

BEFORE THE ARBITRATOR

---

In the Matter of the Arbitration of a Dispute Between

**LOCAL 348, AFSCME, AFL-CIO**

and

**PORTAGE COUNTY**

Case 210

No. 68

MA-14386

(Pro-rated Medical Appointment Grievance)

---

**Appearances:**

**Mr. Houston Parrish**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1457 Somerset Drive, Stevens Point, Wisconsin, appearing on behalf of Local 348.

**Mr. Blair Ward**, Corporation Counsel, Portage County, 1462 Strongs Avenue, Stevens Point, Wisconsin, appearing on Portage County.

**ARBITRATION AWARD**

Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter "Union," and Portage County, hereinafter "County," requested a list arbitrators from the Wisconsin Employment Relations Commission from which to select a staff arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was selected to arbitrate the dispute. The hearing was held before the undersigned on April 13, 2010, in Stevens Point, Wisconsin. The hearing was transcribed. The parties submitted briefs and reply briefs, the last of which was received by June 24, 2010 whereupon 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 there were no procedural issues in dispute, but were unable to agree as to the framing of the substantive issues.

The Union frames the substantive issues as:

Whether the County violated Article 13, Section F, of the collective bargaining agreement when it prorated the medical appointment time of some part-time employees? If so, what is the appropriate remedy?

The County frames the substantive issues as:

Whether the County violated Article 13, Section F and Article 22 of the collective bargaining agreement when it prorated the medical appointment time of some part-time employees? If so, what is the appropriate remedy?

Having considered the record and arguments of the parties, I accept the Union's framing of the issue.

### **RELEVANT CONTRACT PROVISIONS**

...

#### **ARTICLE 8 – GRIEVANCE PROCEDURE**

##### **H) Arbitration**

1. **Time Limit:** If a satisfactory settlement is not reached in Step 3, the Union must notify the Human Resources Committee in writing within ten (10) days that they intend to process the grievance to arbitration.
2. **Selection of Arbitrator:** In the event of grievance arbitration, the parties agree to request a panel of five (5) arbitrators from the staff of the Wisconsin Employment Relations Commission (WERC). The parties will alternately strike a name from the panel provided by the WERC until one arbitrator's name remains. The parties shall flip a coin to determine which party shall choose to strike first or second. The petitioning party shall request that the remaining arbitrator be assigned as sole arbitrator of the grievance. If the remaining arbitrator is not available to arbitrate the grievance, a new panel shall be requested and the striking procedure shall be repeated. If the WERC should determine that they will not provide a panel, the WERC shall assign an arbitrator from its staff, who shall serve as sole arbitrator.
3. **Arbitration Hearing:** The arbitrator selected or appointed shall meet with the parties at a mutually agreeable date to review the

evidence and hear testimony relating to the grievance. Upon completion of this review and hearing, the arbitrator shall render a written decision which shall be final and binding upon both parties.

4. Decision of the Arbitrator: The decision of the arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to the interpretation of the contract. The arbitrator shall not modify, add to, or delete from the express terms of the Agreement.
  5. Costs: All expenses incurred in connection with the arbitrator shall be borne equally by the County and the Union. Either party may request a transcript. If both parties agree that there shall be a transcript, the parties shall share any costs related to the transcript. If only one party requests a transcript, they shall bear the cost of the same. However, if only one party requests a transcript and the arbitrator asks for a copy of the transcript, the parties share in the cost of the arbitrator's copy.
  6. Witnesses: County employees of the bargaining unit appearing as witnesses shall not suffer a loss of wages during the period of time that they are required to testify at an arbitration hearing, provided the employee(s) notifies the employee(s)' immediate supervisor at least two (2) days in advance of the hearing, if possible.
  7. Single Arbitrator: The parties may agree to single arbitrator who shall be a member of the Wisconsin Employment Relations Commission.
- I) Past Grievances: Past grievances may not be filed under the provision of this procedure and all grievances filed which bear a filing date which precedes or is the same as the expiration date of this Agreement must be processed to conclusion under the terms of this procedure.

...

#### **ARTICLE 10 – LEAVE OF ABSENCE**

- A) Personal Leave: Up to ten (10) unpaid days per year may be approved at the sole discretion of the Department Head.

...

