BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

THE LABOR ASSOCIATION OF WISCONSIN, INC., (LAW)
WINNEBAGO COUNTY DEPUTIES ASSOCIATION, LOCAL 107

and

WINNEBAGO COUNTY

Case 420
No. 69466
MA-14614

(Grievance 2009-14; Treder Grievance)

Appearances:

Benjamin Barth, Labor Consultant, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin 53022, appearing on behalf of LAW.

Anna Pepelnjak, Attorney, Weiss, Berzowski, Brady, LLP, 700 North Water Street, Suite 1400, Milwaukee, Wisconsin 53202, appearing on behalf of Winnebago County.

ARBITRATION AWARD

The Labor Association of Wisconsin, Inc., Winnebago County Deputies Association, Local 107, hereinafter LAW or the Association, and Winnebago County, hereinafter the County or Employer, requested a list of five staff arbitrators from the Wisconsin Employment Relations Commission from which to select an arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Raleigh Jones, of the Commission's staff, was selected to arbitrate the dispute. The hearing was held before the undersigned on September 21, 2010, in Oshkosh, Wisconsin. The hearing was transcribed. The parties submitted briefs on November 8, 2010, whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUE

The parties were unable to stipulate to the issue to be decided in this case. The Association framed the issue as follows:

> Did the Employer violate the terms of the collective bargaining agreement when it did not credit Deputy Justin Treder's sick leave account for accrued sick leave from his date of hire? If so, what is the correct remedy?

The County framed the issue as follows:

> Did Winnebago County violate Article 4, lines 23-25 or Article 12, page 9, lines 28-32 of the collective bargaining agreement between Winnebago County and the Winnebago County Deputies Association, 2007-2009, by refusing to credit Deputy Justin Treder with 64 hours of sick time on January 1, 2010, [sic] because he had not completed 993 hours of service?

I have not adopted either side's proposed issue. Based on the entire record, I find that the issue which is going to be decided herein is as follows:

> In a probationary employee's first year of employment, do they get either the full 64 hour lump sum sick leave allotment, or any prorated share thereof, if they do not hit the threshold of 993 hours?

PERTINENT CONTRACT PROVISIONS

The parties' 2007-09 collective bargaining agreement contained the following pertinent provisions:

ARTICLE 2
MANAGEMENT RIGHTS

> Except to the extent expressly abridged by a specific provision of this Agreement, the County reserves and retains, solely and exclusively, all of its Common Law, statutory, and inherent rights to manage its own affairs, as such rights existed prior to the execution of this or any other previous Agreement with the Association. Nothing herein contained shall divest the Association from any of its rights under Wisconsin Statutes, Section 111.70.

. . .

ARTICLE 4
PROBATIONARY EMPLOYEES

All newly hired regular employees shall be considered probationary employees for a period of 1,986 hours and successful completion of the mandatory recruit training program. If the newly hired employee has not completed the mandatory recruit training program upon working 1,986 hours, the probationary period may be extended by mutual consent of the County and the Association Board of Directors.

All probationary employees shall receive eight (8) hours' pay for each holiday as it occurs. Upon completion of 993 hours of service, probationary employees shall be eligible to use paid sick leave accrued since the date of hire. Upon completion of 1,986 hours of service, employees shall be eligible to use paid vacations accrued between their date of hire and December 31 of their year of hire.

Probationary employees may be terminated at any time in the sole discretion of the County. Discharges during probationary period shall not be subject to the grievance procedure.

All newly promoted or transferred employees shall serve a six (6) month probationary period beyond the end of their successful completion of the FTO training program. Any any time during the course of his probationary period, the Department may return the employee to his former division/shift or the employee, within sixty (60) days after completing training in the new division/shift, may elect to return to his former division/shift, and any such decision shall not be grievable under Article 5 of this Agreement.

. . .

ARTICLE 12
SICK LEAVE WITH PAY

. . .

The following provision shall take effect January 1, 2005 for all employees hired on or after January 1, 2005, and for all employees who select the group dental insurance/sick leave package.

All employees hired on or after January 1, 2005 and employees who elect to participate in the group dental insurance/sick leave package shall accrue sick leave with pay benefits on January 1 of each year at the rate of eight (8) days per year (64 hours). In January of 2005, employees will be credited with

> the sick leave that they earned in December of 2004 and their accumulated balances of unused sick leave shall be carried forward. Unused sick leave shall accumulate from year to year.
>
> . . .

