

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**WISCONSIN FEDERATION OF NURSES AND HEALTH PROFESSIONALS,
LOCAL 5001, AFT, AFL-CIO**

and

MILWAUKEE COUNTY

Case 742
No. 70067
MA-14848

(Pamela Prince Grievance)

Appearances:

Mr. Jeffrey P. Sweetland, Hawks Quindel, S.C., 700 West Michigan, Suite 500, P.O. Box 442, Milwaukee, Wisconsin 53201-0442, on behalf of Local 5001.

Mr. Roy L. Williams, Principal Assistant Corporation Counsel, Room 303, Courthouse, 901 North 9th Street, Milwaukee, Wisconsin 53233, on behalf of Milwaukee County.

ARBITRATION AWARD

Wisconsin Federation of Nurses and Health Professionals, Local 5001, AFT, AFL-CIO, hereafter Union, and Milwaukee County, hereafter County, are parties to a collective bargaining agreement that provides for final and binding arbitration of disputes arising there under. On August 5, 2010, the Union requested the Wisconsin Employment Relations Commission to appoint a WERC Commissioner or staff member as arbitrator of the instant dispute. The undersigned was so appointed. Pursuant to the agreement of the parties, an arbitration hearing was held on September 16, 2010 in Milwaukee, Wisconsin. The record was closed on November 5, 2010, following receipt of the parties' post-hearing written argument. Having considered the record as a whole, the undersigned makes and issues the following Award.

ISSUES

At hearing, the parties stipulated to the following statement of the issues:

Did the County violate the contract when it changed Grievant Pam Prince's hours for September 14, 15 and 16, 2009 from LAP to 1 day of Holiday and 2 days of vacation?

If so, what is the appropriate remedy?

At hearing, the parties agreed that there were no procedural issues.

RELEVANT CONTRACT LANGUAGE
(2009-2011 Agreement)

. . .

1.03 NONDISCRIMINATION

- (1) The County and the Union shall not discriminate in any manner whatsoever against any employee or applicant for employment because of handicap, race, sex, age, nationality, political or religious affiliation.
- (2) Sexual harassment shall be considered discrimination under this section. Sexual harassment shall mean unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:
 - a. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
 - b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- (3) The County and the Union agree that the County will take all appropriate action necessary to comply with the Americans With Disabilities Law.

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1.05 MANAGEMENT RIGHTS

The County of Milwaukee retains and reserves the sole right to manage its affairs in accordance with all applicable laws, ordinances, resolutions and executive orders. Included in this responsibility, but not limited thereto, is the right to determine the number, structure and location of departments and divisions, the kinds and number of services to be performed; the right to determine the number of positions and the classifications thereof to perform

such service; the right to direct the work force; the right to establish qualifications for hire, to test and to hire, promote and retain employees; the right to transfer and assign employees, subject to existing practices and the terms of this Agreement; the right, subject to civil service procedures and the terms of this Agreement related thereto, to suspend, discharge, demote or take other disciplinary action and the right to release employees from duties because of lack of work or lack of funds; the right to maintain efficiency of operations by determining the method, the means, and the personnel by which such operations are conducted and to take whatever actions are reasonable and necessary to carry out the duties of the various departments and divisions. In addition to the foregoing, the County reserves the right to make reasonable rules and regulations relating to personnel policy procedures and practices and matters relating to working conditions, giving due regard to the obligations imposed by this Agreement. However, the County reserves total discretion with respect to the function or mission of the various departments and divisions, the budget, organization, or the technology of performing the work. These rights shall not be abridged or modified except as specifically provided for by the terms of this Agreement, nor shall they be exercised for the purpose of frustrating or modifying the terms of this Agreement. But these rights shall not be used for the purpose of discriminating against any employee or for the purpose of discrediting or weakening the Federation.

In the event a position is abolished as a result of contracting or subcontracting, the County will hold advance discussions with the Federation prior to letting the contract. The Federation's representatives will be advised of the nature, scope of work to be performed, and the reasons why the County is contemplating contracting out work. Notification for advance discussions shall be in writing and delivered to the President of the Federation by certified mail.