- C) Military Leave: Leaves of absence shall be automatically granted for all full-time employees who are called or volunteer for military service.
- D) Maternity Leave: Whenever an employee becomes pregnant, she shall furnish the County with a statement from her physician stating the approximate date of delivery. The employee shall be granted maternity leave of absence after presenting medical verification that she is unable to perform her normal duties and responsibilities. Medical evidence shall be the basis of determining when maternity leaves will commence and conclude. So long as required by state and/or Federal law, any sick leave the employee may have upon commencement of the leave may be applied to the leave. The seniority of an employee on maternity leave shall accumulate during said leave.
- E) Armed Forces Leave: An employee who is a member of the National Guard, navy militia, or a member of other reserve components of the armed forces of the United States, shall be entitled to leave of absence from their respective duties without loss of pay for such time as they are in military service and field training or active duty for periods not to exceed fourteen (14) days in any calendar year. Employees covered by this provision shall receive the difference between their normal straight time pay and any compensation received for such duty.
- F) Extended Sick Leave: All employees shall be granted an extended leave of absence without pay not to exceed one (1) year beyond the accumulation of paid sick leave during periods of lengthy illness or disability so certified by a medical doctor. During such leaves, seniority shall be retained but will not accumulate. Seniority will accumulate during periods of paid sick leave only. It is understood that the employee must return to work if the illness or disability ends prior to the termination of the leave. The County reserves the right to have an employee on leave examined by a physician of its own choosing at no cost to the employee.
- G) Civil Leave: An employee shall be given time off without loss of pay when performing jury duty, when subpoenaed to appear in court, public body or commission, in connection with County business, or for the purpose of voting. In the case of jury duty, the employee shall remit his jury fee to the County. If the employee does not remit the fee, he shall be considered to be on a leave of absence without pay while performing jury duty.

A leave of absence without pay shall be granted an employee, upon the employee's request, to appear under subpoena or on the employee's own behalf, in litigation involving personal or private matters.

Time off for voting shall be granted only if the employee cannot vote on non-business hours.

#### **ARTICLE 11 – HOLIDAYS**

- A) Holidays - Courthouse, Gilfry, Library: All regular full-time and regular part-time employees shall be granted the following holidays with pay, except as provided in paragraphs B), C), and D) bellows:

...

- B) Holidays – Health Care Center: The following days shall be declared paid holidays for the Health Care Center employees:

...

- C) Holidays – Highway Department: All regular full-time and regular part-time employees shall be granted the following holidays with pay.

...

- D) Holidays – Communications Technician: The following days shall be declared paid holidays for the Communication Technicians:

...

- G) Regular Part-Time Employees: Regular part-time employees shall receive a pro-rated share of the above 10 holidays. For Part-Time Bus Drivers, Adult Day Center Aides, and Dining Site Managers, when a holiday falls on what would otherwise be the employee's scheduled work day, the employee shall receive a paid holiday in the number of hours they would otherwise have been scheduled to work.

...

#### **ARTICLE 12 – VACATION**

- A) Annual: Each full-time employee shall be eligible for vacation with pay as follows:

...

### **ARTICLE 13 – SICK LEAVE**

- A) Monthly Accrual: All employees will accrue one day of sick leave per month with no limit on the total accumulative total.

...

- F) Medical Appointments: Employees, including part-time employees, shall be allowed necessary time off with pay up to a maximum of two (2) hours during working hours for physician, chiropractor, optometrist, ophthalmologist, dentist, mental health clinician, nurse practitioner, physician assistant, physical therapist, occupational therapist and/or speech therapist appointments. Time in excess of two (2) hours per appointment shall be deducted from sick leave. Such appointments shall be made during non-working hours whenever possible. Medical appointment time over ten (10) hours per year will be deducted from sick leave.

...

### **ARTICLE 14 - BEREAVEMENT LEAVE**

- A) Immediate Family: In the event of a death in the immediate family of an employee, such employee will be paid for time lost from scheduled work to attend the funeral and either ...

...

### **ARTICLE 15 – FAMILY ILLNESS**

- A) Family: In the event of illness or injury in an employee's immediate family, absence up to and including six (6) days (48 hours) per calendar year will be allowed without loss of pay. Such time off shall be charged to accumulated sick leave.

...

### **ARTICLE 16 – INSURANCE**

- A) Health Insurance: Each new employee is eligible for health insurance coverage, to be effective no sooner than the first of the month following date of hire or the first of the month following thirty (30) days if hired

after the 15<sup>th</sup> of the month. The County shall pay ninety percent (90%) of the cost of the single plan or family plan.