BACKGROUND

The County operates a Sheriff's Department. The Association is the exclusive collective bargaining representative for certain Sheriff's Department employees, including Deputy Justin Treder.

This case deals with the 64 hour lump sum sick leave allotment for probationary employees in their first year of employment. It is a contract interpretation case.

Since this is a contract interpretation case, the contract language pertinent to this case is going to be reviewed at this point in the decision in order to provide context for the facts which follow. The parties' collective bargaining agreement provides that deputies hired since 2005 can earn 64 hours of paid sick time on two separate occasions. First, pursuant to Article 4, when an employee is hired (and they are still a probationary employee), they start to bank sick leave right away, but they can't use the sick leave until they complete 993 hours of service. After they hit that threshold (meaning they have completed 993 hours of service), they get an allotment of 64 hours of sick leave. Second, after that, they receive 64 hours of paid sick time annually, on January 1st of each year, pursuant to Article 12. That article (i.e. Article 12) sets forth two methods by which paid sick leave is awarded to deputies. For those deputies hired before 2005 (and who do not select the group dental insurance/sick leave package), sick leave with pay benefits accrue at the rate of eight hours per month for each month of completed service (i.e. 96 hours per year). For deputies hired after 2005 (and those who select the group dental insurance/sick leave package), sick leave with pay benefits are allocated in a lump sum of 64 hours once a year on January 1st. The difference between these two categories of employees in Article 12 can be stated thus: those employees hired before 2005 earn paid sick leave month-by-month. Those employees hired after 2005 receive a lump sum sick leave allotment of 64 hours each January 1st.

. . .

Mary Polishinski is the County's payroll and benefits manager. She has been working in that capacity for 35 years. Her job requires her to administer the provisions of the parties' collective bargaining agreement which relate to benefits (such as sick leave and health insurance).

Each payday, her staff receives a timekeeper report which shows the number of hours of service each employee has. They track probationary employees on a spreadsheet. The spreadsheet allows the payroll department to keep track of how many hours of service

probationary employees have completed. When a probationary employee hits the threshold of 993 hours, the payroll department notifies the Sheriff's Office, and the probationary employee is credited with 64 hours of paid sick time.

The record indicates that the County's payroll department has historically paid out the 64 hour lump sum sick leave allotment only to those deputies who are "non-probationary" for purposes of sick leave (i.e., those deputies who have completed 993 hours of service). Prior to this case, no one had ever challenged the way the payroll department handled the 64 hour lump sum sick leave allotment for probationary employees in their first year of employment. Additionally, prior to this case, the payroll department had never been asked to prorate the 64 hour lump sum sick leave allotment for a probationary employee who did not complete 993 hours of service as of December 31st of their first year of employment.

The payroll department also administers the County's health insurance system. Polishinski testified that under the County's health insurance policy, employees become eligible for health insurance on the first day of the month following 60 actual days of employment. Employees who start work on a day other than the first day of the month must wait until the first day of the month that follows their completion of 60 work days before they can take health coverage. The following examples show how this works. Employee A begins employment on September 1 and Employee B begins employment on September 15. Employee A begins participating in the Employer's health insurance plan on November 1, whereas Employee B begins participating in the Employer's health insurance plan on December 1.

FACTS

Deputies Melissa Krokstrom and Holly Tuttle started working for the Winnebago County Sheriff's Office on July 14, 2008. As of December 31, 2008, Deputy Krokstrom had completed 1,022 hours of service and Deputy Tuttle had completed 1,032 hours of service. Once they completed 993 hours of service, Deputies Krokstrom and Tuttle were credited with 64 hours of paid sick time for 2008, pursuant to Article 4 of the collective bargaining agreement. Then, on January 1, 2009, Deputies Krokstrom and Tuttle were credited with 64 hours of paid sick time for 2009 pursuant to Article 12. Thus, in early 2009, Krokstrom and Tuttle were awarded two separate allotments of 64 hours each, for a total of 128 hours of sick time. (Note: 64 hours was for 2008, and 64 hours was for 2009). Going forward though, they will not receive 128 hours of sick time each January 1st; instead, they will only receive 64 hours of sick time each January 1 (pursuant to Article 12).

