

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**COLUMBIA COUNTY  
(HEALTH CARE CENTER)**

and

**LOCAL 2698, AFSCME, AFL-CIO**

Case 250  
No. 65546  
MA-13245

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**Appearances:**

**Mr. Joseph Ruff, III, Esquire**, Corporation Counsel/Human Resources Director, Columbia County, 120 W. Conant Street, P.O. Box 63, Portage, Wisconsin 53901, on behalf of the County.

**Mr. David White**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, on behalf of Local 2698.

**SUMMARY OF BENCH AWARD**

According to the terms of the 2005-2006 collective bargaining agreement between the captioned parties, the parties requested that the WERC appoint a staff Arbitrator to hear and resolve a dispute between them regarding the appropriate amount of sick leave pay due Grievant Jennifer Meeker during June, 2005.

Hearing was originally scheduled for June 12, 2006, but was postponed and then held at the Health Care Center (HCC) located in Wyocena, Wisconsin on July 17, 2006. A stenographic transcript of the proceedings was taken, a copy of which the Arbitrator received on July 26, 2006.

At the beginning of the hearing herein the Arbitrator suggested and the parties agreed to allow the Arbitrator to issue a verbal Bench Award on July 17<sup>th</sup> after receipt of all evidence in the case and a short period of study and reflection thereon, and that the Arbitrator would thereafter issue a written summary of her Bench Award for the parties' records. The parties agreed to this approach and thereby waived their right to file briefs in the matter. The parties also chose not to make closing statements at the close of the case.

Based upon the documentary and testimonial evidence as well as the parties' opening statements, the Arbitrator makes the following observations and finds the following facts:

1) The stipulated issue herein is as follows: Did the Employer violate the collective bargaining agreement by the manner in which it compensated the Grievant for sick leave during the month of June, 2005? If so, what is the appropriate remedy?

2) Grievant Meeker began working at the HCC in December, 1998. In 2000, she took a regular part-time Housekeeping/Laundry position with a guarantee that she would work 48 hours in each 2-week pay period. Meeker actually worked on average 30 or more hours per week on a consistent basis so that she received health insurance under Article 11 "on the same basis as full time employees" in all quarters except the one immediately following June, 2005.

Meeker took sick leave for all 11-work days listed on the posted schedule for her from June 7 through June 23, 2005 for a bona fide illness. The HCC paid her for only 7 sick days, stating that these were her "guaranteed" days and that it would not pay for the remaining 4 days as those were not "guaranteed" workdays. The HCC also refused to give Meeker credit for those 4 days toward her health insurance so that she fell below the minimum 30 hours per week required by Article 11 and she had to pay more for her health insurance during the quarter following her June, 2005 illness. As a remedy for her grievance, Meeker sought 4 days' pay plus recoupment of additional money she spent toward health insurance after her June, 2005 illness.

3) Article 10, Section 10.03 reads as follows:

"Sick leave benefits shall be paid at the regular hourly rate received by the employee at the time of illness or injury. Sick leave benefits shall be paid up to the extent of an employee's accumulation for all bona fide illness or injury . . ."

Section 10.07 reads as follows:

"Regular part-time employees shall receive sick leave benefits on a prorated basis."

4) There is no reference in the contract to guaranteed days or non-guaranteed days of work for regular part-time employees. There are various references in the contract to scheduled workdays (Section 10.10), normal scheduled hours in a week (Section 9.02) and working days (Section 7.06) which are of no help in this case as no distinguishing definitions are given.

5) The language of Sections 9.02 and 9.06 was not used in Sections 10.03 or 10.07. Section 9.02 reads as follows:

"Vacation pay shall be equal to the pay the employee would have received working his or her normal scheduled hours for the week. A vacation week shall be equal to seven (7) full days off, five (5) days of which are considered paid vacation days."

Section 9.06 reads as follows:

“Regular part-time employees shall receive paid vacation benefits computed on a prorated basis, based on 2,080 hours per year, January through December of each calendar year.”

6) Because Article 10 is overly broad and is ambiguous and subject to more than one interpretation, evidence of past practice is relevant and admissible. Past practice evidence showed that part-time employees only received paid vacation – when arranged in advance – for their “guaranteed” workdays. However, the uncontroverted evidence also showed that once the monthly schedule is posted, part-time employees must find replacements for any and all days they are listed to work if they need time off and if the replacement employee does not come in to work, the part-time employee who was scheduled to work could be disciplined.

Grievant Meeker stated that in December 2004 and May 2005 she was paid for at least 2 non-guaranteed work days on which she took sick leave and that in the Summer of 2004 Meeker was also denied a request to work only her guaranteed hours. Meeker also stated that she had been told and believed she would be subject to discipline if she missed any non-guaranteed work hours.

7) The County either failed to address the facts contained in paragraph 6 above or its witness admitted that those events were possible/could have occurred. Based upon the above, this Arbitrator finds that the Union proved its past practice argument, and she issues the following

### **AWARD<sup>1</sup>**

The Employer violated the collective bargaining agreement by the manner in which it compensated the Grievant for sick leave during the month of June, 2005. The Employer shall therefore make Jennifer Meeker whole by paying her 4 days’ pay at her rate as of June 7, 2005 and it shall reimburse her for additional health insurance premium payments she had to make because she was not credited with those 4 sick days as work days during the quarter following June, 2005.

Dated in Oshkosh, Wisconsin, this 10<sup>th</sup> day of August, 2006.

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

1 I shall retain jurisdiction of the remedy only for 60 days after the date of this Award.