...

- E) Life Insurance: Group life insurance in the amount equal to the next one thousand dollars (\$1000) of the employee's annual wages will be made available to full-time employees. The County will pay the full cost of the premiums. All newly hired employees shall be eligible for the insurance coverage on the ninety-first (91<sup>st</sup>) day after beginning employment.

...

- G) Disability Insurance: Employees are eligible for coverage under the County's disability insurance plan, with the County paying one hundred percent (100%) of the premium; however, employees must fulfill the underwriting requirements of the policy.

...

#### **ARTICLE 17 – LONGEVITY**

- A) Annual Earnings: Employees who have completed five (5) years of service shall receive a longevity payment based on the following schedule:

...

#### **ARTICLE 18 – RETIREMENT**

The Employer agrees to pay the employee's share of the retirement contributions up to six point five percent (6.5%) of the employee's gross earnings to the State retirement fund in addition to the Employer's share of the contribution.

...

#### **ARTICLE 22 – PART TIME EMPLOYEES**

All benefits addressed in this contract shall be prorated for regular part-time employees based upon the number of hours worked. Exception: Nutrition Assistants are entitled to call-in pay when called in. It is understood between the

parties that the underwriter's regulations for life insurance (35 hours per week), health insurance (16 hours per week), disability insurance (30 hours per week), and the Wisconsin Retirement Fund rules and regulations (600 hours per year) shall control those provisions.

### **BACKGROUND AND FACTS**

This grievance was filed on behalf the entire bargaining unit, Local 348, although it was initially initiated at the County Landfill. Local 348 represents all full-time and part-time nonprofessional employees and nutrition assistants in the Courthouse, Courthouse Annex, Housing Authority, Law Enforcement Center, Solid Waste Department, Health Care Center, Department of Health and Human Services, Library, Highway Department, Aging and Disability Resources Center, Community Care, and Portage House. Of the 26 departments/offices, approximately 12 employ part-time employees.

At all times relevant herein, Collene Ottum served as Local 348 President. In May 2008, a part-time bargaining unit employee, Sarah Rogers, contacted Ottum and explained that her (Rogers') supervisor had told her that she was only entitled to seven and one-half hours of paid medical appointment time. Rogers' inquiry prompted Ottum to direct an e-mail to Laura Belanger-Tess, County Personnel Director, on or about May 12, 2008 seeking clarification on a variety of issues including medical appointments. Ottum's questions on these topics read as follows:

The second issue is that of Family Illness time. I am told that the 6 days (48 hours) is being pro-rated for part-time employees. If you remember, the arbitration from which that settlement resulted was filed on behalf of a part-time employee. Therese Freiberg issued a memo to department heads about the issue reiterating that this benefit is not to be pro-rated for part-time employees. Perhaps it would be time to remind department heads again of this.

The third issue is medical appointments. Again, I am told that this benefit (10 hours per year) is being pro-rated for part-time employees. Contract language is very clear on this - Article 13(F): Employees, including part-time employees shall be allowed necessary time off with pay up to a maximum of two (2) hours during working hours...Medical appointment time over ten (10) hours will be deducted from sick leave.

Belanger-Tess responded on May 12, 2008 as follows in relevant part:

My understanding is that Family Illness is not being pro-rated for part-time employees. If you have a specific example I will be happy to look at this.

My understanding is that medical appointment time is to be prorated for part-time employees the reference "including part-time employees" is meant to



indicate part-time employees are eligible for medical appointment time because at some point they were not and all medical appointments for them were supposed to be made outside of working hours.

After Ottum received Belanger-Tess' response, she replied and explained the reasons the Union disagreed with the County's interpretation.

On May 16, 2008 the Union filed a grievance contending that the County had violated Article 13 (F) by "...inappropriately pro-rating medical appointment time for part time employees." The grievance was processed through the grievance procedure and denied by the County Human Resource Committee on August 7, 2009 thereby placing it properly before the Arbitrator.

### DISCUSSION

This grievance arises out of the County's application of Article 13 to part-time employees of the bargaining unit. The County argues that since the parties did not specify that the paid ten hour accumulation for medical appointment time is for part-time employees, then Article 22 applies and the benefit must be pro-rated. In contrast, the Union argues that the ten hours of paid medical appointment time is available to all employees, "including part-time," as the contract provides.