Deputy Justin Treder started working for the Winnebago County Sheriff's Office on July 21, 2008 (i.e. one week after Krokstrom and Tuttle). As of December 31, 2008, Deputy Treder had not completed 993 hours of service (whereas Krokstrom and Tuttle had completed 993 hours of service). As of that date, Treder had completed 991 hours of service. Since Treder had not completed 993 hours of service by December 31, 2008, the payroll office did not credit him with 64 hours of paid sick time for 2008 the way it did for Krokstrom and

Tuttle. Sometime after January 1, 2009, Deputy Treder completed 993 hours of service. At that time, he was credited with 64 hours of paid sick time for 2009. Thus, in early 2009, Treder did not receive two separate allotments of 64 hours each (for a combined total of 128 hours) as Krokstrom and Tuttle did. Instead, in January, 2009, Treder just received a single allotment of 64 hours.

When that happened, Treder thought he had been treated unfairly because he did not get 128 hours of sick leave credited to his sick leave account the way Krokstrom and Tuttle did. As he saw it, the Employer had not credited him with sick leave for 2008.

The Association subsequently filed a grievance on Treder's behalf. The grievance alleged that the Employer violated the collective bargaining agreement "when it did not credit Deputy Treder's sick leave account for accrued sick leave from his date of hire." The grievance also alleged that Treder's sick leave account was not credited with any sick leave from his date of hire through December 31, 2008 (i.e. a 5.5 month period). The Association sought a prorated share of the 64 hour lump sum sick leave allotment that is credited to each employee pursuant to Article 12. Specifically, the grievance sought to have 29.33 hours of sick leave credited to Treder's sick leave account. The Employer denied the grievance and it was ultimately appealed to arbitration.

POSITIONS OF THE PARTIES

Association

The Association contends that the County violated the collective bargaining agreement when it did not credit any sick leave to the account of Deputy Treder for the time he was employed in 2008. It elaborates as follows.

For background purposes, the Association acknowledges at the outset that probationary employees can't use any sick leave until they hit the 993-hour (sick leave) threshold. Next, it notes that Treder did not use any sick leave during his 993-hour (sick leave) probationary period. Finally, it also acknowledges that Treder was awarded his 2009 sick leave allotment of 64 hours in January, 2009. Having noted the foregoing, the Association gets to what it considers the problem herein, specifically what happened during the 5.5 month period from the time Treder was hired until December 31, 2008. According to the Association, during that time period, Treder was not credited with any sick leave whatsoever. Said another way, he did not accrue any sick leave during that period. The Association maintains that he should have, and since that didn't happen, the Employer violated the collective bargaining agreement.

As the Association sees it, the arbitrator need not look any further than the contract language in Articles 4 and 12 to resolve this case. The Association contends those provisions are clear and unambiguous in providing that both regular employees and probationary employees accrue (bank) sick time from their date of hire. As previously noted, the Association acknowledges that probationary employees can't use any sick leave until they pass

the 993-hour (sick leave) threshold, but the Association maintains they nonetheless still accrue sick leave during that period. The Association repeats the contention that that didn't happen here, and the Employer did not accrue Treder's sick leave account from his date of hire (as it should have).

The Association maintains that the County's reading of Articles 4 and 12 is just plain wrong. To support that contention, the Association cites the Employer's opening statement from the hearing. According to the Association, what the Employer's representative said was this: "two different methods exist for the accrual of sick time, one in which the grievant would be eligible for sick leave accrual and a second method which requires the grievant to forfeit the sick leave." The Association characterizes that proposed interpretation as perplexing and avers that it implies that "employees who do not work 993 hours in a year do not accrue sick time." The Association asserts there is nothing in Articles 4 or 12 that says that. The Association ends this portion of its brief with the following statement: "For the County to purport the 993 hour provision also attaches an unwritten 'sick leave probationary status' is a gross distortion of the collective bargaining agreement."

Next, the Association argues that notwithstanding the County's contention to the contrary, this case should not be controlled by an alleged past practice. Instead, as the Association sees it, the contract language should be controlling. Here's why. The Association cites the standard arbitral principle that when the contract language is clear and unambiguous (which the Association maintains is the situation here), then there is no need for the arbitrator to even consider an alleged past practice. The Association asks the arbitrator to follow that principle here.

However, if the arbitrator does consider the alleged past practice, the Association submits that the County did not present sufficient evidence to establish a binding past practice which is entitled to contractual enforcement. The Association cites the standard arbitral principles for establishing a past practice (i.e. that it be unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time) and asserts they were not met here. The Association put it this way in their brief: "there is simply nothing in the record which proves any of the three prongs necessary for the Employer to establish a past practice." Consequently, the Association asks that the arbitrator ignore the Employer's assertion of a past practice, and instead base his decision on the clear and unambiguous language in Articles 4 and 12 of the collective bargaining agreement.

The Association therefore asks the arbitrator to sustain the grievance and find a contract violation. The remedy which the Association asked for in their grievance and in their opening statement at the hearing was to credit Treder with 29.33 hours of sick leave (i.e. a prorated amount which represents 5.5 months of a 64-hour annual allocation). In its brief though, the Association asked for a different remedy, to wit: that Treder be credited with 64 hours of sick leave.

County

The County contends it did not violate either Articles 4 or 12 of the parties' collective bargaining agreement when it did not credit Deputy Treder's sick leave account with 64 hours of sick time on January 1, 2009. It elaborates as follows.

The County notes at the outset that the parties' collective bargaining agreement provides two occasions on which deputies can acquire 64 hours of paid sick leave. Under Article 4, the 64 hour allocation is given to new employees upon completing their first 993 hours of service. Under Article 12, the 64 hour allocation is provided to employees once a year on January 1st. The County contends it does not have to provide the 64 hour allotment to those probationary employees who have not reached the 993-hour threshold. It argues that the Association's contention to the contrary should be rejected because it fails to give effect to the contract as a whole. It cites the standard arbitral principle that all words in an agreement should be interpreted in a way that gives them meaning. Next, it notes that Article 4 prohibits new employees from using paid sick time until they have passed the 993-hour milestone. Building on that, the Employer opines that "it must be assumed that, at bargaining, the parties intended to treat new, or 'probationary' employees different from regular, non-probationary employees." To support that premise, it then goes on to note that the agreement contains a half-dozen provisions that differentiate probationary from non-probationary employees. For example, in Article 1, the recognition clause applies only to "regular" full time and part time employees; in Article 4, it provides that "probationary employees may be terminated at any time in the sole discretion of the County. Discharges during probationary period shall not be subject to the grievance procedure"; also, in Article 4, it prohibits probationary employees from using vacation until they have completed 1,986 hours of service; and the Article 12 "Sick Leave Control Incentive Program" applies only to employees who have been represented by the Association for at least 560 hours in the trimester period."

Next, the County addresses the fact that those employees hired later in the year won't likely be able to hit the 993 hour threshold by December 31. It acknowledges that that "arguably disadvantages" an employee hired later in the year (as opposed to an employee hired earlier in the year). Be that as it may, the Employer emphasizes that is what the parties collectively bargained, so it should not be changed by arbitral decision. As the County sees it, "the Association's position obliterates the contract's distinction between new and regular employees for purposes of sick leave" and renders the 993-hour requirement contained in Article 4 meaningless.

Addressing the Association's contention that the phrase "all employees" in Article 12 refers to both probationary and non-probationary employees, the Employer disputes that interpretation. According to the Employer, the phrase "all employees" in Article 12 "can only be interpreted to mean those employees who are bound by the Agreement." It asserts that if any broader interpretation were applied, the Agreement would take in unrepresented employees. The Employer maintains that the phrase "all employees" should be interpreted

consistent with Polishinski's testimony to mean non-probationary employees who, for sick leave with pay purposes, have passed the 993-hour threshold established in Article 4.

The County asserts that the practice which Polishinski referenced in her testimony was not kept secret from the Association. According to the County, it did not hide this practice from the Association or prevent the Association or its members from discovering it.

It's the County's view that the procedure which it uses to award sick leave with pay benefits mirrors the procedure for health insurance eligibility. Here's why. It notes that employees become eligible to participate in health insurance on the first day of the month after they complete 60 days of actual work. Officers hired on the first of the month might be eligible to complete the 60 day work requirement in two months. But officers hired later in the month will probably not be eligible until the first day of the third month. As the County sees it, "this procedure is not unfair, discriminatory or malicious – it is just the way things are." Building on that premise, the Employer opines that "so it is with the Article 12 annual allocation of paid sick leave benefits."

Finally, the County maintains that there is no basis in the contract language for the Association's request for a prorated amount of paid sick time for Treder. It notes in this regard that the contract sets forth a marked difference between pre-2005 and post-2005 employees: those employees hired before January 1, 2005 earn paid sick leave time month-by-month, while employees hired after 2005 receive a lump sum allocation of 64 hours of paid sick time. It specifically points out that the contract language itself does not provide for prorating this lump sum amount. Additionally, the County notes that Polishinski testified that the County has never prorated sick time for any employee. The County further notes that the contract contains a seniority list which shows, among other things, that three deputies were hired in September, 2007 (namely, Deputies Wohahn, Nozar and Van Thiel). The County avers that "assuming these deputies did not work 993 hours before January 1, 2008, they are examples of similarly situated individuals for whom no proration was made."

