BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**VILLAGE OF GRAFTON**

and

**GRAFTON POLICE ASSOCIATION, LOCAL 305,**
**LABOR ASSOCIATION OF WISCONSIN, INC.**

Case 36
No. 65814
MA-13332

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**Appearances:**

**Mr. Ben Barth,** Labor Consultant LAW, Inc., N116 W163033 Main Street, Germantown, Wisconsin 53022, on behalf of Local 305 and the Grievant.

**Ms. Mary Hubacher, Esq.,** Davis & Kuelthau, S.C., 300 North Corporate Drive, Suite 150, Brookfield, Wisconsin 53045, on behalf of the Village.

## ARBITRATION AWARD

The parties jointly selected Arbitrator Sharon A. Gallagher from a panel of five WERC Staff Arbitrators to hear and resolve a dispute between them involving whether Chief Wenten possessed discretion under Article X of the labor agreement to require Officer Thomas Meiller to bring in a "note" from his doctor regarding his absence of less than three days' duration covering his shifts on March 13 through 15, 2006. On May 15, 2006, with the agreement of the parties, Arbitrator Gallagher attempted to mediate the dispute in meetings with the parties held at Grafton, Wisconsin. The case was then held in abeyance pending final settlement. Thereafter, on October 4, 2007 the parties advised the Undersigned that settlement had failed and the case was again scheduled to be heard on January 15, 2008 at Grafton, Wisconsin. A stenographic transcript of the proceedings was taken and received on January 24, 2008. The parties made opening statements, they presented documentary evidence and two witnesses testified. The parties agreed to submit their post-hearing briefs and they agreed to waive the right to file reply briefs. The Undersigned received the parties' briefs by March 10, 2008 whereupon the record was closed.

## ISSUES

The parties were unable to stipulate to the issues for determination herein. However, the Association suggested the following issues:

1. Did the Employer violate the express or implied terms of the collective bargaining agreement when it ordered the Grievant to provide a medical proof of illness for an illness that was less than three (3) days?

2. If so, what is the appropriate remedy?

The Village suggested the following issues:

1. Did the Department properly exercise its authority under Article 10, Section 1(D) of the collective bargaining agreement when Chief Wenten requested a certificate of recovery from Officer Meiller before his return to work from an illness on March 13 through 15, 2006?

2. If not, what is the appropriate remedy?

The parties agreed that the Arbitrator could frame the issues based upon the relevant evidence and argument herein and their suggested issues. Having considered the parties' suggestions as well as the relevant evidence and argument herein, I find that the following issues fairly state the dispute between the parties and they shall be decided herein:

1. Did the Village violate Article 10 of the labor agreement by requiring Officer Meiller to submit a certificate of recovery because he was absent with flu-like symptoms for 2.5 work days in March, 2006?

2. If so, what is the appropriate remedy?

## RELEVANT CONTRACT PROVISIONS

### ARTICLE II – MANAGEMENT RIGHTS

The Association recognizes the right of the Village and the Chief of Police to operate and manage its affairs in all respects. The Association recognizes the right of the Chief to establish departmental rules and procedures.

. . .

The Village shall retain all rights and authority to which, by law, they are entitled and to manage their affairs as such affairs and rights existed prior to the execution of this or any previous agreement with the Association.

. . .

The parties understand that every duty connected with the operations enumerated in job assignments or descriptions is not always specifically described, and it is intended that all duties shall be performed by the employee.

The Village has the exclusive right and authority to make assignments of jobs, to determine the size and composition of the work force, to determine work schedules and the work to be performed by the work force and each employee, to establish methods and processes by which said work is performed, to determine the competence and qualifications of the employees, to determine the location where the operations of the Village are to be conducted, to hire, promote and lay off employees and to make assignments and promotions to supervisory positions, to transfer employees within the Police Department, to suspend, demote and discharge employees, to assign and schedule overtime work, to create new positions or departments, to introduce new or improved operations or work practices, to terminate or modify existing positions, departments, operations or work practices, and to consolidate existing positions, departments or operations.