This is a contract interpretation case. The parties' dispute arises out of the meaning of their labor agreement. Contract interpretation is the determination of meaning. Elkouri & Elkouri, *How Arbitration Works*, 6<sup>th</sup> Ed. (2006) p. 430. Language is clear when it is susceptible to one convincing interpretation, but may be deemed ambiguous if there is more than one plausible interpretation. *Id.* At 434. If the plain meaning of the language is clear, it is unnecessary to resort to extrinsic evidence. *Id.* If the language of the agreement is ambiguous, it is necessary to look to extrinsic evidence to determine meaning. Relevant extrinsic evidence includes bargaining history, past practice and the parties' course of dealing. *Id.* at 438. See also St. Antoine, *Common Law of the Workplace*, (1998) p. 68.

I start by noting that this dispute involves two contract clauses, Article 13 and Article 22. Article 22 of the labor agreement provides that, "All benefits addressed in this contract shall be prorated for regular part-time employees based upon the number of hours worked..." This language is clear, unambiguous, and straight forward. This language supports the County's position.

Moving to Article 13, Section F, it provides in the first sentence that, "[e]mployees, including part-time employees, shall be allowed necessary time off with pay up to a maximum of two (2) hours during working hours for physician, chiropractor, optometrist, ophthalmologist, dentist, mental health clinician, nurse practitioner, physician assistant, physical therapist, occupational therapist and/or speech therapist appointments." This sentence permits all employees up to two hours during working hours to attend medical appointments

with any of the identified providers. Further, it specifically states that part-time employees are entitled to this benefit and that the time away from work is with pay, so long as the employee is seeking the services of one of the listed health care service providers. The provision of this benefit to part-time employees directly contradicts the language of Article 22 and creates a dilemma – which clause is controlling?

Article 22 is a general clause. The meaning of a general provision is restricted by more specific provisions of the labor agreement. As the Restatement explains:

People commonly use general language without a clear consciousness of its full scope and without awareness that an exception should be made. Attention and understanding are likely to be in better focus when language is specific or exactly, and in case of conflict, the specific or exact term is more likely to express the meaning of the parties with respect to the situation than the general language.

Mathew Bender & Co. Inc., *Labor and Employment Arbitration*, 2<sup>nd</sup> Ed., p 9-15-16 (2002) citing “Restatement (Second) of Contracts” at Section 203.

In contrast to Article 22, the language of Article 13, Section F, is specific. Section F creates a benefit, sets eligibility standards and directs the manner in which the benefit’s usage will be approved as medical appointment time or sick leave time. Any conflict between the two sections must be resolved accepting that the parties’ intentions are contained in Article 13 given its specificity. I therefore return to the remaining portion of Article 13, Section F.

Sentence number two reads, “[t]ime in excess of two (2) hours per appointment shall be deducted from sick leave.” This sentence modifies the first sentence, addresses those appointments that exceed two hours, and directs that any appointment time greater than two hours shall be deducted from sick leave. The third sentence, “[s]uch appointments shall be made during non-working hours whenever possible,” modifies the second sentence. It refers to “such appointments” and directs that they shall be made during non-working hours. Since the first sentence specifically stated that the two hour or less appointments could be taken during the work day, it is reasonable to conclude that sentence number three is modifying sentence number two and that “such appointments” are those appointments which exceed two hours. I find sentences two and three to be clear and unambiguous.

The last sentence of Section F is the cause of this dispute and provides that, “[m]edical appointment time over ten (10) hours per year will be deducted from sick leave.” This sentence creates a cumulative benefit of ten paid hours per year for medical appointments and directs that any hours in excess of ten per year will be deducted from sick leave. This relates to the benefit provided for in sentence one. The fourth sentence of Section F cannot be isolated from the rest of the clause. All four sentences relate to one another and no reasonable interpretation of the clause allows for the conclusion that the parties intended that they be pulled apart. As such, I conclude that the ten-hour medical appointment benefit is available to

part-time employees and there is no contractual authority in Section F which allows the County to prorate the benefit.

The County concludes sentence four is a stand alone sentence and the ten hour benefit is subject to proration consistent with Article 22. I disagree. The fourth sentence relates to the remainder of the section and provides the cumulative cap for allowable medical appointment time before an employee would need to use sick leave. Relevant to this analysis is the interpretive principle:

The primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties and to interpret the meaning of a questioned word, or part, with regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions.

Elkouri at 462.

Sentence four must be read in concert with the other three sentences of Section F. There is nothing in sentence four or in any other sentence of this section which indicates that the parties intended to disconnect it from the other sentences of the clause.

Even if I were to find that the County's reading of section plausible, the extrinsic evidence supports the Union's position.

### **Bargaining History**

The parties agreed to provide employees paid time off for medical appointments almost 25 years ago when it included Article 13, Section F in the 1986-1987 labor agreement. At that time, the contract clause provided:

Medical Appointments: Employees shall be allowed necessary time off up to a maximum of two (2) hours during working hours for physicians, ophthalmologist or dental appointments. Time in excess of two (2) hours shall be deducted from sick leave. Such appointments shall be made during non-working hours whenever possible. When requested by the County, the employee shall submit a statement from the doctor certifying his/her appearance at the doctor's office.

This language remained unchanged until the 1998-1999 agreement when the County proposed as follows:

...

F. Medical Appointments:

Change to:

Dentist-Doctor Appointments: An employee shall be allowed time off from Work for an appointment with a dentist or doctor; however, such time off shall be deducted from the employee's sick leave accumulation. The amount of sick leave deducted shall be two (2) times the actual time used. (Example: One hour off – two hours deducted; two hours - four hours deducted, etc., and the hour off shall be calculated to the nearest hour). This time shall be deducted from the employee's previous accumulation and not from the current month's earned sick leave. Upon return to work, the employee shall present the Employer with a signed appointment slip from the doctor or dentist substantiating the appointment (appointment slip to be provided by the County). Such appointments should be made during non-working hours, whenever possible.

...

The Union also wanted to change the language for the 1998-99 agreement and proposed:

Article 13(F) – Medical Appointments. Add chiropractor appointments if scheduled as part of a workers compensation claim.

The parties ultimately reached a tentative agreement and Gerald E. Lang, County Personnel Director, forwarded a Labor Agreement Summary to Jeff Wickland, AFSCME Local 348 President. <sup>1</sup> Article 13, Section F – Medical Appointments, as Lang drafted, read as follows:

...

2. Article 13 – Sick Leave

F. Medical Appointments

Add: Medical appointment time over sixteen (16) hours per year will be deducted from sick leave and is pro-rated for part-time employees.

...

---

<sup>1</sup> The County argued that Lang's language to prorate for part time employees was an attempt to codify current practice. The problem with the County's argument was that at no time did the County propose such a language change nor was there any reason for the County to be prorating the cumulative medical leave benefit prior to the 1998-1999 collective bargaining agreement since there was no cap on the amount of medical appointment time an employee could use.

Wickland did not agree to the County's language on pro-ration for part time employees and responded on March 4, 1998 stating:

2. The reference to pro-ration for part-time employees should be deleted. I recommend the second sentence rewritten as follows:

*"Time in excess of two (2) hours or in excess of sixteen (16) hours per calendar year shall be deducted from sick leave."* (Italic in original).

Lang accepted Wickland's language and Article 13, Section F was modified to read (new language underlined):

F) Medical Appointments: Employees shall be allowed necessary time off up to a maximum of two (2) hours during working hours for physician, ophthalmologist or dental appointments. Time in excess of two (2) hours per appointment or sixteen (16) hours per calendar year shall be deducted from sick leave. Such appointments shall be made during non-working hours whenever possible. When requested by the County, the employee shall submit a statement from the doctor certifying his/her appearance at the doctor's office.

...

Thus, the parties negotiated and the Union specifically rejected prorating the medical appointment cumulative total for part-time employees. This outright rejection elevates the County's obligation to show that the parties intended to prorate the amount of medical appointment time that was available for part-time employees. A party may not obtain through arbitration what it could not acquire through negotiation. See Elkouri at 454 citing U.S. POSTAL SERV. V. POSTAL WORKERS, 204 F.3D 523, 530, 163 LRRM 2577 (4<sup>th</sup> Cir. 2000).

Again in the 2000-2002 labor agreement, the parties bargained the language of Article 13, Section F. The modifications, with new language (underlined) were as follows:

Employees, including part-time employees, shall be allowed necessary time off with pay up to a maximum of two (2) hours during working hours for physician, chiropractor, optometrist, ophthalmologist, dentist, mental health clinician, nurse practitioner, physician assistant, physical therapist, occupational therapist and/or speech therapist appointments. Time in excess of two (2) hours per appointment shall be deducted from sick leave. Such appointments shall be made during non-working hours whenever possible. Medical appointment time over ten (10) hours per year will be deducted from sick leave.

Not only was language added to include part-time employees, but the approved providers was increased and the amount of paid time decreased from 16 hours to ten hours.

Both the Union and the County offered a witness at hearing that was involved in bargaining the 2000-2002 labor agreements. Union President Collene Ottum testified that the Union proposed the language contained in Article 13, Section F and further, that this language is the same as contained in the County's agreement with OPEIU, another bargaining unit which represents the County professional employees. Ottum testified it was her understanding when proposing the OPEIU language that leave time for medical appointments was not prorated for part-time employees. She further indicated that at no time during the bargaining process did the County indicate a desire to prorate the cumulative leave benefit nor was it discussed.<sup>2</sup>

County Personnel Director Laura Belanger-Tess testified that in exchange for expanding the number of providers that employees could use for medical appointments, the Union agreed to reduce the 16-hour cap to a ten-hour cap. Belanger-Tess indicated that there was no discussion regarding the inclusion of "including part-time employees" or the impact of implementing the language for the Union.

The evidence establishes that the Union declined to add language to the labor agreement in 1998-1999 that would prorate the medical appointment time benefit for part-time employees. While the language of the Section F changed in the 2000-2002 agreement, the changes that were discussed and agreed to by the parties did not address the proration of the cumulative cap for part-time employees. The Union focused on expanding the provider list and the County focused on reducing the maximum number of hours available for medical appointment time. The failure of the parties to discuss proration or the intended meaning of the inclusion of "including part-time employees," reasonably allows for the conclusion that neither side anticipated that there would be any change in the manner in which the benefit was administered. This failure, coupled with the Union's prior rejection of prorating the medical appointment time accumulation supports the Union's position. I now move to how the parties administered the language.

### **Parties Manner of Dealing**

I start by noting that part-time employees have utilized the medical appointment benefit since the early 1980s even though the language did not specifically identify part-time employees as beneficiaries. Since there was no cap on the amount of time available for medical appointments, there was no reason or means to prorate the maximum number of paid hours available per year for a part-time employee.<sup>3</sup>

---

<sup>2</sup> Ottum explained in a May 12, 2008 e-mail to the County that the parties' intent when adding the language "including part time employees" to the 2003-2004 labor agreement was "in order to clarify and codify how the benefit is applied." Jt. Ex. 5. But, the fact that the "including part time employees" clause was never discussed with the County negates any reliance on the Union's undisclosed interpretations and understandings.

<sup>3</sup> Janet Zander, County Director for the Aging and Disability Resource Center, testified that the two hour medical appointment benefit was prorated for part-time employees in her Department. This record establishes that this was the only department that prorated the two hour medical appointment time benefit.

When the language changed in the 1998-1999 agreement, the parties agreed to a maximum of sixteen hours that an employee could use per year. Belanger-Tess testified that when this occurred, she was directed by then Personnel Director Theresa Freiberg to “prorate or advise departments to prorate the sixteen-hour cap based on the Article 22 part-time employees’ language.” Tr. 97 She also testified when asked about County departments that were not prorating the benefit, that it was her understanding “that any department that asked us if they should prorate or not, we indicated, yes, per the Article 22 part-time employees.” Tr. 100 Belanger-Tess’ testimony is inconsistent in that it presents two different scenarios by which a department would become aware that proration was expected; either she issued a memorandum which directed departments to prorate or she directed them to prorate only after the department posed a question to the human resources department. I do not believe a memorandum was ever issued. Had one been issued, I am confident that the County would have offered it as an exhibit and it did not do so. Moreover, Director for the Aging and Disability Resource Center, Janet Zander, testified that she did not receive a memorandum directing her to not prorate the medical appointment time. Given this testimony, I am certain that had a memorandum been issued, Zander would have indicated as such.

The record is incomplete as to which departments in 1998 were prorating, but as of the filing of this grievance, Belanger-Tess testified that half of the departments were prorating and half were not. In e-mail correspondence in February 2009, Ottum asked Belanger-Tess how many departments prorated medical appointment time for part-time employees and Belanger-Tess responded:

The following is the information I have from departments that came from a separate survey.

ADRC, P&Z, Child Support, Maintenance and UW-Extension all prorate for part-time employees. Library does not. Clerk of Courts responded they don’t have part-time employees. Those were the departments that responded.

Cty Ex. 8

Health and Human Services and the Health Care Center are two of the largest departments and neither department prorates medical appointment benefits. The Aging and Disability Resource Center has 12 part-time employees and it prorates both individual appointments and the cumulative cap for medical appointments since 1998.<sup>4</sup> The Union leadership was unaware that some County departments were prorating part-time employee medical appointment time.

The County employs part-time employees in 12 of their 26 departments. The record establishes that the Aging and Disability Resource Center prorates benefits. At best, four additional departments prorate. Ottum’s testimony that she was unaware of individual

---

<sup>4</sup> Zander testified on direct examination that she did not receive a memorandum which directed that she not prorate the medical appointment time, and therefore she believed she was authorized to prorate the time. Based on this testimony, it is reasonable to conclude that Zander did not receive any memorandum directing her to prorate the benefit for part-time employees.

department's prorating part-time employees' Section F benefits is credible and her reaction once she became aware of the facts underlying this grievance support her credibility. While the Union was surprised by the fact that five departments were prorating, the County knew or should have known that it was not prorating the benefit in the remaining seven departments. Ultimately, the record provides that there is no consistent past practice with regard to implementation of the ten-hour maximum use of medical appointment time, but further, that not prorating was acquiesced to by the County.

### **Other Clauses of the Entire Labor Agreement**

Medical appointment leave time is one benefit of many offered to full-time and part-time employees of the County. Other benefits include leaves of absence, holiday leave, vacation leave, sick leave, bereavement leave, retirement, longevity, and insurance. The labor agreement establishes that the parties are versed in how to draft language that specifically includes and excludes part-time employees.

Zander testified that there were two sections in the labor agreement that create exceptions to the pro-ration for part-time employees; the family illness time section and the holiday pay section. Article 15, Family Illness, provides employees with six days (48 hours) of leave for the purpose of caring for a family member. This article does not contain language that grants part-time employees the six days and therefore a strict reading of the language would place the six days subject to proration pursuant to Article 22. Interestingly, the record establishes that the County has agreed to extend this the six days to all employees and explains that it "made a specific policy decision not to prorate this benefit and to give part-time employees the same amount of family illness leave as full-time employees." Cty Br. p. 16. The County's policy decision is inconsistent with the terms of the labor agreement, thus it lends credence to the Union's argument.

The County argues that finding for the Union will effectively render meaningless Article 22 of the labor agreement. Finding that Article 13, Section F has been specifically excluded from proration of benefits for regular part-time employees does not render meaningless Article 22. Rather, it attaches meaning to the language of Article 13, Section F as the parties intended and allows Article 22 to guide those other clauses of the labor agreement where the parties have not specifically granted the benefit to part-time employees.

### **Conclusion**

The record provides that the plain meaning of Article 13, Section F can be ascertained from the language. The parties bargained a medical appointment benefit for all employees, including part-time employees, and that benefit includes paid leave for appointments with delineated medical providers of two hours or less up to a maximum of ten hours per year. That reading of Article 13, Section F is supported by the bargaining history and other sections of the labor agreement. There is no pattern or controlling practice that establishes how the parties intended to implement Section F and therefore the County has not overcome its burden



of showing that the parties did not intend to prorate part-time employees' cumulative medical appointment time.

The County argues that equity dictates that part-time employees' medical appointment time should be prorated since they work less hours than full time employees. Regardless of whether I agree or disagree with the County's equity based argument, my authority is grounded in interpreting the terms and conditions of the labor agreement. The labor agreement provides part-time employees the full medical appointment time benefit and therefore, I find in favor the Union.

**AWARD**

1. Yes, the County violated Article 13, Section F, of the collective bargaining agreement when it prorated the medical appointment time of some part-time employees.

2. The County is directed to prospectively grant part-time employees ten (10) hours of medical appointment time per year.

Dated at Rhinelander, Wisconsin, this 15th day of October, 2010.

Lauri A. Millot /s/

---

Lauri A. Millot, Arbitrator