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2.27 SEMINAR/CERTIFICATION FEE AND TUITION REIMBURSEMENT

- (1) Seminar Leave and Reimbursement
 - (a) The County agrees to provide annual seminar/certification fee reimbursement funds of \$70,000 to be used for the payment of seminar/certification registration fees such reimbursement within the limits of the annual fund shall be approved up to a maximum of \$550 per year per employee plus \$300 for certification and may only be utilized with the prior approval of the appointing authority. On an annual basis, pool nurses will be eligible for seminar reimbursement upon completion of 500 hours of work per 12- month period.

- (b) When an employee is authorized to attend a seminar, irrespective of the manner of reimbursement, the employee shall be permitted to attend during the employee's normally scheduled working hours. In the event the employee is scheduled for p.m.'s or nights, the employee's schedule shall be modified to permit attendance during the day. However, attendance at seminars on regularly scheduled off days shall not be compensated.

Employees attending seminars will be credited with paid leave during their scheduled shift for that day, but will be expected to return to duty if two or more hours of work can be completed on the shift for that day.

The term "authorized" shall mean permission of or direction by the Director of Nursing, their designee or the department head.

- (c) Permission to attend seminars shall not be unreasonably withheld. When requests for the same LAP time for a seminar cannot be granted, first consideration will be given to those who have not previously been granted LAP days during the calendar year; next consideration shall be given to those who are members of the organization sponsoring the seminar or conference and if these factors are equal, seniority shall be used.
- (d) Advance Practice Nurse Prescriber, Occupational Therapist, and Music Therapist shall be eligible for up to \$2,000 per year from the Seminar Reimbursement Fund as reimbursement for costs incurred to maintain their practitioner certification in addition to monies available to them from the Seminar Reimbursement Fund for credit classes. Payment shall be made in accordance with guidelines on file in the Division of Labor Relations.
- (e) Reimbursement payments will be made as soon as administratively practicable after completion of the Seminar.

(2) Tuition Reimbursement

- (a) The County agrees to provide annual tuition reimbursement funds of \$30,000. Such reimbursement may be approved up to \$3,000 per year per employee. Eligibility for such reimbursement shall be established after 6 months of employment with Milwaukee County. Tuition reimbursement shall be granted in accordance with the guidelines on file with the Training Division of the Division of Human Resources.

- (b) Employees are eligible to participate, within established guidelines, in the Milwaukee County Tuition Loan Program.

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BACKGROUND

Pam Prince, hereafter Grievant, is a certified Advanced Practice Nurse Prescriber (APNP). She is an employee of Sheriff's Department Inmate Health Services Unit (IHS), specializing in women's health.

In order to maintain her APNP certification, the Grievant is required to complete a certain number of continuing education hours each year. In 2001, 2005 and 2007, the Grievant attended conferences, including the annual Women's Health Care Conference (NWHCC), in Las Vegas, Nevada and received reimbursement of seminar fees and related travel expenses from the Seminar Reimbursement Fund established under Sec. 2.27 of the labor agreement.

In 2008, the Sheriff's Department Fiscal Manager, Howard Felix, developed travel forms to be used to request Department payment of seminar-related travel expenses. Prior to that time, APNP's submitted reimbursement requests on forms developed by the Union and the County. The employee submitted the completed form to the Union for approval and the Union submitted approved requests to Yvonne Makowski, Director of Human Resources at BHD. After Ms. Makowski approved the request, she would arrange for the employee's department to reimburse the employee for the approved reimbursements.

On December 9, 2008 at 12:01 PM, Monica Pope-Wright, Director of Nursing, Milwaukee County Sheriff's Office, Detention Services Bureau, Health Services Unit, sent an e-mail to the "SHF Med Staff" that included the following:

Subject Seminar Reimbursement request for FNHP

Effective immediately, ALL requests for seminar educational reimbursement are to be submitted to me for approval and process through the Sheriff's fiscal department. DO NOT send any of these requests to BHD. **BHD will NO LONGER process these request.** Please contact me if you submitted any requests to BHD recently prior to this notice, so I can follow up and get it processed properly.

Thank you in advance.

At 5:01 PM on the same day, Ms. Pope-Wright sent the following e-mail to "SHF Med Staff."

Subject Re: Seminar Reimbursement request for FNHP

This also applies to requests that were sent to the FNHP office. This request MUST be submitted to me for approval. There is no need to submit to the union. They will only turn around and send to Milwaukee County and cause confusion, because they send it to another department and not to MCSO. Once I receive the request, it will be processed through the Sheriff's Office fiscal department much more efficiently and allow us to track these expenses. We now know that the union does NOT for these expenses. MCSO is responsible for these expenses for employees in our department and part of FNHP.

Thank you in advance.

Mr. Felix sent an e-mail on January 14, 2009 to Union President Barb Kelsey stating as follows:

. . .

I was invited to an operations meeting between Inspector Schmidt, MCSO Inmate Health Services staff, Ms. Kelsey and representatives of FNHP.

We discussed the whole process of getting nurses, nurse prescribers, etc. authorized and paid for seminars and other education activities, related to the \$100,000 County-wide pot of funds that by agreement many years ago is administered by Union staff, though ultimately paid for with County department funds.

Not understanding the process before this year, MCSO has never budgeted funds for this purpose. Inspector Schmidt's comments made me realize that our Office has had a disconnect between getting education, especially if travel is involved, authorized, and the payment for those authorized activities. In the end, authorizing and payment administrative processes apply equally to represented and non-represented staff.

My goal is to timely pay and account for properly authorized education within MCSO.

I was asked to provide the current County travel authorization documents and those are attached for Ms. Kelsey at her request and others who wish to see them.

I am sending this to a wider audience to give County leadership an opportunity to have a group think through the best means of allowing departments such as the MCSO maintain an independent approval and payment process, while

participating in a joint County-wide process that has been borne by FNHP staff and Ms. Makowski.

If there is no group process, I believe that Inspector Carr will implement what he sees as the best course for the MCSO, but all at the meeting seemed in agreement that a collaborative solution would be best.

. . .

Ms. Kelsey responded on January 15, 2009 as follows:

. . .

thanks . . . however Yvonne has informed me that these forms are not part of the seminar/tuition process. And I restate the union will grieve any employee denied these fund.

. . .

Thereafter, Ms. Kelsey sent a memo to Union members which states:

. . .

RE: Seminar/Tuition Reimbursement

ISSUE: The Sheriff's Department has misinformed employees and confused the Seminar and Tuition reimbursement process.

- Any and all requests for seminar reimbursement must be forwarded to your union office to be processed there. However, Nurse Practitioners should continue to forward the same paperwork you have always done to Yvonne Makowski at BHD.
- Do not confuse this with LAP time which requires your supervisor's approval (paid time off to attend).
- You do not have to complete either the Travel Advance Form or Travel Authorization Form to get reimbursement, as neither form is part of the process.

TAKE ACTION: If you are within 90 days of having funds denied, contact the union office at 414-475-6065. It may be necessary to file a grievance.

...

On April 1, 2009, Ms. Pope-Wright prepared an e-mail that was sent to the Grievant and forwarded to Ms. Kelsey by Sheriff Department employee Melissa Van Hoff. This e-mail states:

...

Subject: Seminar/ Certification Reimbursements

Please make sure you submit ALL request to me PRIOR to going to any seminars where you expect MCSO to pay for it. Also, there will be NO MORE approvals for out of state travel. You will need to find local or closer seminars to attend for your continuing education requirements.

I had a meeting with Inspector Carr and he was pretty adamant that the MCSO will not pay for any travel to other states when there are probably local seminars that could be attended.

Again, the key is getting AUTHORIZATION BEFORE YOU GO. To avoid confusion about who should approve your request, submit all request to me for approval as your administrative supervisor. I'm also attaching a form that you will also need to complete for any reimbursements under a separate cover.

Don't hesitate to call me with any questions.

...

Ms. Kelsey responded to Ms. Van Hoff and Ms. Pope-Wright in an e-mail dated April 2, 2009 and that states:

...

Subject: Re: Fw: Seminar/Certification Reimbursements

I will say it again,

Monica approves LAP time...the authorization or denial of the Seminar is done by the union office and Yvonne Makowski at BHD. If the employee follows the proper guidelines written on the back of the request form and the funds are denied by the Sheriff the issue will may need to go to arbitration.

If however, the employee does not follow the guidelines then they place their reimbursement in jeopardy.(sic) Giving the request to mgmt at the Sheriff's dept is not part of the process at this point.

...

On April 6, 2009, Ms. Kelsey sent an e-mail addressed to the Grievant and others that includes the following:

...

Subject: Fw: Melissa Van Hoff – Seminar/tuition reimbursement

FYI

We are having a disagreement with the sheriff and his DON both of whom want to have control over our funds. They have told some of the APNP staff that they not (sic) longer need to submit their requests to FNHP or Yvonne but instead submit their requests to the sheriff's payroll department directly (Howard Felix) after the DON approves the request. Part of that process is getting a payroll vendor number. . . which they will not give out as they do not want our members going to expensive workshops out of state or even very far from home and have been denying (sic) these requests. What is making some employees mad is that the members who have continued to send the union office their requests for reimbursements have continued to get their money while the ones submitting their form to the sheriff have had funds denied.

I sent to (sic) directives to the members in corrections to continue the process as usual but apparently that is not happening. However if we have a member who in fact does follow the process as printed on the form and the Sheriff does not pay (I think it is only a matter of time before this happens) then we will need to grieve.

...

On May 14, 2009, the Grievant submitted a "Request for Travel Advance/Authorization" for "Nurse Practitioner CEU's OB/GYN Conference Women's Health in Las Vegas, Nevada." This request was for \$242.00 for airline; \$300 for hotel; \$440 for registration; and \$150.00 for meals. Dr. Michael Grebner, the Medical Director of the HIS, signed on the line adjacent to "Approved" and which was designated for the "Deputy Inspector or Authorized Representative. Subsequently, Inspector Schmidt of the Sheriff's Department crossed out the signatures of the Grievant and Dr. Grebner and wrote "Denied Inspector Schmidt."

On May 26, 2009 at 12:40 PM, Ms. Pope-Wright sent an e-mail to the Grievant that states:

...

Subject Fw: Travel Reimbursement

Pam

Please make sure you submit to me for approval. Howard will begin returning requests without my approval.

Thanks!

...

On May 26, 2009 at 3:17 PM, the Grievant sent an e-mail to Dr. Grebner that includes the following:

...

Subject Fw: Travel Reimbursement

For your info. I submitted a request to you on 5/14/2009. Why does Monica have to approve my request when you are approving the other N.P's? We all need to be on the same page.

...

On May 26, 2009 at 3:25 PM, Dr. Grebner sent an e-mail to the Grievant that states:

...

Subject Fw: Travel Reimbursement

Howard is suggesting that we adopt a system where Monica signs off on all reimbursement requests for the APNPs. It is his suggestion, nothing more. I am actually signing off on everyone's requests.

I got your request to go to the Conference in Las Vegas back from Inspectors Carr & Schmidt. It was rejected because Las Vegas is a resort. I e-mailed Insp. Carr noting that the hotel charge in Las Vegas is actually lower than it would be in Chicago.

You should also be submitting your reimbursement requests thru the union process as you used to. I expect you will be reimbursed though it will be slow.

...

On May 26, 2009 at 3:25 PM, the Grievant sent an e-mail to Dr. Grebner that includes the following:

...

Subject Fw: Travel Reimbursement

So does that mean that I can or can't go to the Women's Health Conference in Las Vegas? Diana Mueller is attending a medical conference at a Resort location in South Carolina in July. Did the inspectors approve her expensive conference?

...

Dr. Grebner responsive e-mail states:

...

You can go. You will not get reimbursed quickly. You may not get reimbursed at all depending on how the grievance process turns out.

I would suggest asking Diana. I have been approving conferences at resorts if the conference appeared worthwhile and the costs appeared reasonable. Inspector Carr told me last week to reject all resort sited conferences.

...

On August 20, 2009 at 1:05 pm, Dr. Grebner sent an e-mail to the Grievant that includes the following:

...

Subject Fw: Travel Reimbursement

At this time the Sheriff has determined that no one will be reimbursed for attending any conference that is held at a resort. Monica and I have both been instructed not to approve any resort based conferences.

FNP has indicated that FNP members should grieve any decisions that reject reimbursement based on location.

...

On August 20, 2009 at 1:29 pm, the Grievant sent an e-mail to Inspector Carr that includes the following:

...

Subject Fw: Travel Reimbursement

I have sent in my registration for the Women's health conference, to be held again in Las Vegas, September 14th to September 16th. I would like to be reimbursed for my expenses, after I attend. I have already paid for the conference and my airline ticket. The guidelines are still unclear, and there is no official written policy yet in place, on conference locations. According to the minutes from the nurse practice committee, you are the person who approves the tuition reimbursement funds/travel expenses. (Inspector Schmidt disapproved my request, because of the location, per Dr. Grebner.) Did you review my travel forms I submitted? The cost was lower to attend the conference, and I will receive more credit hours for my recertification, than the Rhode Island location. Other employees have attended conferences in resort locations this year. The National Jail Health conference is being held in Orlando, and next year in Las Vegas. I have attended other women's health conferences and jail conferences held in Las Vegas in the past, and the format was excellent, (and I'm not a gambler). Please allow me to be reimbursed, as per past practice. If you would like to set a meeting up with me to discuss my individual situation, please feel free to call.

...

On August 20, 2009 at 1:55 PM, Inspector Carr sent a responsive e-mail that states:

...

No need to discuss. Inspector Schmidt did not approve the trip. I should have been consulted before the trip, not afterwards. The Sheriff does not approve of training conferences in locations such as Las Vegas.

...

On September 3, 2009, the Grievant submitted a "Milwaukee County Office of the Sheriff Off-Time Request" in which she requested 4 hours of holiday for 9/7/09; LAP on 9-14-09, 9-15-09, 9-16-09 and VAC on 9-17-09. Ms. Pope-Wright approved these "Off-Time Requests" on September 3, 2009.

The Grievant attended the NWHCC conference in Las Vegas on September 14-16, 2009. On September 24, 2009, Dr. Greber signed the Grievant's "Nurse Practitioner Certification Program Application" on the "ADMINISTRATIVE APPROVAL" line. This application requested reimbursement of \$1,226.04 for attendance at a "Women's Health" Seminar/Course.

On September 24, 2009 at 4:49 PM, Inspector Schmidt sent an e-mail to the Grievant that includes the following:

...

Pam-if this is the conference that we refused to endorse then I cannot approve after the fact. If this is a conference that Inspector Carr approved in writing on a travel advance form, bring that signed document with your detailed costs and receipts and then I will sign the summary. Again, if there was not a travel advance form signed off by Inspector Carr, then I absolutely cannot approve reimbursement. Thank you

...

The Grievant's responsive e-mail, dated September 25, 2009, includes the following:

...

My travel advance form was never submitted to Inspector K. Carr for his approval or disapproval. The travel advance form was signed and denied by you.

It is my understanding that Inspector K. Carr is the person that has the final determination for NP certification reimbursement, but it was never submitted to him. I will be filing a grievance with the union.

...

On October 8, 2009, Ms. Pope-Wright sent an e-mail to Trish Taylor-Berg which states:

...

Trish

As below, change the 3 paid LAP days for 9/14, 9/15, and 9/16 to 1 holiday and 2 vacation days, so she is using her own time.

...

Attached to the above e-mail is an e-mail from the Grievant to Ms. Pope-Wright that states:

...

This memo is to verify our conversation on 10/08/2009 regarding the denial of LAP time, for the NP conference that I attended in Las Vegas 09/14/09 to 09/16/09. I was told I will be reimbursed for the conference but not for the days off. I will use one accrued holiday and two of my vacation days for time away at the conference. I will now have three additional LAP days in my bank. Two

LAP days will be used for the conference in Chicago 11/09/09 to 11/10/09. I will get back to you regarding the conference in Brookfield, WI on diabetes in pregnancy, which will be my last LAP day for 2009.

...

In response to Ms. Pope-Wright's e-mail, the Milwaukee County Payroll Department prepared a "Payroll Correction Form" stating "LAP time not approved. See supervisors note." As result of this correction, the LAP Day entry for 9/14/09 was changed to a holiday and the LAP Day entries for 9/15 and 9/16 were changed to vacation.

In November 2009, the Grievant signed a "Grievance Initiation Form" that was presented to the County. In this form, the Grievant alleges "Management Failed to pay 3 LAP days, which were granted on 09/03/2009. Grievant noticed a change on her time card, done on 10/13/2009, from LAP time to personal hours." The requested remedy was restoration of 16 hours of vacation and 8 hours of accrued holiday time and "to be made whole."

The grievance was denied and submitted to arbitration.

POSITIONS OF THE PARTIES

Union

In a prior arbitration award involving the same parties, the Arbitrator concluded that, under Sec. 2.27(1)(b) and (c) of the contract, "LAP days [for seminars] must be authorized, which means they must be with permission or direction of management [but] permission to attend seminars shall not be unreasonably withheld . . . Sec. 2.27(c) grants in the County the discretion to give or withhold permission, but also puts on the County the obligation to provide a suitable reason for withholding." (cites omitted) The requirement that permission not be unreasonably withheld is an application of the widely understood rule that an employer must exercise its discretionary management rights in a manner that is not arbitrary, capricious or in bad faith.

Ms. Pope-Wright's reversal of her previous approval of LAP days for the seminar was arbitrary, capricious and in bad faith. The original stated reasons for the Sheriff's attempt to take over the payment of Fund reimbursements was to give him control over payments that were being charged to his budget and to expedite the reimbursement process. Subsequently, Ms. Pope-Wright informed APNP's in the IHS that there would be "NO MORE approvals for out of state travel" and no reimbursements for any conference held at a resort.

Thereafter, Inspector Carr failed to apply either criterion when he approved APNP Mueller's travel advance for a five-day seminar at Kiawah Island, South Carolina. When Inspector Carr denied the Grievant's request for an advance for the NWHCC he stated "The Sheriff does not approve of training conferences in locations such as Las Vegas, "but offered

no meaningful distinction between Kiawah Island Golf Resort and “locations such as Las Vegas.”

In the present case, there is no dispute that the content of the NWHCC was relevant to the Grievant’s certification as an APNP and to her job as a women’s health specialist. Any ban on APNPs attending seminars out of state would substantially limit their ability to use LAP for seminars appropriate to their certification and work.

When Ms. Pope-Wright met with Union representative, the Grievant’s use of LAP hours was not an issue. Ms. Pope-Wright had previously approved the Grievant’s use of LAP for Las Vegas and Ms. Mueller’s at Kiawah Island.

The County is wrong when it argues that Ms. Mueller’s case may be distinguished on the basis that she did not follow proper procedure. As Ms. Mueller testified at hearing, she believed that Ms. Pope-Wright had approved five days of LAP to attend the Kiawah Island seminar. In any event, Ms. Mueller’s expenses were approved by Inspector Carr; the very person that Ms. Pope-Wright described as “adamant” about denying out-of-state seminar travel.

Knowing that the outcome of this meeting, *i.e.*, that the Sheriff’s Department would relinquish any authority over the reimbursement fund, would rankle the Sheriff, Ms. Pope-Wright decided to apply the “no locations such as Las Vegas” criterion to the Grievant’s LAP days. She called the Grievant into her office and “requested” that she replace the LAP with other paid leave. Contrary to the argument of the County, the Grievant did not voluntarily give up her three LAP days.

In so doing, Ms. Pope-Wright was not acting for the proper administration of Sec. 2.27, but, rather, acted in bad faith purely for collateral and retaliatory purposes. She wished to ingratiate herself with senior management; soothe the sting of relinquishing any authority over the reimbursement fund; and get back at the Union for its victory on this issue. Her retaliatory intent was further demonstrated two months later when she demanded that the Grievant not be reimbursed until her unrelated grievance had been resolved.

