

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF OSHKOSH (POLICE DEPARTMENT)

and

OSHKOSH PROFESSIONAL POLICE OFFICERS ASSOCIATION

Case 362
No. 66743
MA-13618

Appearances:

Ms. Andres Hoeschen, Esq., Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman
1555 North RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212,
on behalf of the Association.

Mr. William G. Bracken, Labor Relations Coordinator, Davis & Kuelthau, S.C., Attorneys
at Law, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54903-1278,
on behalf of the City.

SUMMARY OF BENCH AWARD

The parties jointly selected Sharon A. Gallagher as Arbitrator from a panel of five Wisconsin Employment Relations Commission Staff Arbitrators to hear and resolve the captioned dispute. The hearing was held on May 10, 2007 at Oshkosh, Wisconsin. No stenographic transcript of the proceedings was made. Prior to the hearing, the parties agreed to allow the Arbitrator to issue a Bench Award herein after the close of the hearing. The parties presented the testimony of three witnesses, six Joint Exhibits, as well as six Factual Stipulations. At the close of the hearing, the parties made oral arguments whereupon the record was closed. The Arbitrator then took time to study all the evidence and argument, she re-convened the hearing on May 10th and gave the parties an oral Bench Award which the parties agreed the Arbitrator could summarize in writing and submit to them at a later date, as follows:

A. The Factual Stipulations herein were as follows:

1. Karl Wendt was on vacation from December 17 to December 27, 2006 (sic)
2. Officer Wendt took off on December 28, 2006, using 8 hours of Compensatory time.
3. Officer Wendt was called into (sic) complete paperwork at the District Attorney's Office on December 28, 2006.
4. Officer Wendt was paid three hours call-in pay and ¼ hour overtime for December 28, 2006.
5. The Police department did not return a vacation day to Officer Wendt for his call-in on December 28, 2006.
6. Officer Wendt used vacation days on December 17 and on December 21 through 25, 2006. His regularly scheduled off days were December 18 to 20 and 26 to 27, 2006. Wendt used compensatory time on December 28, 2006.
7. Officer Wendt's grievance is timely.

B. The parties were unable to stipulate to the issues for determination. They did agree that the Arbitrator could frame the issues based upon the relevant evidence and argument and their suggested issues. The Association suggested the following issues:

Did the City violate Article V of the labor agreement by not returning a vacation day to Officer Wendt for his call-in on December 28, 2006?
If so, what is the appropriate remedy?

The City suggested the following issues:

Did the City violate Article V, Call-In Time and Court Appearance when it denied Officer Wendt an additional day of vacation when he was called into work on a compensatory day?

Based upon the above suggestions and the relevant evidence and argument, the Arbitrator selected the Union's issues.

C. Summary of Findings and Conclusions:

1. There is no relevant bargaining history or past practice which pertains to this case. The situation in this case has never arisen in the past. Evidence of one prior case involving Detective Artus was factually distinguishable and so not helpful in deciding this case. There, Artus had clearly picked a vacation day on the first day he was called in for court; thereafter Artus was called in for court again on his payback day so he was granted another payback day.
2. Article II uses the terms “on duty” and “days off.” Article IV Compensatory Time does not specifically refer to “days off.” Rather, Article IV refers to “normally scheduled work day or work week” and describes a procedure, separate and distinct from the contractual vacation provision in Article IV, for earning and taking accrued compensatory time off or being paid therefore.
3. A practice exists whereby officers request comp time 30 days before the day they wish to take off which the Lieutenant either approves or denies. A comp time day that has been approved can be canceled thereafter in emergencies. In the past, if an officer is called in on a stand-alone comp time day, no payback day has ever been granted the officer.
4. Article IV defines vacation days as “working days;” vacation picks are done by seniority in rotation beginning early in the year of usage. There is a practice that officers with less than 25 years seniority can hold 5 vacation days and wait to schedule them after the rotation picking is concluded.
5. Here, Officer Wendt made his first vacation pick in rotation, selecting 6 working days, December 17, and 21 through 25, 2006; Wendt could have but did not choose to pick vacation on his next work day, December 28, 2006. Rather, at some time at least 30 days before the day, Wendt requested to use comp time on December 28, 2006, which request was approved. December 28, 2006 would have been Wendt’s first “regularly scheduled duty day,” after the vacation days he had selected and the contiguous regularly scheduled off days surrounding his vacation pick, had Wendt not requested and received approval to take comp time that day.
6. Had Wendt been called in to sign the court document on December 27, 2006 he would have been granted a payback day (as well as the 3 hours call pay and 1.5 pay for time worked) because December 27th was Wendt’s regular off day contiguous to his vacation pick and therefore December 27th was considered to fall “during” Wendt’s vacation. However, the DA’s office did not get the document ready until December 28th and Wendt was called in to sign it that day, a day of approved comp time for Wendt.
7. Article V states clearly in the first paragraph that officers are to receive 3 hours of call-in pay and time and one-half for the time spent on the call/appearance, if called to return to duty or appear in court “at some time other than his/her regular scheduled duty day” (emphasis supplied). Paragraph 2 of Article 5 uses the term “during vacation” and defines vacation (only when taken in one-week blocks) “to include off-days commencing on the officer’s last day of work before the vacation and his/her first day of work after vacation.”

8. In paragraph 1 of Article V, approved comp time is “some time other than” an officer’s “regular scheduled duty day;” approved comp time is not expressly or impliedly included in the definition of a vacation block of time under paragraph 2 of Article V; and it does not fall “during” an officer’s vacation. The complete exclusion of sick leave or workers compensation time off from the call-in pay provisions does not include comp time and supports the conclusion that comp time must be included under paragraph 1 of Article V.

AWARD

Therefore, the City did not violate Article V by not returning a vacation (payback) day to Officer Wendt for his call-in on December 28, 2006. The grievance is denied and dismissed in its entirety.

Dated in Oshkosh, Wisconsin, this 22nd day of May, 2007.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator