July 29, 2005. Hearing was held on December 13, 2005 at Evansville, Wisconsin. No stenographic transcript of the proceedings was made. The parties submitted their post-hearing briefs directly to each other with a copy to the Arbitrator by February 1, 2006. The parties also agreed to waive the right to file reply briefs.

### ISSUES

The parties were unable to stipulate to the issues for determination herein. However, the parties agreed that the Arbitrator could frame the issues based upon the relevant evidence and argument in the case as well as the parties' suggested issues. The Union suggested the following issues:

1. Did the City violate Article 11 of the collective bargaining agreement, relevant past-practice or deny a vested benefit when it refused to allow Paul Forstrom to devote 100% of his first ninety banked days of sick leave toward retiree health insurance?
2. If so, what is the appropriate remedy?

The City suggested the following issues:

3. Did the City violate Article 11 by the manner in which it calculated and paid out Paul Forstrom's sick leave balance upon retirement?
4. If so, what is the appropriate remedy?

Based upon the relevant evidence and argument herein, this Arbitrator finds that the Union's issues accurately state the controversy between the parties and they shall be determined herein.

### RELEVANT CONTRACT PROVISIONS

The 1999-2001 agreement between the parties contained the following language:

#### ARTICLE 11 – SICK LEAVE

Employees shall be entitled to one and one-quarter (1 ¼) days sick leave per month of employment. Accumulation of sick leave would be payable at fifty (50%) percent of any accumulation in excess of the ninety (90) days at the end of the year. This payment shall be paid no later than January 15, of the following year. The employee may also choose, on a yearly basis, to delay a one hundred percent (100%) payout until retirement/separation. This payout shall be used to pay health insurance premiums after retirement/separation. Pay shall be based on the employee's normal rate of pay; and at the scheduled hours of work in effect at that time. For any sick leave an employee shall furnish a physician's certificate upon the City's request. The City may require examination by its own physician at the City's expense.

The Article 11 provision was changed in the 2002-04 labor agreement to read as follows:

**ARTICLE 11 – SICK LEAVE<sup>1</sup>**

**Section 1. Accumulation:** Full-time employees shall accumulate sick leave at the rate of 1-1/4 days per month of employment to a maximum accumulation of ninety (90) work days.

Until such time as the City's payroll system allows the accumulation to be added on a monthly basis, the total annual accumulation shall be added at the beginning of the year. In the event of retirement or separation, the actual accumulation shall be adjusted to reflect the number of full months worked. In the event that more sick leave has been used than earned, the City will be credited by a reduction of the final paycheck. If the amount owed is in excess of the final paycheck, the employee shall reimburse the City within ten (10) calendar days.

**Section 2. Payout:** Accumulation of sick leave in excess of ninety (90) work days shall be payable at 50% of the employee's normal rate of pay. Employees may elect, on a yearly basis, to delay a one hundred percent (100%) payout of sick leave in excess on (sic) ninety (90) work days until retirement in accordance with the rules of the State of Wisconsin Retirement System. The 100% payout shall be used to pay health insurance premiums after retirement. Employees must indicate their preference no later than December 15<sup>th</sup> of each year. This payment shall be made as part of a special payroll in January.

**Section 3. Usage:** Sick leave shall be used in increments of no less than one (1) hour. For any sick leave an employee shall furnish a physician's certificate upon the City's request. The City may require examination by its own physicians at the City's expense.

The 2005-07 labor agreement, applicable to this case, reads in relevant part as follows:

**ARTICLE 11 – SICK LEAVE**

**Section 1. Regular** full-time employees shall **accrue** sick leave at the rate of 1-1/4 days per **full** month of employment **and employees may accumulate sick leave** to a maximum accumulation of ninety (90) work days, **except as provided in Section 11.02. Sick leave shall be paid at the pay rate in effect during the two week pay period in which the sick leave is used.**

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<sup>1</sup> Bolded type indicates the parties agreed to amend the language in the contract referenced.

**Section 2.** Accumulation of sick leave in excess of ninety (90) work days shall be payable at 50% of the employee's normal rate of pay. Employees may elect, on a yearly basis, to delay a one hundred percent (100%) payout of sick leave in excess on (sic) ninety (90) work days until retirement in accordance with the rules of the State of Wisconsin Retirement System. The 100% payout shall be used to pay health insurance premiums after retirement. Employees must indicate their preference no later than December 15<sup>th</sup> of each year. This payment shall be made as part of a special payroll in January.

