BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TOWN OF BELOIT FIRE FIGHTERS, LOCAL 2386, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO, CLC

and

TOWN OF BELOIT

Case 49
No. 66258
MA-13475

(Sick Time Grievance)

Appearances:

Patrick Kilbane, Field Services Representative, IAFF Fifth District, appeared on behalf of the Union.

Robert Museus, Town Administrator, appeared on behalf of the Town of Beloit.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and Town or Employer, respectively, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide the above-captioned grievance. A hearing was held on November 27, 2006, in Beloit, Wisconsin at which time the parties presented testimony, exhibits and other evidence that was relevant to the grievance. The hearing was not transcribed. The parties filed briefs by December 28, 2006, whereupon the record was closed. Having considered the evidence, the arguments of the parties, the applicable provisions of the agreement and the record as a whole, the undersigned issues the following Award.

ISSUE

The parties did not stipulate to the issue to be decided herein. The Union framed the issue as follows:

Did the Employer violate Article XIII "Sickness and Accident Benefits Full-Time Employees and Salaried Personnel" or any other article of the collective bargaining agreement which may apply when it denied Al Cass his maximum allowance of sick leave for calendar year 2006? If so, what is the appropriate remedy?

The Employer framed the issue as follows:

Did the Employer violate Article XIII when it denied Al Cass his maximum allowance of sick leave for calendar year 2006? If so, what is the appropriate remedy?

I have not adopted either side's wording of the issue. Instead, my wording of the issue is as follows:

Did the Employer violate Article XIII of the collective bargaining agreement when it determined Cass' sick time allotment for 2006? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 2006-2008 collective bargaining agreement contains the following pertinent provisions:

ARTICLE XIIII

SICKNESS ANDACCIDENT BENEFITS
FULL-TIME EMPLOYEES AND SALARIED PERSONNEL

Section 1 – Establishment. BE IT RESOLVED by the Town Board of the Town of Beloit Rock County, Wisconsin that the following sickness and accident plan be established to reduce financial hardship which employee might experience as a result of physical disability for which they have been granted authorized leave of absence.

Section 2 – Allowance.

Maximum Allowance:

Length of Service	Full Pay	Half Pay
Less than one month	None	None
One month to one year	7 working days	7 working days

One year to five years	14 working days	14 working days
Five years thru nine years	21 working days	21 working days
Ten years thru fifteen years	35 working days	35 working days
Sixteen years and over	45 working days	45 working days

. . .

FACTS

The Town operates a fire department in Beloit, Wisconsin. The Association is the exclusive collective bargaining representative for the Town's full-time employees. Al Cass is a lieutenant in the department and thus is a bargaining unit employee.

This case involves Cass' allotment of sick time for 2006.

Cass began his employment with the Town on January 22, 1997. Thus, his anniversary date each year is January 22. His first year anniversary was January 22, 1998. His second year anniversary was January 22, 1999. His third year anniversary was January 22, 2000. His fourth year anniversary was January 22, 2001. His fifth year anniversary was January 22, 2002. His sixth year anniversary was January 22, 2003. His seventh year anniversary was January 22, 2004. His eighth year anniversary was January 22, 2005. His ninth year anniversary was January 22, 2006.

Cass injured his knee in June, 2006 and had surgery on it the following month. He was off work on sick leave for an extended period of time before and after the surgery.

Prior to undergoing his knee surgery, Cass asked the Town's payroll clerk, Lynn Caple, how much sick time he had available to use. Caple responded that Cass had 21 full pay days and 21 half pay days of sick leave available. Cass disagreed with Caple's answer because he thought, based on his reading of the sick leave schedule, that he was entitled to 35 full pay days and 35 half pay days of sick leave. Cass subsequently sent a letter to Fire Chief Dennis Ahrens requesting clarification of his available sick time. In that letter, Cass indicated that he thought he was entitled to 35 full pay days and 35 half pay days of sick leave. Ahrens subsequently responded, in writing, that since Cass' hire date was January 22, 1997, he was (still) in the "five years thru nine years" category, so he was (only) entitled to 21 full pay days and 21 half pay days of sick leave. Ahrens further indicated that the Town payroll clerk had advised him that "this is the policy the Town had followed for sick time benefits."

The Union disagreed with the Chief's interpretation of the sick leave schedule and filed the instant grievance. In the grievance, the Union contended that Cass was entitled to 35 full pay days and 35 half pay days of sick leave for calendar year 2006. When Town Administrator Robert Museus responded to the grievance, he indicated that Cass was (still) in the "five years thru nine years" category, so he was (only) entitled to 21 full pay days and 21 half pay days of sick leave. He further opined that "this interpretation is consistent with the past practice of the Town."

. . .

The contract language involved in this matter (i.e. the sick leave language) has been in existence in its current form for at least the last 18 years.

. . .

Lynn Caple, the Town's payroll clerk, testified that employees have not been advanced to the "ten years thru fifteen years" category on the sick leave schedule until they complete nine full years of service and reach their ten year anniversary date; employees who have not reached their ten year anniversary date remain in the "five years thru nine years" category. No demonstrable proof was offered to substantiate her testimony.

DISCUSSION

At issue is whether the Employer violated Article XIII when it determined Cass' allotment of sick time for 2006. The Union contends that it did while the Employer disputes that assertion. Based on the following rationale, I answer that question in the negative, meaning that the Employer did not violate Article XIII by its actions herein.

My discussion begins with the following preliminary comments. This is a contract interpretation case involving sick leave language which will be addressed below. In some contract interpretation cases, the arbitrator looks at evidence external to the collective bargaining agreement to help interpret the applicable contract language. I am referring, of course, to the parties' past practice and/or bargaining history. In this case, when the Employer responded to the grievance, it averred that there was both a policy and a practice that supports its interpretation of the contract language. At the hearing though, the Employer did not offer demonstrable proof of either an applicable policy or a past practice. Consequently, the outcome of this case is not going to be based on a policy or an alleged past practice. Additionally, no evidence was offered about the parties' bargaining history on the language involved, except that the language has been in existence in its current form for a long time. That being so, the outcome of this case is not going to be based on bargaining history either. It follows from the foregoing that all I've got to work with, so to speak, is the language itself. Accordingly, the outcome in this case is going to be based exclusively on the applicable contract language.

Having so found, the focus now turns to the applicable contract language which is found in Article XIII. That article identifies the sickness and accident benefits which are available to bargaining unit employees. While that article contains numerous sections, the only section which is relevant to this case is Section 2. That section contains a schedule which identifies the amount of sick leave which is available to employees based on their length of service. It provides thus:

Maximum Allowance:

Length of Service	**Full Pay**	**Half Pay**
Less than one month	None	None
One month to one year	7 working days	7 working days
One year to five years	14 working days	14 working days
Five years thru nine years	21 working days	21 working days
Ten years thru fifteen years	35 working days	35 working days
Sixteen years and over	45 working days	45 working days

The question to be answered here is whether Cass was in the "five years thru nine years" category or the "ten years thru fifteen years" category in the summer of 2006 (i.e. when the grievance was filed). The Town contends Cass was in the former category while the Union contends he was in the latter category. Both sides argue that the plain meaning of the language supports their position.

Before I address those two categories though, I'm first going to address the two categories which precede them so that the language can be compared and contrasted. In the discussion which follows, I'm going to refer to five categories on the schedule which I'm calling the first category, the second category, the third category, the fourth category and the fifth category. For the purpose of my discussion, I've bypassed the first category which is listed on the sick leave schedule (i.e. the "less than one month" category), because an employee in that category does not qualify for sick leave and Cass, of course, does. Consequently, when I refer to the first category, I'm not referring to the "less than one month" category, but instead am referring to the second category listed on the schedule (i.e. the "one month to one year" category). Thus, my numbering system starts with the second category on the sick leave schedule and proceeds upward from there.

The focus now turns to what I'm calling the first and second categories (i.e. "one month to one year" and "one year to five years"). I begin my discussion about them with the observation that both categories contain the phrase "one year". It's found at the end of the first category and the beginning of the second category. Since the phrase "one year" is repeated in that fashion, "one year" is obviously a specific cutoff date. Given its context and usage, it means that an employee is in the first category (i.e. "one month to one year") until they reach their first anniversary date. When an employee reaches their first anniversary date, they move into the second category (i.e. the "one year to five years" category). This interpretation also applies to categories two and three. Here's why. Both categories contain the phrase "five years". It's found at the end of the second category and the beginning of the third category. Since the phrase "five years" is repeated in that fashion, "five years" is obviously a specific cutoff date (just like "one year" was a cutoff date). Given its context and usage, it means that an employee is in the second category (i.e. "one year to five years") until they reach their fifth anniversary date. When an employee reaches their fifth anniversary date, they move into the third category (i.e. the "five years through nine years" category).

Starting with category three though, the sick leave schedule's format changes. Here's what I'm referring to. First, the word "to" is replaced with the word "thru". The word "to" is used in categories one and two, while the word "thru" is used in categories three and four. Second, the year at the end of the category is not repeated at the beginning of the next category (like it was in categories one and two). Starting with category four, the number at the beginning of the category is not identical to the number at the end of the preceding category. Instead, it increases by one (i.e. going from nine years to ten years and fifteen years to sixteen years). Those changes, and their significance, will be reviewed next.

The word "thru" does not have the same meaning as the word "to". The following shows this. In my discussion about categories one and two, which contains the word "to", I noted that an employee remains in their existing category until they reach the applicable anniversary date. Thus, in that context, the word "to" essentially means until. Once an employee reaches the endpoint of categories one and two, they move into the next category. Specifically, an employee with one year and a day of service is not in category one anymore (i.e. the "one month to one year" category), but instead moves into category two (i.e. the "one year to five years" category). Similarly, an employee with five years and a day of service is not in category two anymore (i.e. the "one year to five years" category), but instead moves into category three (i.e. the "five years thru nine years" category). Starting with the third category though, the schedule no longer uses the word "to", but instead uses the word "thru". This change in word changes the meaning. Here's why. When the word "thru" is considered in its context, it means that an employee has to complete their ninth and/or fifteenth year of service before they move to the next category. Until that occurs, they remain in their existing category even after they pass their ninth and/or fifteenth year anniversary dates. In other words, an employee does not move to the next category upon reaching their ninth and/or fifteenth year anniversary date. Instead, they remain in their existing category after they pass their ninth and/or fifteenth year anniversary date. Once they complete their ninth and/or fifteenth year of service, then they move to the next category (i.e. either the fourth category or the fifth category). For emphasis though, I repeat: an employee has to complete (i.e. finish) their entire ninth and/or fifteenth year before they move to the next category.

The Union argues that once Cass passed his nine year anniversary date on January 22, 2006, he began his tenth year of employment and thus was eligible to move to the next category on the sick leave schedule (i.e. the fourth category of "ten years thru fifteen years"). Said another way, it's the Union's view that once an employee passes their nine year anniversary date, they move to the next category. There are two problems with this interpretation. First, it ignores the fact that the schedule uses the word "thru" in the third category. The Union essentially replaces the word "thru" with the word "to" so that an employee gets to move to the next category once they pass their nine year anniversary date. However, the language does not say that; it says "thru nine years". Cass started his ninth year with the Town on January 22, 2006. Application of the word "thru" (in the phrase "thru nine years") to these facts mean that Cass' ninth year ran from his January 22, 2006 anniversary date through January 21, 2007. In the summer of 2006, when Cass sought to be moved to the next category on the sick leave schedule, he had about nine and a half years of service.

However, he had not completed (i.e. finished) his ninth year of service. That was not scheduled to occur until January 22, 2007 when he reached his ten year anniversary date and qualified for the next level of sick leave benefits. That fact is dispositive of the outcome herein. Second, aside from that, the category that Cass sought to move to (i.e. the fourth category) does not start with the phrase "nine years"; it starts with the phrase "ten years". As previously noted, Cass had not yet reached his ten year anniversary date in the summer of 2006, so he did not qualify to be moved into the fourth category as he sought. To repeat, once that event happens, and he reaches his ten year anniversary date, then he moves into the fourth category (i.e. the "ten years through fifteen years" category). Until then, he remains in category three.

Given the above, I find that Cass was still in the "five years thru nine years" category when the grievance was filed. Accordingly, the Employer did not violate Article XIII when it determined Cass' sick time allotment for 2006.

In light of the above, it is my

AWARD

That the Employer did not violate Article XIII of the collective bargaining agreement when it determined Cass' sick time allotment for 2006. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 27th day of February, 2007.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
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