

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**SHEBOYGAN COUNTY HEALTH CARE FACILITIES EMPLOYEES,
LOCAL 2427, AFSCME, AFL-CIO**

and

ROCKY KNOLL HEALTH CARE CENTER, SHEBOYGAN COUNTY

Case 398
No. 68374
MA-14213

(Kassons Grievance)

Appearances:

Mr. Sam Gieryn, Staff Representative, 187 Maple Drive, Plymouth, Wisconsin appearing on behalf of Sheboygan County Health Care Facilities Employees, Local 2427, Wisconsin Council 40, AFSCME, AFL-CIO.

Ms. Mary Lynne Donohue, Assistant Corporation Counsel, Sheboygan County, 2124 Kohler Memorial Drive, Suite 110, Sheboygan, Wisconsin, appearing on behalf of Rocky Knoll Health Care Center, Sheboygan County.

ARBITRATION AWARD

Sheboygan County Health Care Facilities Employees, Local 2427, Wisconsin Council 40, AFSCME, AFL-CIO hereinafter "Union" and Rocky Knoll Health Care Center, Sheboygan County, hereinafter "County," requested that the Wisconsin Employment Relations Commission assign Lauri A. Millot, staff arbitrator, to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The hearing was held before the undersigned on July 9 and September 9-10, 2008 in Manitowoc, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing briefs, the last of which was received by June 13, 2009 at which time the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there were no procedural issues in dispute and framed the substantive issues as:

Did the Employer violate Article 19 of the collective bargaining agreement when it denied the Grievant's leave of absence request and terminated her employment? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

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ARTICLE 3

MANAGEMENT RIGHTS RESERVED

Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, transfer, demote or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason is vested exclusively in the Employer. If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due to him/her for such period of time involved in the matter.

. . .

Unless otherwise herein provided, the Employer shall have the explicit right to determine the specific hours of employment and the length of work week and to make such changes in the details of employment of the various employees as it from time to time deems necessary for the effective operation of its Health Care Centers. The Union agrees at all times as far as it has within its powers to preserve and maintain the best care and all humanitarian consideration of the patients at said Health Care Centers and otherwise further the public interests of Sheboygan County.

In keeping with the above, the Employer may adopt reasonable work rules and amend the same from time to time, and the Union will cooperate in the enforcement thereof.

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ARTICLE 8

WORK DAY/WEEK, SCHEDULES, SHIFT DIFFERENTIAL

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III. SHIFT DIFFERENTIAL

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Extra Week-End Differential: LPN's who volunteer or are mandated to work extra or non-scheduled weekend hours shall receive an additional seventy-five (\$.75) per hour. All other Employees who are scheduled to work on the weekend shall be entitled to an additional fifty cents (\$.50) per hour.

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ARTICLE 14

CALL-IN PROCEDURES

A. Voluntary Call-In List

1. Schedules shall be posted for periods of either a calendar month or a four-week period, at the County's option.
2. Part-time and full-time Employees may volunteer to work additional hours that they are not scheduled to work on the regular posted schedule by signing a volunteer call-in list which will be posted next to the schedule.
3. On any work day where replacement Employees are needed to insure a full staff, volunteer part-time Employees will be contacted first. If volunteer part-time Employees are not available to complete the staffing, regular part-time Employees will then be contacted. The least senior part-time Employee will be called first and continuing on a sequential basis until all part-time non-volunteering Employees are contacted. Such Employees will be offered the available hours and will be given the option of accepting the hours. If available hours still remain, volunteer full-time Employees will be called and offered the work hours.

4. If on any particular day there are not enough volunteer call-in Employees, Article 14C will be put into effect.
 - (a) Volunteer Employees will work on his/her normal assigned shift and may volunteer for alternate shifts.
 - (b) Volunteer Employees may volunteer to work half shifts (four (4) hours).

B. Part-Time Employees - No Benefits (With Restrictions)

Part-time Employee - no benefits will be used in lieu of mandatory call-in if they are available to be used. This also applies to week- end work.

C. Mandatory Part-Time Employee Call-In

1. If sufficient staff is not available and the volunteer list has been exhausted for any particular day in which replacement Employees are needed, mandatory call-in shall be used.
2. The least senior part-time Employees shall be called and MUST report to work. This call-in will be done on a rotating basis starting with the least senior part-time Employee and continuing with the next least senior part-time Employee as the need arises, until all part-time Employees on the seniority list have worked.
3. A part-time Employee who has worked under the mandatory call-in shall not be called again until all other part-time Employees on the seniority list have been called for mandatory call-in.
4. Employees who have worked voluntary hours will be exempted from the mandatory call-in list for one list rotation.

D. Mandatory Full-Time Call-In

If on any given day there is not sufficient part-time Employees available to be called in, then full-time Employees shall be called in per the current labor contract.

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ARTICLE 19

LEAVES OF ABSENCE

1. General Leaves

Any Employee who wishes to absent himself/herself from his/her employment for any reason other than sick leave, funeral, jury duty, or any other reason specifically provided for in this agreement, must make application for a leave of absence from the Employer. Whenever possible all requests for leaves shall be made in writing to the Human Resources Department at least fifteen (15) days previous to the start thereof. The Employer shall determine whether or not justifiable reason exists for granting a leave of absence. No leave shall be granted for the purpose of seeking other employment. The Employee is responsible in contacting the facility and the Human Resources Committee for possible extension.

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ARTICLE 27

SENIORITY

It shall be the policy of the Health Care Centers to recognize seniority. (As used herein the term "seniority" shall mean the period of continuous employment from the last date of hiring.)

1. Lay-Offs: If a reduction of employee personnel is necessary, the last person hired shall be the first person laid off and the last person laid off shall be the first person recalled. The employee(s) exercising a bump must be capable of performing the job without retraining and only with familiarization.

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BACKGROUND AND FACTS

The Grievant was hired by the County on February 19, 1990 to a part-time, day shift Certified Nursing Assistant (CNA) position. The Grievant worked first shift. The Grievant did not have any performance deficiencies or any disciplinary actions.

The Grievant was injured in an off-the-job automobile accident on November 1, 2007. The Grievant used accumulated sick leave from November 1, 2007 through November 12, 2007.

On November 12, 2007 the Grievant submitted an Application for Leave of Absence for the time period November 5, 2007 through December 1, 2007. The medical certification indicated that she was incapacitated for four weeks. The Grievant was approved for Family and Medical Leave for the time period November 1 through December 1.

The Grievant returned to work on December 1, 2 and December 4 with light duty restrictions. The County accommodated the restrictions for three days and then informed her that it could no longer provide accommodation.

On December 24, 2007, the Grievant submitted a second Application for Leave of Absence due to a right shoulder cuff tear. The attached medical certification indicated that the condition commenced on November 1, 2007 and had a probable duration of six to eight months. The Grievant requested leave from December 24, 2007 to March 19, 2008. The County Human Resource office modified both the start date to December 1, 2007 and the return to work date to March 1, 2007. The Human Resources Committee approved the leave on or about January 16, 2008.

On January 19, 2008, the Grievant's right rotator cuff was surgically repaired.

The Grievant submitted a third Application for Leave of Absence on March 7, 2008 seeking to extend her leave to June 18, 2008.

On April 7, 2008 the nursing home administration sent the Grievant the following letter:

Dear Ms. Kassens:

I have received your request for an additional Leave of Absence. Please be advised that your request for a General Leave has been denied based on the staffing needs of the Center. Due to your inability to return to work, and the denial of another leave of absence your employment with Rocky Knoll Health Care Center will be terminated effective with the expiration date of your last leave March 26, 2008.

If you have any questions, please feel free to contact me at (920) 893-9205.

Sincerely,

/s/ Michael J. Taubenheim, NHA
Administrator

The Union filed a grievance on April 14, 2008 asserting an unjust termination. The Grievance was denied at all steps by the County.

Additional facts, as relevant are contained in the DISCUSSION section below.

ARGUMENTS OF THE PARTIES

County

The County's decision to disallow the Grievant a leave of absence beyond six months was a reasonable exercise of its management rights. Article 3 provides the County broad management discretion to take reasonable and necessary steps in order to manage the County in an efficient, cost-effective manner which includes the right of management to determine when and how leaves of absences will be granted.

The County addressed the Grievant's request for leave consistent with Policy 243, Leave of Absence, of the County's Policies and Procedures Manual. If the leave is statutorily guaranteed, then the County follows the statute. Once the employee uses all of her Family and Medical Leave, then the County considers the reasons for which the leave was requested, the needs of the facility and the likelihood of return to work after the leave time expires. The County's use of a straightforward set of criteria that balance the needs of the County with the needs of the employee is appropriate and beyond encroachment by the Union.

The County's decision to deny the Grievant's leave was for justifiable reasons. The County routinely grants leave requests for three to six months, but scrutinizes greater than six month leave requests. The County concluded that the Grievant's return to work was uncertain and given the new structured work schedule, it would not have been in the best interest of the institution to keep her positional slot open. These reasons were reasonable under the circumstances and consistent with both policy and the labor agreement.

Finally, the County's denial of the Grievant's leave request was consistent with past practice. The County rarely grants leaves for greater than six months. In 2008, the County granted a leave to a terminally ill employee who the County knew would never return to work and therefore the County was able to make permanent staff changes. In 2000 and 2005, Employee RO was approved for two leaves of greater than six months and employee RB was approved for seven months in 1999. Since there is no information to determine the particular facts surrounding RO and RB's leaves, it can reasonably be inferred that both were approved following an appropriate exercise of management rights. All of the examples of leave taken establish that leaves in excess of six months are rarely granted and that a past practice of the County making a justifiable decision with respect to six month leaves exists.

Union

The County violated the parties' collective bargaining agreement when it refused to grant the Grievant's medical leave of absence.

The parties' negotiated language requires the County to determine whether or not justifiable reason exists for granting a general leave of absence. If the leave is justified, then the County must grant the request. Acknowledging that the County has the discretion to determine whether a leave is justified, the County may not make its decision in an arbitrary, unreasonable or discriminatory manner. Not only was the County's decision arbitrary, it also was inconsistent with the parties' past practice and custom.

Employees CH, RB, and SD all were granted family and medical leave followed by a general leave of absence. The County approved leaves in excess of six months for all three of these employees. The County's denial of the Grievant's request was arbitrary and inconsistent with past practice.

The County exaggerates the length of the Grievant's consecutive leave. The Grievant returned to light duty after a month of leave on December 1. The Grievant worked three days and then the County determined that no light duty work was available. At that point the Grievant was terminated, even though she had only been on leave for less than four consecutive months. The Grievant's last leave of absence request, had it been granted, would have resulted in a total approved leave of six months and 13 days. The County could have granted the Grievant leave through June 5 - limiting her consecutive leave to six months - but it did not. Instead, the County denied the leave and terminated her employment.

The County's claim that approving the Grievant's leave would have detrimentally affected its operational needs is false. At the time of the Grievant's termination, there were 30 first-shift, part-time CNAs available to work. The County's own administrator admitted that there were sufficient part-time CNAs seeking additional hours in the spring of 2008 to fill the Grievant's hours. The labor agreement provides that these employees are offered vacant shifts.

County in Reply

The County maintains that the decision to deny the Grievant's leave request was reasonable and justified.

The County first points out that it did not deny the Grievant a general leave of absence because she had used all of her FMLA leave as the Union suggests. The Grievant's request was denied because, if granted, she would have extended her leave beyond six months and the County had determined that this was not in the best interest of the County. The Grievant took eight weeks of FMLA leave in 2007 and 12 weeks in 2008. The Grievant's requests, in total, exceeded six months thus causing the County to scrutinize the request. The request was not denied because she had used all her FMLA, rather it was because her return to work was uncertain and scheduling would be difficult due to the scheduling matrix.

The real issue in this case is the ability of the County to exercise its management rights in a way to advance the institution's interest. The language of the labor agreement requires a

justifiable reason. When determining whether the decision was justifiable, the right of the County to run its business in a rational, efficient manner must be the standard. The County made a justifiable decision when it denied the Grievant's request and the grievance should be denied.

Union in Reply

The County claimed in its brief that it relied on Policy 234 which would have required Taubenheim to prepare a recommendation accompanied by work coverage plans and a statement of reasons for his recommendation. No such documents were presented at hearing or to the Human Resources Committee.

The County failed to demonstrate that the needs of the facility were jeopardized by the Grievant's request. The County did not claim an additional hardship or cost if it approved the Grievant's leave request. The County granted CH's request, which exceeded 12 months and they could not possibly have complied with 234 since there was no expectation that CH would return to work.

The County's argument that granting the Grievant additional leave would have caused a lay-off of a less senior employee when the Grievant returned to work is speculative and completely backward. Had the County approved the Grievant's request, that junior employee that "would" have been laid off could have remained at work and they could have waited to see if an opening would become available. If a reduction in staff was necessary, then the less senior employee would have to be laid off and the more senior Grievant returned to work which is the procedure the parties bargained. If a lay off was required when she returned to work, then it is reasonable to conclude that the County was fully staffed in her absence

In direct contradiction to the above argument, the County maintains that if it had approved the leave and later the Grievant returned to work, they would have difficulty filling her position. This is confusing at best! Staffing shortages generally result in employers retaining employees rather than terminating them. The County's decision to deny the Grievant's request was arbitrary.

The County's claim that there was uncertainty with regard to the Grievant's likelihood of return is false. All medical documentation included a probable return to work date. All forms identified the date of injury and included and expected recovery date. The County is attempting to substitute its judgment for that of the medical provider. In fact, the Grievant's actual recovery date was May 2, 2009, well before the six month deadline that the County said it was concerned about. Moreover, the County's decision to focus on this aspect is inconsistent with its approval of RO's leave request since they were fully aware that it was very unlikely that RO would return to work.

The County did not deny the Grievant's request for leave for performance or disciplinary reasons. The County made assertions as to the operational difficulties that would

result if it approved the Grievant's leave, but all assertions lacked proof. The County has approved leave in similar situations in the past. Thus, the County's decision to deny the Grievant's leave was arbitrary.

The Union respectfully asks the Arbitrator to find that the County violated the labor agreement when it arbitrarily denied the Grievant's leave of absence request and terminated her employment.

DISCUSSION

The Grievant was a 17 year employee with the County who was denied a general leave of absence. The County maintains the denial was consistent with its legitimate exercise of management rights while the Union disagrees. This case does not involve the Grievant's use of family and medical leave nor the County's inability to provide light duty work.

Contractual disputes regarding personal leaves of absence center on the reasonableness of management's decision to approve or deny requested leave. Even if management has an express contractual right, its actions must not be arbitrary, capricious or taken in bad faith. Elkouri & Elkouri, *How Arbitration Works*, 6th Ed. (2006) p. 640-641. When the evidence shows that management's criteria are objective, consistent with the parties' negotiated contract language, and have been equitably applied, management's decision will not normally be overturned. *Labor and Employment Arbitration*, Borstein & Gosline, 2nd ed. (Mathew Bender & Co., Inc., 2000) p. 30-22.

Article 3 of the agreement is the Management Rights clause and specifically sets forth the County's expansive right to its "management of the work and the direction of the working forces."

Article 19 of the parties' collective bargaining agreement establishes that the parties bargained a general leave of absence benefit for employees. General leave is distinguished from "sick leave, funeral, jury duty, or any other reason specifically provided for in this agreement" and there is a specific procedure that employees should follow when requesting general leave. Once an employee submits the proper paperwork requesting general leave, the County "shall determine whether or not justifiable reason exists for granting a leave of absence." The County therefore has the reserved right to approve or deny general leave requests, but that right is expressly restricted to making a determination as to whether the leave is justified. The County has a policy that establishes the criteria it shall use to determine justification. That policy, the County Leave of Absence policy, reads as follows:

A. POLICY

Any employee who wishes to request a leave of absence, for any reason other than sick leave (if more than three days), funeral, jury duty, approved benefit time, or other reason specifically provided for in the

various labor agreements, must make written application for a leave of absence. The Human Resources Committee shall determine whether or not justification exists for granting a leave of absence. No leave shall be granted for the purpose of seeking other employment. An employee requesting leave under the Family and Medical Leave Act shall follow the provisions of Policy "FAMILY AND MEDICAL LEAVE ACT".

B. PROCEDURE

(1) Any employee wishing to take a leave of absence shall submit a written request for such leave to his or her department head at least thirty (30) days in advance of such leave, except in emergencies such as funerals. The employee must complete the request for leave of absence forms provided by the Human Resources Department for submission to the Human Resources Committee.

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(4) An unpaid leave of thirty (30) or more (sic) shall adjust the longevity date by the actual days of the unpaid leave. The number of hours earned for vacation and sick leave shall be prorated based on the number of hours paid. An unpaid leave of absence of less than thirty (30) days shall be disregarded toward the calculation of fringe benefits, such as vacation or longevity.

(a) In General. All requests for leave of four or more days must be approved by the Human Resources Committee. All such requests shall be accompanied by a written recommendation of the employee's department head, which shall include the department's plan to cover the absent employee's work duties during the leave by:

- (1) Reallocation of work among other employees,
- (2) Hiring one or more LTEs and/or
- (3) Outsourcing

The projected costs of the department's plans shall be included in the department head's recommendation.

(b) Interrelationship with Family and Medical Leave (FMLA). The length of leave granted under this policy that qualified as leave time and Medical Leave Act time,

shall be counted as Family and Medical Leave (FMLA) time.

- (c) Leaves Exceeding Six Months. The Human Resources Committee may not grant a leave of absence exceeding six months in length including FMLA, without positive written recommendation by the department head and the operating committee that supervises the employee's department. The recommendations shall address the work coverage plans and projected costs called for in (a) above, and shall also include a statement of reasons for the positive recommendations. Except as permitted by (d) following, leaves shall not be granted for more than twelve months.
- (d) Leaves Exceeding Twelve Months. Leave exceeding twelve months in length, including FMLA may be granted by the Human Resources Committee only if the following criteria are present:
 - (1) The reason for the leave request is the employee's personal medical condition;
 - (2) The employee's recuperation/recover has not been completed by the end of the twelve month period,
 - (3) The employee's treating physician has submitted a written report to the Human Resources Department setting forth the employee's condition, summary of treatment, prognosis, and assurance that the employee is expected to be able to return to work not later than eighteen months after the commencement of the leave of absence, and
 - (4) The Human Resources Committee concludes it is in the best interest of the County to do so.

Leaves exceeding twelve months in length will rarely be granted. In no event may the Human Resources Committee grant a leave exceeding eighteen months in length.

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The Grievant submitted three requests for general leave. The first two were approved and the third is the subject of this grievance. All three were for medical reasons arising out of an off-the-job automobile accident injury. The County characterizes the third request as different than the first two because it was for more than six months. I do not find this differentiation to be contractually relevant nor policy based. The parties' labor agreement does not make a distinction between general leaves less than six months or greater than six months and therefore the same standard should apply. Moreover, the language of the Leave of Absence policy, section 4, sub-section (c), does not differentiate between whether the six months is cumulative or a single request for greater than six months. In as much as sub-section (c) incorporates the standards of sub-section (a) and therefore the same criteria are considered, it does not affect the outcome of this decision.

The County Human Resources Committee denied the Grievant's third general leave request. The Grievant's department head did not support the request and did not submit a positive recommendation to the committee. The County's letter to the Grievant denying her leave request stated the denial was "based on the staffing needs of the Center." The County articulated that the denial was due to the negative impact that the Grievant's absence would have on the recently implemented staffing matrix and the uncertainty of the Grievant returning from leave.

I start with the staffing issue. The County's leave of absence policy requires that the department head consider how it will cover the absent employee's work duties and specifically, whether the work can be reallocated or if a limited term or outsourced employee could cover the duties. Rocky Knoll Administrator Mike Taubenheim testified that the Grievant's extended absence would have created a significant hole in the new scheduling matrix and if the County was required to cover her position temporarily, it would have not allowed for "steady, even, predictable staff each day." While I can understand Taubenheim's belief that the Grievant's absence was not ideal given his desire for predictability, he was expected to determine *whether the work could be reallocated* and not whether he preferred to reallocate the work. This distinction is significant.

The scheduling matrix was implemented at the nursing home by at least February 3, 2008. The matrix designates a specific employee to a specific rotating schedule which the County calls a "slot". The Grievant's third general leave request was submitted on March 7 for the time period March 1 through June 18. Thus, at the time that Taubenheim and the County were addressing the Grievant's third general leave request, the matrix had already been in effect and the County had been able to cover for the Grievant's already approved general leave absence for greater than one month's time.