**Section 3.** Sick leave shall be used in increments of no less than one (1) hour. For any sick leave an employee shall furnish a physician's certificate upon the City's request. The City may require examination by its own physician at the City's expense.

**Section 4.** If an employee voluntarily leaves employment by the City, including, but not limited to, by retirement, he or she shall be entitled to 50% of the sick leave accumulation in cash. If the employee dies prior to retirement, then the employee's estate shall be entitled to receive 50% of the sick leave accumulation in cash. If an employee is terminated for cause, then none of the accumulated sick leave shall be paid out.

### **BACKGROUND**

Former City Administrator Jennifer Petruzello stated that the 1999-2001 labor agreement was in place when she began her employment with the City, but that she was chief negotiator on the 2002-04 labor agreement between the City and the Union. Petruzello testified as follows regarding what occurred during negotiations for the 2002-04 agreement:

BY MR. CRONE:

Q. Do you know whether or not there were any changes made to the sick leave article in the 2002-2004 negotiations?

A. Yes, there were.

. . .

THE WITNESS: I can say that there were numerous changes to the sick leave language.

In Section 1, there were changes incorporated to address the fact that the City was in the process of switching computer systems, and the system they would be moving to would have different capacities in terms of documenting the accumulation of sick leave. Prior to that,

all sick went in January 1<sup>st</sup> and would need to be credited back if an employee left employment midyear.

Section 2, the changes in Section 2 were to make certain that the payout for--the cash payout or the payout for retirement were for those days in excess of 90 days. And secondly, that if the payout was--that the payout would need to be in accordance with the retirement as defined by the State of Wisconsin Retirement System. In other words, somebody couldn't quit or be terminated.

BY MR. CRONE:

Q. And do you recall in those negotiations if the Union expressed any position with regard to an employee being able to take sick leave of less than 90 days as a payout towards health insurance?

A. No. There was very little discussion about it.

Q. And who -- strike that.

Did you have any involvement in negotiating the successor agreement to the 2002-2004 agreement?

A. No, I did not. (Tr.39-40)

. . .

BY THE ARBITRATOR:

Q. So you quit to be a mom as of what date?

A. February 2003.

Q. February. So you were involved in, you said, negotiations for the -- which one was it?

A. The 2002-2004.

Q. Joint 7?

A. Yes.

Q. But not Joint 8, because that one was basically put in place before you arrived?

A. Correct. So the contract would reflect the change.

Q. So whose language was it that appears in Section 2 of Article 11?

A. Who proposed it?

Q. Yes.

A. The City did.

Q. And did you say there was not much discussion regarding this, ma'am, Section 2?

A. Well, during the time the Union – the biggest concern during this contract was the health insurance issue. The City presented its proposals, explained the proposal. And actually, this was then agreed upon.

Q. So “this” meaning Section 2 of Article 11?

A. Correct.

Q. Do you remember any discussions regarding Section 2 at all?

A. I remember myself explaining the purpose of the language change, explaining the changes relative to the payroll system, explaining the changes relevant to - - making it clear that the payout was for those days in excess of 90. In excess of.

Q. So you said that specifically?

A. Yes.

Q. You said that the payout for purposes of health insurance would be the days in excess of 90? Did you say that?

A. Probably payout without referring to health insurance, because this section refers to the cash payout as well as the health insurance payout.

Q. Tell me exactly, if you recall, what you said regarding Section 2 of Article 11.

A. Please remember that this was some time ago.

Q. Right. Do the best you can.

A. At the meeting where the City presented our initial offer to the Union, I presented a written summary of the proposal. I went down each proposal line-by-line to say, “This is the change that the City is requesting and why.”

When I got to the section relative to sick leave, Article 11, Section 2, to the best of my recollection, I would have said, “Recognize that this language is being presented to make clear that the payout would be for the time in ex” - - “time accrued in excess of 90 workdays.”

Q. Any questions? Did the Union ask any questions?

A. No to my recollection.

Q. Did they make a counterproposal regarding Section 2?

A. No, they did not.

THE ARBITRATOR: Any further questions by anyone?

MR. CRONE: I have none.

MR. HALL: I have none. (Tr. 42-44)

Petruzello stated that the City’s proposal became the language contained in Article 11 of the 2002-04 contract. Petruzello stated she knew of no employee who received a 100% credit of his/her accrued sick leave toward retiree health insurance during her employment with the City.