The Association pledges cooperation to the increasing of the departmental efficiency and effectiveness. Any and all rights concerning the management and direction of the Police Department and the Police Force shall be exclusively the right of the Village and the Chief of Police, unless otherwise provided by the terms of this Agreement as permitted by law.

. . .

## ARTICLE X – ILLNESS, INJURY AND EMERGENCY LEAVE

Section 1. Non-occupational Illness and Injury Leave. All full-time Association employees hired before January 1, 1996, shall be entitled to receive pay for those days during which they are unable to work because of a non-occupational illness or injury subject to the following limitations and provisions:

A. Upon request by the Police Chief, medical proof of illness shall be required by the Village from a registered physician chosen by the Village for any illness exceeding three (3) days.

B. Sick leave shall be granted at straight-time rates, provided, however, that such sick leave shall be granted up to a maximum of three hundred sixty-five (365) consecutive calendar days for the same illness or injury. However, no sick leave shall be granted prior to the completion of ninety (90) days service to the Village.

C. All officers shall report any illness immediately to the Chief or commanding officer on duty, and shall inform him of an anticipated date of return.

D. A certificate of recovery may be required from a registered physician as named by either the village or the officer.

E. Sick leave may also be granted to an officer because of unexpected and serious illness or injury to a member of his family. Such leave shall be permitted only for a reasonable period to make appropriate arrangements. Approval of this type of absence must be made by the Chief or the commanding officer on duty.

F. All full-time Association employees hired before January 1, 1996, shall be eligible for a payout of unused sick leave based upon the following formula:

Employees, for purposed of calculating a payout of unused sick leaven, will receive a one hundred five (105) day accounting of sick days effective January 1, 1996, of which one hundred twenty (12) days is the maximum sick days allowed. All sick leave taken after January 1, 1996, will be subtracted from this amount.

G. All full-time Association employees shall earn sick leave at the rate of 1.25 days per month of continuous service for purposes of calculating a payout of unused sick leave, effective January 1, 1996. Continuous service shall not include any period of unpaid leave of absence, except for illness or injury, in excess of thirty (30) days, nor any period of layoff or unpaid leave of absence for illness or injury in excess of sixty (60) days.

H. Fifty (50) percent of all unused sick leave will be paid to the employee upon retirement from Village service. In case of the employee's death, the employee's sick leave payout entitlement shall be paid to the employee's beneficiary.

I. Sick Leave Reduction Incentive Program: Employees will be compensated twenty five percent (25%) for any sick days accumulated over one hundred and twenty (120) days to be paid on the first full pay period of the following year. An employee must be employed on December 31 in order to receive the benefit.

## BACKGROUND

The Village employs approximately 18 Patrol Officers who are members of the Association. At all times relevant to this case, Charles Wenten was the Chief of Police and Gabrish was a non-unit lieutenant or captain who supervised the Grievant, Patrol Officer Thomas Meiller (Meiller).

The language which appears in Article X, Section 1D (quoted above) was placed in the agreement approximately 20 years ago. Meiller, who was hired as a Patrol Officer 15 years and 3 months prior to the date of the instant hearing in this case, and who served as Association President from mid-2004 through May, 2006, stated that it was his understanding (from talking to unnamed long-time Village Patrol Officers) that Article X, Section 1D was placed in the agreement so that officers who had been absent due to serious illnesses or serious injuries which exceeded 3 days could be required to bring in a certificate of recovery before they could return to full-time work. Meiller also stated that he understood that Article X, Section 1D was also applied to situations when an officer may have broken a bone and he/she was then required to present a certificate of recovery upon returning to work.[1] Meiller stated that he understood that the parties never intended Article X, Section 1D for day-to-day illness/injuries.

Chief Wenten has reviewed all absence forms since his hire as Chief in 2003 because he views it to be his responsibility to assure that his officers can perform their jobs at 100% after having been ill or injured. Chief Wenten stated that he believes that he has the discretion, under Article X, Section 1D to require that officers bring in a certificate of return or recovery when they return from a sick leave absence if he (the Chief) is concerned that due to the type of illness or injury suffered, the officer may not be ready to return at 100% whenever he/she wishes, causing the Chief to request a certificate of return/recovery from a doctor stating when the officer can return and be 100% at work.