The County claims that there was a “past practice of not applying LAP days to conferences in locations such as Las Vegas.” The record, however, fails to establish the existence of any binding past practice. The alleged “past practice” was equivocal at best; even in the context of expense reimbursement, it was acted upon inconsistently; and the Union never accepted it as a basis for denying either reimbursements or LAP.

Ms. Pope-Wright “unreasonably withheld” LAP from the Grievant. The grievance should be sustained. The Grievant should be made whole by restoring two days to her vacation bank and one day to her holiday bank. The Arbitrator should retain jurisdiction for sixty days to resolve any disputes that may arise between the parties concerning implementation of the remedy.

County

The Grievant alleges that management violated Secs. 2.27, 1.03 and 1.05 of the labor contract by failing to pay three (3) LAP days previously granted by management. The Grievant was initially approved to attend the training conference. However, the Sheriff's Office had a past practice of not applying LAP days to conferences in locations such as Las Vegas. On August 20, 2009, which was prior to the Las Vegas conference, Inspector Carr sent an e-mail to the Grievant that specifically stated that the Sheriff does not approve of training conferences in such locations as Las Vegas.

When the Grievant returned from this training conference, she had a conversation with Ms. Pope-Wright in which she agreed that she would use one holiday and two vacation days to cover the time she was at the conference. Inasmuch as the Grievant voluntarily gave up her three (3) LAP days, the County did not violate the contract by failing to pay her for the LAP days.

In alleging discriminatory practices, the Grievant cites that Ms. Mueller, another APNP, received LAP days for a conference attended in Kiawah Island. The process for getting approval in the Sheriff's Office is two-fold: Dr. Grebner must approve the content of the seminar and Ms. Pope-Wright must approve the location and other logistical matters. Inasmuch as Ms. Mueller failed to follow proper channels, the authorization by Dr. Grebner does not provide a proper comparison. The Grievant has not provided any evidence that shows that the Sheriff's Office has violated Sec. 1.05.

The three (3) unpaid LAP days is appropriate in light of the Grievant's acceptance of the one holiday and two vacation days and the sufficient notice regarding nonpayment for out-of-state conferences that was provided by the Sheriff's Office. The County respectfully requests that the nonpayment of the Grievant's three (3) LAP days be sustained.

DISCUSSION

It is undisputed that the Grievant has received her requested reimbursement for attending the NWHCC in Las Vegas. At issue is whether the County violated the contract by changing Grievant Pam Prince's hours for September 14, 15 and 16, 2009 from LAP to one (1) day of holiday and two (2) days of vacation.

It is undisputed that, on September 3, 2009, the Grievant submitted a "Milwaukee County Office of the Sheriff Off-Time Request" in which she requested four (4) hours of holiday for 9/7/09; LAP on 9-14-09, 9-15-09, 9-16-09 and VAC on 9-17-09 and that Ms. Pope-Wright approved these "Off-Time Requests" on September 3, 2009. It is also undisputed that, following a conversation between Ms. Pope-Wright and the Grievant on October 8, 2009, Ms. Pope-Wright contacted the County's payroll department and requested that they change 9-14-09, 9-15-09 and 9/16/09 from LAP to "1 holiday and 2 vacation days." In dispute is whether, as the County argues, the Grievant voluntarily agreed to have the three previously approved LAP days converted to one (1) holiday and two (2) vacation days.

Ms. Pope-Wright recalls that, on October 8, 2009, she attended a meeting with representatives of the Sheriff's Department, County Labor Relations and the Union. Ms. Pope-Wright further recalls that, at the conclusion of this discussion, the parties agreed that reimbursements for seminars and conferences would be administered as they had been prior to 2009. According to Ms. Pope-Wright, the parties further agreed that the only aspect of the seminar and conference process that the Sheriff controlled was to grant LAP.