Current City Administrator William Connor stated that he was Chief City Negotiator on the 2005-07 labor agreement; that the Union asked for the addition of Section 4 to Article 11; that the Union's proposal was simply to add language from the City Police Department labor agreement but Connor proposed to change that language to include a reference to retirement; Connor stated that no proposal was made to change Article 11, Section 2 and no discussion of a payout of accrued sick leave for retiree health insurance occurred. Connor stated that he checked the City records for the past five to seven years and found no former employee during this period had received 100% of their banked sick leave credited toward their post-retirement health insurance. Connor stated that older City records were not available.

Grievant Forstrom stated herein that former employee, Gwen Walsh, who retired ten to fifteen years ago, told Forstrom she had used all of her banked sick leave to pay for her retiree health insurance.<sup>2</sup> Connors found only one former employee, Betty Katzenmeier, who had been paid cash for 50% of her first ninety banked sick leave days according to City records. Connor stated he found no evidence to show that any former employee who retired in the past 5 to 7 years received a 100% credit of accumulated sick leave toward the payment of retiree health insurance.

### FACTS

The Grievant, Paul Forstrom, was hired by the City in 1977. When he retired on July 29, 2005, Forstrom was a foreman in the City Streets Department. Over the years of his employment, and after he had accumulated ninety sick days in his sick leave bank, Forstrom was asked each year whether he wished to receive a cash payout of 50% of his sick leave over ninety days or whether he wished to bank that sick leave for later use on retiree health insurance. In some years, Forstrom took a cash payout but as he got nearer to retirement, he chose to bank his accumulated sick leave. In the years when Forstrom chose to bank his sick leave he was not allowed to cash out any part of it. Starting in approximately 2002 or 2003, the City began annually issuing City employees the following memorandum regarding their option to receive a sick leave payout or to bank the time for later use toward retiree health insurance:

Your current labor agreement addresses the accumulation of sick leave hour limits. As you know, if you have accumulated more than ninety days of sick leave, you may elect to either receive a payout at 50% of your regular wage or you may "bank" your hours until retirement. Please review your contract language or contact your union representative if you have questions specific to your labor agreement.

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<sup>2</sup> The Union did not call any witnesses concerning bargaining history or past-practice. Ms. Walsh did not testify herein.

Please indicate your preference below, sign and date this form and return it to me by December 15. Your current sick leave balance is printed, each payroll period, on the bottom portion of your payroll check. If you have a question about your balance, please contact me.

\_\_\_\_\_ I elect to receive a payout for all accumulated sick leave hours in excess of ninety days. I understand that the payout amount is calculated at 50% of my regular 2004 hours base rate of pay.

\_\_\_\_\_ I elect to “bank” my sick leave hours until retirement. I understand this payout will not be in the form of cash but rather, the hours will be used in a formula conversion and applied toward the cost of post-retirement health insurance costs.

Prior to 2002 or 2003, communications between the City and its employees regarding sick leave accumulation/payouts were verbal only.

In April or May, 2005, Forstrom went to City Hall and spoke to Deputy City Clerk Sandra Hart regarding the amount of banked sick leave he could use toward retiree health insurance.<sup>3</sup> Hart purportedly checked a copy of the labor agreement applicable to Forstrom and hand-wrote the following calculation which she gave to Forstrom:

Paul Forstrom # 30020  
10 hrs/mo.

Current bal	976
	<u>+30</u> (May, June, July)
	1006 hrs
	x 18.39 wage /hr
	18,500.34 total \$

health cost 367.40/mo

50.3 mo of coverage  
4.2 years

Based upon the above information, Forstrom believed he would be eligible to receive 100% of the value of his banked sick leave as a payment toward retiree health insurance, which

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<sup>3</sup> Forstrom had not made any calculations of his own nor had he checked the labor agreement regarding this matter.



equaled 4.2 years of single policy insurance for Forstrom. On May 3, 2005 Forstrom executed a State of Wisconsin Department of Employee Trust Funds form entitled "Employer Verification of Health Care Coverage" (U. Exh. 4), which Hart also signed, which indicated that Forstrom's health insurance would be paid by the City through August 31, 2009 based upon Forstrom's anticipated retirement date, stated as being on July 31, 2005.

Upon discovering Hart's calculations were in error (based upon the City's interpretation of Article 11 of the 2005-07 Union contract), City administrator Connor sent Forstrom the following letter dated June 23, 2005:<sup>4</sup>

. . .