Chief Wenten has applied Article X, Section 1D in the past to Officers Meiller and Stapleton without drawing any grievances. The first time Chief Wenten applied Article X, Section 1D was in September, 2004 when then – Sergeant Stapleton took two days' sick leave

[1] Chief Wenten was hired by the Village in 2003. He was not employed by the Village when Article X, Section 1D was placed into the agreement. The Village called no witnesses to address the bargain history assertions made by Meiller.

because he had a lot "of pain from back injections" (ER Exh. 1). Chief Wenten stated that at that time he was concerned about the level of pain Stapleton was feeling and whether he could return to work and perform all of his duties fully, so Wenten requested that Stapleton submit a certificate of recovery (CR) upon his return to work. Stapleton submitted a CR as requested.[2]

On December 26 and 27, 2005, Meiller called in sick and stated the reason for leave as "Laceration (evulsion) Right Thumb." On December 27, 2005 Meiller got a "certificate of return to work…" from his doctor stating that he could return to work on December 30, 2005 (ER. Exh. 2). The Chief stated that he requested Meiller submit a CR for his December, 2005 absence because he was concerned whether Meiller could fully perform his duties with a lacerated right thumb. Notably, Meiller did not file a grievance regarding the requirement that he submit this December 30, 2005 CR; and the Association submitted no evidence regarding why neither Stapleton nor Meiller filed grievances regarding the requested CR's.

Also, on February 28, 2006, Meiller was absent on sick leave for an "allergic reaction to allergy injection" in his right arm. Meiller then went to his doctor and got a "certificate of return to work" on March 1, 2006. Again, the Chief stated he requested Meiller obtain a CR from his doctor for the February, 2006 absence because he (the Chief) was concerned about when Meiller's system would be clear of the allergic reaction he had had. As with the prior situation, Meiller failed to grieve the requirement that he produce a CR for his February, 2006 absence and the Association offered no evidence to explain this failure.

## FACTS

In March, 2006, the Grievant was working the 3PM to 11PM shift and Captain Gabrish was his supervisor. Meiller was scheduled to work March 13, 14 and 15th. On March 13th, Meiller reported for duty, but left work at approximately 5:20 P.M. complaining of flu-like symptoms. Meiller remained on sick leave through his next two scheduled shifts on March 14th and 15th due to the flu. On March 15th the Chief talked with Captain Gabrish and re-read the labor agreement and told Gabrish to tell Meiller he should bring in a "certificate of recovery" because Wenten was concerned about whether and when Meiller could fully return to this duties. But Wenten stated he never doubted that Meiller was ill on March 13 through 15th. Wenten denied telling Captain Gabrish that Meiller would have to bring in a CR for every future illness/injury[3] and Wenten denied any knowledge that Meiller had been given such an order.

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[2] Although Chief Wenten stated he recalled requesting a CR from Stapleton and that Stapleton submitted same concerning the latter's September 15 and 16, 2004 absence, none could be found among Village records.

[3] Captain Gabrish did not testify herein, although he is currently employed by the Village. I have therefore credited Meiller regarding his conversation with Gabrish except where Meiller's testimony is internally inconsistent or conflicts with the documentary evidence.

When Meiller called in sick on March 15th, Gabrish told him he would need to bring in a "sick slip." Later that day, Gabrish called Meiller back and told him he had to bring in "a note," that Chief Wenten said his absence was close enough to a three day absence. At this time, Gabrish told Meiller he needed to put in a slip for every future absence. Meiller stated that by asking him for a note, he thought Gabrish had asked him to get an excuse from his doctor. No evidence was presented to show that Meiller ever asked Gabrish for clarification of Gabrish' request. The "note" Meiller brought in from his doctor stated:

> Thomas Meiller has recovered from recent illness and may return to work 3/18/06 (ER. Exh. 4).

Also, on March 18, 2006, Meiller completed a "Claim for Sick Leave or Extended Absence" on which he wrote that he had seen his doctor "after my illness to get a 'certificate of recovery'" (ER. Exh. 4).[4] Meiller filed the instant (written) grievance on March 23, 2006 which made the following assertions:

. . .

6. That the grievant called in sick on Wednesday, March 15, 2006 for his regularly assigned shift and was informed by Lt. Gabrish that upon his return to work, he needed to provide medical proof of illness from a registered physician.

7. That Article X – *Illness, Injury and Emergency Leave, Section 1(a)*, reads as follows:

   "Upon request by the Police Chief, medical proof of illness shall be required by the Village from a registered physician chosen by the Village for any illness **exceeding three (3) days." (**Emphasis added)

8. That the grievant's illness did not exceed three (3) days in duration.

9. That by ordering the grievant to provide a medical proof of illness for his illness that did not exceed three (3) days, the Village has exercised its' management rights in an unreasonable manner.

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[4] The Village submitted Employer Exhibits 5 through 14 which covered Meiller's requests for absences after the filing of the instant grievance, covering his sick leave absences from March 24, 2006 through November 30, 2007 for 13 sick days plus a sick leave which covered 25 calendar days in 2007. As these instances occurred after the filing of the instant grievance, I find that they are neither relevant or material to this case. In addition, I note that Meiller stated herein that the grievances were not filed regarding the instances covering Employer Exhibits 5 through 14 because this case was pending.

On April 5, 2006 the Village Administrator responded to the written grievance which stated:

> I am in receipt of your March 15, 2006 grievance in reference to Village's request for a Certificate of Recovery.
>
> Please note that your grievance cites a provision of the Contract – Article X, Section 1(A) regarding a medical proof of illness – that is not applicable. Chief Wenten requested you to provide the Village with a Certificate of Recovery consistent with Article X, Section 1(D).
>
> As Step 2 of Article XV – Grievance Procedure, I am denying your grievance based upon no violation of the contract has occurred.
>
> . . .

Thereafter, the case was further processed. At some time prior to October 2, 2006, Labor Consultant Barth e-mailed Chief Wenten concerning this grievance and the Chief replied as follows:

> I apologize for not getting back to you sooner but I have been out of the office. A brief review of the conversation that Lieutenant Gabrish had with Officer Meiller indicates that the term "sick slip" was used when directing Officer Meiller. Lt. Gabrish indicated to me that he was referring to the certificate of return. I have made it clear to Lt. Gabrish that the type of return documentation is very important and that the contract makes reference to both medical proof of illness and certificate of return. I assure you that the specific language will be used in the future should it become necessary.
>
> I require a certificate of return from all employees that have a surgical procedure. I need to be certain that the medical procedure that they have had done will not impeded (sic) their ability to perform their duties.

The grievance was then processed to arbitration before the Undersigned.

## POSITIONS OF THE PARTIES

**Association:**

The Association asserted that the Village violated Articles II, V and X by its treatment of Officer Meiller. Specifically, the Association noted that Chief Wenten stated various bases herein regarding when he has required employees to bring in a certificate of recovery, such as when employees return from a surgical procedure and other serious medical conditions. Here, Officer Meiller was returning from having taken sick leave for "flu-like" symptoms, not from surgery or a serious medical condition.

Also, the Association asserted that the parties' bargaining history supports its contention herein that the Village and the Association agreed 20 years ago to place Article X, Section 1(D) in the agreement, to require employees to provide a certificate of recovery to prove that the employee has recovered from a serious illness or injury for which the sick leave claimed exceeded three days and/or if the employee broke a bone, a certificate of recovery could be required before the employee could return to work from an absence of less than three day's duration (Tr. 18-19).[5]

The Association observed that Chief Wenten had been with the Village for less than five years at the time of the instant hearing and he admitted herein that he had no idea what the Village and Association negotiators intended when they wrote the language of Article X, Section 1(D) and placed it in the agreement, making Meiller's (hearsay) testimony the only record evidence of bargaining history. Furthermore, the Association argued that Chief Wenten has been unreasonable in requiring the Grievant to submit certification of recovery but he has otherwise been inconsistent in applying Section 1(D) in the past. On this point, the Association observed that although the Chief indicated during the processing of this grievance that Kim Lentz and Tom Stapleton were required to submit certificates of recovery in the past, the Village only submitted evidence concerning one instance where Sergeant Stapleton received an injection in his back for pain and the Chief required him to submit a certificate of recovery before returning to work. Thus, the Association queried why the Village did not then mention the nine instances from December, 2004 through November, 2007 where the Chief required the Grievant to submit a certificate of recovery (ER. Exhs. 2-13).

The Association noted that Chief Wenten's testimony herein showed that Wenten believes there are no limits on his authority to request certificates of recovery. However, the Association urged that such unbridled authority "runs contrary to established labor law" (Assoc. Br., p. 7) – that such authority is not absolute and must be exercised reasonably, not arbitrarily or capriciously. Both the bargaining history and the minor ailments for which the Chief required Meiller to produce a certificate of recovery supported the Association's conclusion that the Chief has wielded his Article X, Section 1(D) authority arbitrarily.

In addition, the facts of this case wherein Captain Gabrish ordered Meiller to bring in a "note" also supported the Association's argument that the Chief was unreasonable in his treatment of Meiller. Here, the evidence showed that Meiller had been given a standing order to bring in "a note" or certificate of recovery every time he was sick. The Association observed that the Chief professed complete ignorance of Captain Gabrish's standing order to Meiller and the Association pointed out that Meiller has not been accused of abusing sick leave. The Association then cited general arbitral principles as well as three cases it urged showed the Village acted arbitrarily, discriminatorily and unreasonably in requiring certificates of recovery from Meiller in 2006: CITY OF NEW BERLIN, CASE 105, NO. 64242, MA-12848 (MCGILLIGAN 11/28/05); CITY OF KENOSHA, NO. 46869 (GRECO, 10/15/92)[6]; CITY OF APPLETON, CASE 388, NO. 57824, MA-10760 (HAHN, 3/20/00).

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[5] Officer Meiller, a 15 year employee of the Village, was the only Association witness herein and he was not present at bargaining when Article X Section 1(D) was placed in the agreement so Meiller's statements herein were based on his conversations with senior officers (Tr. 36-37).

[6] This was the citation provided by the Association.

The Association asserted that because the Chief never notified bargaining unit members of his interpretation of Article X, Section 1(D) and because no past practice existed thereon, the Chief exercised his management rights unreasonably. In this regard, the Association noted that the Chief's interpretation has not been consistent, long-established or mutually agreed upon/acquiesced in. In fact, the Village submitted evidence regarding only Meiller and one other employee, then-Sergeant Stapleton as being required to bring in certificates of recovery. The Association contended that it is "suspicious that the Chief reviews all sick leave usage of all employees" (Assoc. Br., p. 13) and yet the Chief stated herein he did not know how many sick days were taken by the 18 unit officers in 2006.

Finally, the Village's failure to call Captain Gabrish as a witness herein was "unsettling" and left Meiller's testimony regarding his contacts with Gabrish uncontradicted – that Gabrish ordered Meiller to provide a sick leave note for each sick leave usage in 2006. The Association noted that this evidence was supported by Joint Exhibit 2. Because the Chief had no personal knowledge of Meiller's condition when he left work and when he returned, the Chief lacked a reasonable basis for requiring Meiller to provide a certificate of recovery for his March 13-15, 2006 illness. Therefore, the Association sought an Award sustaining the grievance, an order directing the Village to cease and desist violating the terms and conditions of the labor agreement and purging Officer Meiller's personnel file of all reference to the incident underlying this grievance and granting any other appropriate relief.

**Village:**

Initially, the Village observed that the grievance wrongly asserted a violation of Article X, Section 1(A), by Meiller's being requested to bring in a "proof of illness" slip; that Meiller was never requested to bring in such a slip. Rather, the Village asserted, the Chief never disputed that Meiller was ill on March 13, 2006; but the Chief wished to assure that Meiller was 100% when he returned to duty on March 18th so he requested a CR. The Village contended that the labor agreement contains no limitations or restrictions on the Chief's discretion to request a CR and it noted that the Chief has requested and received CR's in the past from Meiller and Sergeant Stapleton and no grievances were filed thereon, which demonstrated that Meiller particularly, and the Association in general, had knowingly acquiesced in the Chief's decisions to require CR's whenever he deemed it necessary.