In sum then, it's the County's position that it did not violate the collective bargaining agreement by its actions relative to Deputy Treder. It asks that the grievance be denied.

DISCUSSION

As was noted in the **ISSUE** section, I did not adopt either side's proposed issue herein. In my view, the issue which is presented in this contract interpretation case is as follows: In a probationary employee's first year of employment, do they get either the full 64 hour lump sum sick leave allotment, or any prorated share thereof, if they do not hit the threshold of 993 hours? Although neither side worded the issue that way, I believe it's apparent from the record that the Association would answer that question in the affirmative while the County would answer it in the negative. Based on the rationale which follows, I answer that question in the negative. Thus, I find no contract violation.

I've decided to begin my discussion by addressing at the outset the 993-hour sick leave threshold. Article 4 provides that newly-hired employees are considered probationary employees for their first 1,986 hours of employment. The second sentence of the second paragraph of Article 4 then goes on to say that "upon completion of 993 hours of service, probationary employees shall be eligible to use paid sick leave accrued since the date of hire." Given the paragraph which preceded it, I find that this sentence has two different meanings. First, it means that while the probationary period is 1,986 hours long, new employees don't have to work that many hours (i.e. 1,986 hours) before they can take a sick day. Instead, the parties have negotiated a different threshold for their taking sick leave. The threshold is 993 hours. Second, this sentence implicitly means that probationary employees can't use any paid sick leave for their first 993 hours of employment. After they hit the 993 hour threshold though, they can use sick leave.

Having made those preliminary comments about the 993 hour sick leave threshold, I'm next going to review the following facts. Deputies Krokstrom, Tuttle and Treder were all hired in the summer of 2008. Treder started one week after the other two. Krokstrom and Tuttle hit the 993-hour threshold before Treder did. Specifically, Krokstrom and Tuttle hit it before December 31, 2008. Treder did not have 993 hours of employment completed as of December 31, 2008. As of that date (i.e. December 31, 2008), Treder had 991 hours of service. He passed the 993-hour threshold in January, 2009. In the context of this case, it is very significant that Treder did not hit the 993-hour sick leave threshold before December 31, 2008.

Here's why that fact was so significant. In January, 2009, the Employer's payroll department paid out the 64 hour lump sum sick leave allotment which is referenced in Article 12. When the payroll department gave out sick leave allotments to Krokstrom and Tuttle, it gave them each an allotment of 128 hours. 64 hours of that allotment was for 2008 because they had hit the 993 hour threshold specified in Article 4. The other 64 hour allotment was their allotment for 2009. Thus, Krokstrom and Tuttle qualified for two years of allotments (2008 and 2009). Treder was treated differently. He was given a 64 hour sick leave allotment for 2009, but did not receive a 64 hour sick leave allotment for 2008. When Treder learned that he had received an allotment of 64 hours of sick leave, while Krokstrom and Tuttle received double that (i.e. 128 hours of sick leave), Treder cried foul.

Although Treder was treated differently than Krokstrom and Tuttle in that Treder did not receive the same amount of sick leave credited to his account as Krokstrom and Tuttle did, I find there was a non-discriminatory contractual reason for this. Simply put, it was because Krokstrom and Tuttle hit the 993 hour sick leave threshold before December 31, 2008, while Treder did not. Thus, Treder did not qualify for the sick leave payout in 2008.

The Association makes several arguments which essentially contend that this outcome was unfair and/or not contractually based.

First, the Association argues that all probationary employees start to accrue sick leave from their date of hire. That's true; they do. Treder did, in fact, accrue sick leave in 2008 from the date of hire to December 31, 2008. To illustrate that, one need look no further than the fact that if Treder had worked just two more hours prior to December 31, 2008, he would have been treated the same as Krokstrom and Tuttle and been awarded an allotment of 128 hours of sick leave. The fact that he was treated differently than Krokstrom and Tuttle shows that there's a difference between accruing (i.e. banking) sick leave and paying it out. The following example shows this. Say an employee is hired late in the calendar year. That probationary employee won't come close to hitting the 993 hour threshold by December 31. Since that employee didn't hit the 993 hour sick leave threshold by December 31 of their first year of employment, the Employer does not have to pay out the sick leave which they accrued. Said another way, the Employer doesn't have to pay out the 64 hour hour sick leave allotment to them. In the example just given (where the employee is hired later in the year), they will still qualify for the Article 12 sick leave allotment in January for the next year. However, since they did not hit the 993 hour sick leave threshold, they do not qualify for the 64 hour lump sum sick leave allotment for their first year of employment.