Based upon the City's thorough review of both the current collective bargaining agreement and the ones that preceded it, it is the City's conclusion that the information previously provided to you regarding payment of accrued sick leave upon retirement was in error. The City apologizes for this error.

Given the relevant contract language, it is clear that you are entitled to receive a cash payout of 50% of the value of your accumulated sick leave up to 90 days. You have the option of using 100% of the value of accumulated sick leave in excess of 90 days to purchase health insurance after retirement. There is no circumstance in which an employee is entitled to receive a 100% payment or credit for all of his or her sick leave.

To the extent the earlier incorrect information may have influenced the date you selected to retire, I want to give you the opportunity to either withdraw your retirement notice altogether or to push it back to a date which you believe would better enable you to bridge your coverage until you are eligible for Medicare. If you wish to do so, just let me know. . . We would be happy to have you continue to work for the City of Evansville until such time as you choose to retire. You are a valued employee of the city.

In case you decide to proceed with retiring on July 29, 2005, I have enclosed a summary of the payout of your accumulated sick leave, vacation leave, and compensatory time leave.

. . .

Forstrom decided to proceed with his retirement on July 29, 2005, despite the City's recalculation of his retiree health insurance benefit and its offer to rescind or change his retirement date.

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<sup>4</sup> The payout summary referred to in Connor's June 23<sup>rd</sup> letter was not placed in the record here.

## POSITIONS OF THE PARTIES

### The Union

The Union argued that the Grievant, Paul Forstrom, retired in reliance upon the 100% payout of his accrued sick leave, which he earned over many years of employment, in the form of retiree health insurance premiums. The addition of the phrase, “in excess of ninety (90) work days” into Article 11, Section 2, was insufficiently specific to retroactively delete Forstrom’s earned and vested benefit which the City had lead him to believe he would receive after retirement pursuant to past practice and (after 2001) the annual written agreements Forstrom signed agreeing to bank all accrued sick leave benefits for his use after retirement. Also, the Union noted that prior labor agreements (U. Exhs. 1-3) contained the benefit Forstrom seeks herein.

In further support of its case, the Union cited FAYETTE COUNTY, 101 LA 1196 (BETHEL, 9/93). On this point the Union noted that in the Fayette Case, the facts showed that the union was aware that the changes that were made in the labor agreement might result in the revocation of accumulated sick days; that the contract contained a merger clause; that the employer made it clear that the settlement of the contract if accepted by the Union would be retroactive for all purposes “including sick days;” (and that the vacation language of the agreement contained language that reserved accumulated vacation in the future), showing that the parties were able to preserve accumulated benefits when they chose to do so. In contrast, the Union observed that the City submitted absolutely no evidence that the parties ever discussed the City’s view that by essentially adding six little words to Article 11, bargaining unit employees would retroactively lose the 100% payout of accrued sick leave they had banked over the years for payment of health insurance premiums at retirement.

In these circumstances, the Union urged that there was no meeting of the minds regarding the erosion of employee retiree insurance benefits; and that the record facts showed that the City had quietly accomplished through “stealth” a major deletion of vested employee benefits by inserting inconspicuous language into Article 11. The Union further noted that the contract relationship between the City and its Clerk/Treasurer is irrelevant to this case as she is not a bargaining unit member.

The Union therefore urged the Arbitrator to sustain the grievance and to make Forstrom whole by ordering the City to credit Forstrom with 100% of the value of 90 days of Forstrom’s accumulated sick leave toward payment of his health insurance premiums in retirement.

## The City

The City urged that the Union's arguments in this case lack merit and they should be rejected. In this regard, the City noted that the Union argued that the contract language is clear and unambiguous and that in any event, record evidence of a past practice supports its case; that the Union asserted that Forstrom reasonably relied upon his understanding of his sick leave benefit after retirement in deciding to retire and that it would therefore be unfair to deny him the 100% payout of his accrued sick leave for health insurance premiums; and that no matter what the effective labor agreement states, Forstrom's sick leave benefits became vested under the terms of a written agreement with the City and they cannot be retroactively denied.

The City argued that the Arbitrator must give full effect to all language of the labor agreement and that if she held in favor of the Union herein this would render meaningless the phrase "in excess of ninety (90) days" in Article 11, Section 2 and nearly all of Section 4 thereof. Although the 1991-93 agreement contained language which would support the Union's assertions in this case, the City observed that the parties changed that language in the very next contract and that as of the 2005-07 agreement, the language clearly stated that all employees like Forstrom would receive was a cash payout of 50% of the first 90 days of accumulated sick leave and 100% payout of any sick days over 90 as retiree health insurance premiums.