Furthermore, the Village noted that a medical proof of illness (MPI) is different and distinct from a CR. Meiller's assertion herein that Captain Gabrish instructed him to bring in a "note" concerning Meiller's March 13 through 15, 2006 absence which Meiller interpreted to mean a MPI was a disingenuous claim based on the record facts. In this regard, the Village observed that the "note" Meiller brought in on March 18th was clearly phrased as a CR, not an MPI and Meiller never submitted an MPI for his March, 2006 absence. Meiller also acknowledged herein that the "note" he submitted was a CR and he confirmed that he described it as such when he submitted his claim form for sick leave, attesting thereon that his answers and statements were "true."

The Village noted that even if there was confusion in mid-March, 2006 regarding the type of document requested of Meiller by the Chief, the Association and Meiller received clarification thereon in a March, 2006 e-mail from the Chief and that upon Meiller's submission of a CR for his absence, he was allowed to immediately return to work. The Village found it "inexplicable" that about one week after his return to work, Meiller filed the instant grievance claiming he had been asked for an MPI slip. The Village also took exception to Meiller's request for relief in his grievance – that he be reimbursed for time spent obtaining an MPI given the fact that Meiller never sought or obtained such a slip.

The Village next argued that the clear language of Article X, Section 1(D) places no limits on the Chief's power to seek CR's, making Meiller's testimony concerning the bargaining history surrounding Article X, Section 1(D) irrelevant and inadmissible. The Village pointed to the broad language of the management rights clause (Article II) and the lack of direct, non-hearsay evidence to support Meiller's statements herein as further reasons to reject the Association's assertions herein.

The Village noted that on five occasions after March 18, 2006, Meiller was requested and he submitted CR's. In addition, the evidence failed to show that Gabrish ordered Meiller to bring in a slip or note for every absence because on three of Meiller's 2007 absences, no note or slip of any kind was required by the Chief and the Chief stated herein (without contradiction) that he made his decisions to require CR's on a case-by-case basis after he had reviewed each request for sick leave. The fact that Meiller never before filed a grievance alleging a violation of Article X, Section 1(D) because he had to bring a CR for day-to-day illnesses either before, during or after March, 2006, demonstrated Meiller's knowledge of and acquiescence in the Chief's requirement to bring in CR's when he (the Chief) requested same.

Based upon the above, Meiller's submission, upon request, of CR's in December, 2005 and February, 2006 without filing grievances and the Village's assertion that Meiller was not a credible witness, the Village urged the Arbitrator to deny and dismiss the grievance in its entirety.

## DISCUSSION

Several preliminary issues must be dealt with before the merits of this case can be considered. First, it is clear on this record that in March, 2006, there was confusion regarding what type of "note" or "sick slip" Captain Gabrish asked Meiller to submit for his March 13-15, 2006 absence. Nonetheless, on March 16th, Meiller went to his doctor and procured a note stating Meiller had "recovered from his recent illness" and could "return to work" on March 18th. In my view, this doctor's note, by its terms, can only be construed as a CR. And on March 18th upon submission of this note, Meiller was allowed to return to his full-time duties without having to submit an MPI. However, five days later, on March 23rd, Meiller (then Association President) completed and signed the instant grievance alleging a violation of

Article X, Section 1(A) because he had allegedly been required to submit an MPI slip for his March 13-15, 2006 absence which was less than 3 days duration and seeking to be compensated for the time spent seeking and obtaining an MPI slip for his absence.

It is clear from the record evidence in this case that no Article X, Section 1(A) violation occurred herein. Also, I note that Article XV of the effective labor agreement defines a grievance as "an alleged violation of a specific provision of this Agreement" and requires that grievances "shall state the specific provision of this Agreement alleged to have been violated" (Jt. Exh. 1). In these circumstances, some arbitrators would simply deny and dismiss the grievance on the ground that no violation of the contract occurred as alleged in the grievance.