The evidence establishes that in addition to the part-time employees that were available to cover the Grievant's slot, there were employees on lay off as a result of the County closing a nursing home. Taubenheim confirmed that there were employees available and willing to work the Grievant's shift. The County had sufficient staff to cover the Grievant's work duties.

The County argues that approval of the Grievant's general leave request would have resulted in an employee being laid off when the Grievant returned to work. This was so because the County had recently closed another County nursing home and the less senior CNAs had been laid off. The Union and County negotiated lay off language that valued seniority when positions were eliminated and obligated the County to lay off less senior employees if it was necessary to reduce the work force. The fact that a less senior employee would need to be laid off when the Grievant returned to work was not relevant to determining whether the Grievant's request was justified.

Next, the County based its decision on its conclusion that the Grievant's likelihood to return to work was uncertain. County Administrator Michael Collard testified that the documentation submitted suggested that the Grievant's likelihood to return to work was uncertain. The Grievant's third general leave request was submitted to Human Resources on March 7. Attached to the request was a Certificate of Health Care Provider completed by her physician which identified the date her condition commenced as January 9, 2008 (the date of her surgery), indicated a probable duration of four to six months and indicated that she would be able to return to work in three to four months. The third second general leave request medical form indicated a six to eight month recovery following her November 1, 2007 injury. These two forms are consistent. The County had no legitimate factual basis to conclude that the Grievant would not return to work as her physician opined. In fact, the Grievant was released to work without restrictions on May 2, 2008 which was earlier than her physician had anticipated.

Both the County and the Union rely on the parties' past practices in support of their positions. The County maintains that past practice supports the conclusion that it has rarely granted leaves in excess of six months while the Union argues that past practice establishes that the County has approved leaves in excess of six months. Both the County and Union accept the content of a table, created by the Union, which summarizes employees who have requested general leave in the past and their approved leave.

Table 1

Employee	Longest Consecutive Non-Intermittent Leave	Longest Consecutive Combined Intermittent and Non-Intermittent Leave	Longest Total Leave in One Calendar Year	Leave in Excess of FMLA?
CH	8 months and 9 days	16 months and 25 days	10 months and 9 days	Yes
RO	9 months and 17 days	10 months and 24 days	8 months and 7 days	Yes
RM	5 months and 22 days	5 months and 22 days	5 months and 22 days	Yes
SD	7 months and 13 days	7 months and 13 days	7 months and 13 days	Yes
RO aka RB	5 months	5 months	5 months and 23 days	Yes
RB	4 months	4 months	5 months	Yes
Grievant	6 months and 13 days	6 months and 13 days	5 months and 18 days	Yes

The table establishes that the County has approved leaves greater than six months in the past, yet the reasons for the approval are lacking in the table and in the record. Evidence of denied leave requests was not offered. Given the lack of a rationale as to why the leave was granted and the absence of denied requests, I am not persuaded by the County past practice argument. Similarly, I am unwilling to conclude, as the Union maintains, that a past practice of approving leaves in excess of six months exists and therefore the County's actions with regard to the Grievant were arbitrary. To find as the Union suggests would negate the right and obligation of the County to evaluate individual general leave requests and when the circumstances of the leave request are not justified, deny the request.

In summary, the County was obligated to determine whether there was justification for the Grievant's general leave request. The Leave of Absence policy required that the County consider how the work would be performed in the Grievant's absence, in addition to considering the costs. The County had at its disposal qualified employees to whom it could have reallocated the Grievant's hours at the same or similar cost as the County would have paid the Grievant. The County failed to comply with the criteria it established to determine whether a leave request is justified and therefore its decision to deny the Grievant's general leave of absence cannot be upheld.

AWARD

1. Yes, the County violated Article 19 of the collective bargaining agreement when it denied the Grievant's leave of absence request and terminated her employment.
2. The appropriate remedy is to immediately reinstate the Grievant and to make her whole for the losses attributable the period of her termination.
3. The undersigned will retain jurisdiction in the matter for a period of not less than sixty days following the date of this Award for the sole purpose of resolving disputes over remedy.

Dated at Rhinelander, Wisconsin, this 11th day of September, 2009.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator

LAM/gjc
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