The City further contended that past practice is only useful if the disputed contract language is ambiguous. Here, the language of Article 11 is clear and unambiguous and in any event there was no past practice evidence proffered that was inconsistent with the City's analysis of this case. In this regard, the City noted that the Union failed to prove that former City employee, Gwen Walsh received all of her accumulated sick leave paid out in health insurance premiums after her retirement; that the offer of proof on this point was pure hearsay; that even assuming Walsh received all of her sick leave paid out as premiums, Walsh's situation was dealt with under the language of the labor agreement in force 10 to 15 years ago, which was different from that of the effective agreement; and that one case of alleged payment does not constitute sufficient evidence to support the Union's past practice claim. Furthermore, the City pointed out that the cases of Hart and Katzenmeyer showed that no past practice ever existed as the Union claimed.

In regard to the Union's contention that the City's action toward Forstrom caused the forfeiture of a vested benefit, the City urged that sick leave benefits are creatures of contract which the contracting parties are free to increase, decrease, modify or eliminate by mutual agreement. The City noted that Forstrom did not bank all of his accumulated sick leave during his 27 years of employment with the City; that had he done so, Forstrom would have had in excess of 3200 hours or over 400 banked days; that Forstrom had only 125.75 sick days saved at the time he retired, 1006 hours. Yet, the contract provision changed in 1994-95 so that Forstrom had no reasonable expectation that he would receive a 100% payout of his sick leave for retiree health insurance premiums because the small amount of leave he had saved he would have accumulated only after 1994.

Although it was unfortunate that Hart gave Forstrom misinformation regarding his entitlement to a 100% payout of accumulated sick leave for premium payments, the City argued that Forstrom had no right to rely thereon. Indeed, the Union proffered no evidence that Forstrom actually relied on Hart's calculations given the City's letter to him correcting Hart's error and offering Forstrom the opportunity to change his retirement date. The City noted that Forstrom decided to retire despite the City's correction of its initial error in calculating his retiree insurance benefits.

In all of the circumstances of this case, the City urged the Arbitrator to deny and dismiss the grievance in its entirety.

### DISCUSSION

The Union argued herein that despite the changes in the language of Article 11, Section 2, unit employees, specifically Paul Forstrom, should be able to rely upon receiving a 100% payout of their accumulated sick leave toward insurance premiums after retirement, because this was a vested benefit not expressly waived by any of the various changes in the language of Article 11. The Union cited *FAYETTE COUNTY, SUPRA*, in support of its vested benefit argument. However, that case is distinguishable from the instant case in one important way: the Arbitrator Bethel found the relevant contract language in Fayette County (not quoted in full in the award) ambiguous, which caused him to rely upon extrinsic evidence to determine the outcome of the case.

Here, the proposed language of Article 11, Section 2 which was included in the 2002-04 agreement is clear and unambiguous. It clearly states that only the accumulated sick days "in excess on (sic) 90" will be paid out after retirement toward insurance premiums. This language cannot be interpreted any other way, despite the typo contained therein. This means that evidence of bargaining history, had the Union offered same, and the Union's Offer of Proof regarding past practice in Gwen Walsh's case are neither relevant nor admissible to vary to clear terms of the agreement.<sup>5</sup>

Put another way, had the change in Article 11 inserted into the 2002-04<sup>6</sup> agreement been ambiguous, the Union might have successfully argued that there was no meeting of the minds to eliminate the 100% payout of all accumulated sick leave in insurance premiums after retirement and extrinsic evidence, such as past practice and bargaining history would then have been relevant and admissible to "fill in the blanks" in the agreement. Furthermore, in that

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<sup>5</sup> The Union offered only one instance of an alleged payout of all accumulated sick leave in insurance premiums which occurred approximately 15 years ago when the language of the labor agreement read differently. Under any circumstances, this evidence would have been insufficient to prove an effective, relevant past practice.

<sup>6</sup> Contrary to the City's arguments, I find that the language of the 1991-93 labor agreement and all other agreements until the 2002-04 agreement clearly contained the benefit Forstrom seeks here.

situation, the Union's vested benefit argument would also have had much greater persuasive weight. However, where, as here, two interpretations of the relevant language cannot reasonably be made, the parties are responsible to fully understand the other's proposals before agreeing to same.