In this case, Treder came very close to hitting the 993-hour sick leave threshold. However, the simple fact of the matter is that he didn't hit it, and was two hours short. It's inevitable that when parties negotiate a numerical threshold of eligibility for something, situations will arise where an employee comes close to hitting it, but does not. As the Employer put it in their brief, that's "just the way things are." The parties had to have known when they negotiated the threshold of 993 hours that not everybody would hit that threshold in their first calendar year of employment. They nonetheless negotiated a system whereby those probationary employees who hit that threshold qualify for a 64 hour sick leave allotment in their first year of employment while those probationary employees who do not hit that threshold do not qualify for a 64 hour sick leave allotment in their first year of employment. That was their call to make.

Second, the Association relies on the phrase "all employees" which is found in Article 12 in the paragraph which follows the paragraph in bold print. According to the Association, the phrase "all employees" means just that, and has no exclusions. Thus, it's the Association's view that the phrase "all employees" covers everybody, and does not exclude probationary employees who have not hit the 993-hour sick leave threshold. The Association's proposed interpretation would certainly carry the day, so to speak, if it was the only contract language applicable to this dispute. However, it is not. As already noted, Article 4 applies to this case as well. Although Article 12 does not say anything about the 993-hour sick leave threshold referenced in Article 4, I can't just ignore Article 4 when deciding this case. When several contract provisions apply to a given situation – as is the case here – my job as arbitrator is to reconcile them in a way that gives meaning to them all. Were I to just hang my hat exclusively on the phrase "all employees" in Article 12 and interpret/apply it herein so that Treder got the full 64 hour lump sum sick leave allotment in his first year of employment even though he did not hit the threshold of 993 hours, I would essentially be reading the 993 hour timetable part of Article 4 out of existence. I'm not going to do that. Doing so would result in

a contractual interpretation that fails to give full effect to all the relevant contract language. Consequently, in this case, it is held that the phrase "all employees" in Article 12 does not have its conventional meaning. Instead, because of the existence of other pertinent contract language, the phrase "all employees" in Article 12 refers to those employees who have passed the 993 hour threshold established in Article 4.

The contractual interpretation I just made coincides with the way the Employer's payroll department has historically applied the contract language of Articles 4 and 12. What I'm referring to is this: in a probationary employee's first year of employment, the payroll department has not paid out the full 64 hour lump sum sick leave allotment to those probationary employees who have not hit the threshold of 993 hours. That fact buttresses the arbitrator's interpretation.

Finally, the focus turns to the Association's contention that the Employer should be required to pay a prorated share of the 64 hour lump sum sick leave allotment to those probationary employees – like Treder - who don't hit the 993 hour threshold in their first year of employment. I decline to require the County to do that for the following reasons. First, there is nothing in either Articles 4 or 12 which provides that the 64 hour lump sum amount is to be prorated for those employees who don't hit the 993 hour threshold. The parties know how to write proration language if that is what they mutually intended. In this case, they did not include any such language in either Articles 4 or 12. That being so, the obvious inference is that the 64 hour lump sum sick leave allotment is all or nothing. Simply put, if the employee hits the threshold, they get 64 hours of sick leave. If they don't hit the threshold – and are say, two hours short (as happened here) - they don't get any portion whatsoever of that amount. Second, the contractual interpretation I just made coincides with the way the Employer's payroll department has historically applied the language of Articles 4 and 12. What I'm referring to is this: the payroll department has never previously prorated any portion of the 64 hour lump sum sick leave allotment for those probationary employees who have not hit the threshold of 993 hours in their first year of employment. That fact buttresses the arbitrator's interpretation.

In light of the above, I find that the Employer did not violate the collective bargaining agreement by its actions herein involving Deputy Treder's sick leave account.

Accordingly, I issue the following

AWARD

That in a probationary employee's first year of employment, they do not get either the full 64 hour lump sum sick leave allotment, or any prorated share thereof, if they do not hit the threshold of 993 hours of service. In this case, Deputy Treder did not hit that threshold by December 31, 2008. Consequently, he was not contractually entitled to either the full 64 hour lump sum sick leave allotment, or any prorated share thereof, for 2008. The grievance is therefore denied.

Dated at Madison, Wisconsin, this 7th day of January, 2011.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
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