However, in this case, from its inception, although there had been confusion regarding the type of "note" or "sick slip" Meiller had been requested to submit, I note that the Village answered the grievance and then consistently defended against it based upon its assertion that only Article X, Section 1(D) was involved, not Section 1(A). In these particular circumstances, it cannot be said that the Village was blind-sided by the Association's assertion at hearing herein that only Article X, Section 1(D) was at issue. Also, it is significant that the hearing in this case proceeded and the parties put all the facts before this Arbitrator that they thought probative and supportive of their arguments, including arguments regarding both Article X, Section 1(A) and Section 1(D). Therefore, this Arbitrator will decide the merits of this case as argued by the parties herein.

I turn now to the issue whether an Article X, Section 1(D) violation was proved herein. I find it was not, for the following reasons. First, contrary to the Association's assertion, I find that Section 1(D) is clear and unambiguous which makes extrinsic evidence such as Meiller's evidence of bargaining history concerning Article X, Section 1(D) which was offered to alter or vary the express terms of the agreement inadmissible. On this point, I note that unlike Section 1(A), there is no language in Section 1(D) regarding the type of illnesses or injuries or the number of leave days used which would limit the Chief's discretion to request an employee submit a CR before the employee can return to work. Here, the Chief stated that he reviews every sick leave request to determine whether the illness or injury is of a type where he would want the assurance of a medical doctor that the employee can return to work and fully perform all necessary duties. Contrary to the Association's assertion, I find that the Chief's procedure under Article X, Section 1(D) has been rational and reasonable not "suspicious," arbitrary or capricious.[7]

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[7] The Association argued that the Chief has claimed he has unbridled authority to require CR's and that this is contrary to established labor law and/or cases cited by the Association. On this point, I note that the cases cited by the Association are factually distinct from this case and that the principles of good labor relations were not contravened by the Chief herein. Where, as here, the language of the labor agreement clearly and unambiguously places no limits on managerial discretion, arbitrators generally apply an arbitrary/capricious/discriminatory standard to measure the fairness and reasonableness of each management decision. Here, I have found the Chief's procedure as described herein, was rational, reasonable and consistent and that the facts of this case showed the Chief fairly applied his procedure to assure that officers

were ready to return to their full-time duties.

The Association has argued that the Chief has been inconsistent in applying Article X, Section 1(D). The record evidence failed to support this argument. In this regard, I note that the record showed that Meiller and Sergeant Stapleton had been requested and they submitted CR's as instructed, all prior to March 13, 2006 and no grievances were filed thereon. This constitutes strong evidence that the Association waived its right to complain about the Chief's application of Article X, Section 1(D) by acquiescing in the Chief's approach from September, 2004 through February, 2006 (ER. Exh. 1-3).

In addition, I find that the evidence was insufficient to demonstrate that Captain Gabrish gave Meiller a standing order to submit a CR for every absence during 2006. Indeed, the record showed that the Chief had not requested a CR for all of Meiller's absences covering four requests for sick leave, one in October, 2006 (ER. Exh. 7) and three in 2007 (ER. Exh. 8, 9, 11). Also, the Chief denied issuing such a standing order and of being aware that Gabrish had done so.[8] This evidence along with the Chief's description of his procedure for checking all absences and deciding when to request a CR[9] showed that no such standing order was ever issued. The Association has argued that the Chief should have notified the Association of his interpretation. I can find no contract language requiring such notification.

Based on the above, I find no violation of Article X occurred herein and I issue the following

## AWARD

The Village did not violate Article X of the labor agreement by requiring Officer Meiller to submit a Certificate of Recovery for his March 13 through 15, 2006 absence with flu-like symptoms. The grievance is therefore denied and dismissed in its entirety.

Date in Oshkosh, Wisconsin this 1st day of April, 2008.

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

[8] I have credited the Chief on this point, although, in my view, the evidence supported a conclusion that Gabrish was unclear regarding the kind of documentation Meiller should submit. See, Assoc. Exh. 1.

[9] The Association's assertion that the Chief had to have personal knowledge of Meiller's condition before he could reasonably request a CR from Meiller misses the mark. Clearly, Article X, Section 1(D) makes personal knowledge and/or medical expertise unnecessary as the Chief can order employees to bring in a CR based on the paperwork he has, to assure the employee can return from sick leave and fully perform his/her duties.

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