In addition, the Union argued that Petruzello quietly and by "stealth" gained the deletion of a major retiree benefit without the Union's affirmative understanding and agreement thereto, as evidenced by the fact that the Union agreed to the changes in Article 11, Section 2 without having proposed a quid pro quo for the change. The problem with this argument is that evidence of intent is also extrinsic evidence that may not be admitted to vary the clear terms of a contract. In any event, the evidence proffered herein on this point was insufficient to show that by her actions Petruzello intended to mislead or deceive the Union regarding the full import of the proposed changes in Article 11, Section 2. As Petruzello's testimony regarding the bargaining history of the Article 11 changes she proposed for the 2002-04 agreement stands unrefuted in this record, it must be and has been credited in its entirety.

Thus, although Petruzello was not overly descriptive regarding the change she proposed in Article 11, Section 2, she went over it line by line and she explained that the payout (not referring to health insurance specifically) was to be for days in excess of 90. In response, the Union asked no questions, engaged in no significant discussions and made no counter proposals before it agreed to the change in Article 11, Section 2 proposed by the City.

The Union asserted that the annual forms that Forstrom signed electing to "bank" his sick leave "for use after retirement" to pay health insurance premiums as well as his verbal elections for same over the years and his agreement to forego any payment in cash of accrued sick leave during those years in which he banked his leave for future use supports the Union's claims herein. The problem with this argument is that I can find no language in the annual election form that Forstrom signed which could be interpreted as a guarantee that prior benefit levels would be maintained. On the contrary, the form refers electing employees specifically to the effective labor agreement for their actual benefit levels/entitlements.

The Union also argued that Hart's error in calculating Forstrom's retiree health premium supported its assertions herein. However, the evidence showed that the error was corrected by City Administrator Connor's letter as soon as Connor realized that Hart had erred in her representations to Forstrom. In addition, Forstrom made it clear in his testimony herein that he fully understood the contents of Connor's letter and he decided to retire as originally planned, in July, 2005, rejecting Connor's offer to change his retirement date based upon the City's position on his retiree health benefit level described in Connor's letter.

City Administrator Connor testified without contradiction that the Union proposed to add a provision similar to that in the City's Police bargaining unit 2002-04 labor contract, as new

Article 11, Section 4 during negotiations over the parties' 2005-07 contract. Connor stated that at no time during those negotiations did the Union assert that unit employees were entitled to receive a 100% payout in insurance premiums of their accumulated sick leave of 90 days or less. Connor stated that he suggested some amendments to the Union's proposed Article 11, Section 4 and that the parties then agreed that a 50% payout in cash be allowed of the first 90 days of accumulated sick leave at retirement or upon any voluntary separation (Tr.47-49).

The parties' mutual agreement to add Article 11, Section 4 and then to amend it supports a conclusion that at least by the time the 2005-07 negotiations began, the Union realized that a part of the pre-2002 benefits of Article 11 had been lost in the 2002-04 agreement, as no reference was made therein to what, if any, monetary value an employee could expect to receive at retirement/voluntary separation for the first 90 days of banked sick leave. Furthermore, Connor stated that he could find no records, even prior to the 2002-04 agreement being effective and as far back as 10 years ago, showing any employees who had received a 100% payout of all of their banked sick leave at retirement used for health insurance premiums. Indeed, both unit employee Katzenmeier and non-unit employee Hart<sup>7</sup> who were the only City employees on whom records existed, were both paid out at 50% in cash for the first 90 days of their accrued/banked sick leave when they retired.

In all of the circumstances of this case, having found that Article 11, Section 2 is clear and unambiguous and that there are no equitable principles which require a ruling in favor of the Grievant, I am constrained to issue the following

### AWARD

The City did not violate Article 11 of the collective bargaining agreement, relevant past practice or deny a vested benefit when it refused to allow Paul Forstrom to devote 100% of his first ninety days of sick leave toward retiree health insurance. The grievance is therefore denied and dismissed in its entirety.

Dated at Oshkosh, this 14<sup>th</sup> day of March, 2006.

Sharon A. Gallagher /s/  
\_\_\_\_\_  
Sharon A. Gallagher, Arbitrator

<sup>7</sup> The Union objected to the submission of evidence regarding non-unit employee Hart, as she was an executive who had an individual employment contract with the City covering her services. Ordinarily, I would lean toward sustaining such an objection. However, in this case, I find that this evidence, although not very weighty, tends to support the City's arguments herein. Had it been otherwise, had Hart been given a better deal, that evidence would have weighed against the City herein.