Ms. Pope-Wright recalls that, later that day, she met with the Grievant; she explained what had happened at the meeting; and she asked the Grievant if the Grievant was OK with using her own time on 9-14-09, 9-15-09, 9-16-09 because the conference was in Las Vegas. Ms. Pope-Wright further recalls that, at that time, the Grievant knew that the Sheriff did not consider Las Vegas to be an appropriate location. Ms. Pope-Wright recalls that, after she had explained her position to the Grievant, the Grievant agreed to change the three LAP days to personal time and the Grievant said that she would use these LAP days to go to a conference in November. According to Ms. Pope-Wright, she needed to have the Grievant's approval because payroll had said that she could not change the LAP days without the employee's agreement.

According to the Grievant, on October 8, 2009, Ms. Pope-Wright told the Grievant that, as a result of a meeting, the Grievant had to change her LAP to personal time; Ms. Pope-Wright asked the Grievant what personal time did the Grievant want to use; and that Ms. Pope-Wright stated that it did not matter if Ms. Pope-Wright had approved the use of LAP because the Sheriff was not paying for LAP time. The Grievant states that she did not want to replace the LAP with personal time. The Grievant recalls that, following this conversation; she prepared and sent Ms. Pope the following e-mail:

This memo is to verify our conversation on 10/08/2009 regarding the denial of LAP time, for the NP conference that I attended in Las Vegas 09/14/09 to 09/16/09. I was told I will be reimbursed for the conference but not for the days off. I will use one accrued holiday and two of my vacation days for time away at the conference. I will now have three additional LAP days in my bank. Two LAP days will be used for the conference in Chicago 11/09/09 to 11/10/09. I will get back to you regarding the conference in Brookfield, WI on diabetes in pregnancy, which will be my last LAP day for 2009.

The above e-mail, which was prepared shortly after the conversation between Ms. Pope-Wright and the Grievant, supports the Grievant's, rather than Ms. Pope-Wright's version of events. Specifically, it references "the denial of LAP time." Given the fact that Ms. Pope-Wright forwarded this e-mail to the County's payroll department as support for Ms. Pope-Wright's request to "change the 3 paid LAP days for 9/14, 9/15, and 9/16," it is reasonable to conclude that, at the time, she agreed with the content of this e-mail.

In summary, the record warrants the conclusion that, on October 8, 2009, the Grievant did not voluntarily agree to change 9/14, 9/15, and 9/16 from three (3) LAP days to one (1)

holiday and two vacation days. Rather, in response to Ms. Pope-Wright's statement that the Grievant had to change this LAP time to personal time, the Grievant substituted one holiday and two vacation days for the denied LAP time.

The record warrants the conclusion that Ms. Pope-Wright rescinded her prior approval for the Grievant to use LAP on 9/14, 9/15, and 9/16 because, from the discussions at the meeting on October 8, 2009, she understood that the Sheriff's Department had authority to grant or deny LAP. As the Union argues, under the language of Sec. 2.27 as interpreted by Arbitrator Gordon (MILWAUKEE COUNTY, Case 557, No. 65077, MA-13113, 10/5/06), management's authority to grant or deny LAP is not solely within the discretion of management. Rather, management's authority in this regard is subject to a "not unreasonably withheld standard." The specific language of Sec. 2.27 takes precedence over the general management rights language contained in Sec. 1.05.

Ms. Pope-Wright's testimony establishes that the only reason that she did not want the Grievant to use LAP on 9/14, 9/15 and 9/16 was that the conference was located in Las Vegas and Ms. Pope-Wright understood that the Sheriff and Inspector Carr did not approve of Las Vegas as a conference location. The County argues that the Sheriff's Office had a past practice of not applying LAP days to conferences in locations such as Las Vegas.

The record indicates that, prior to 2009, the Grievant and similarly situated employees were permitted to use available LAP to attend conferences and seminars in Las Vegas, as well as other out-of-state locations. It is not evident that, prior to 2009, the location of the conference or seminar was a consideration when granting or denying use of LAP.

Commencing in December 2008, managers in the Sheriff's Department issued various directives regarding reimbursement procedures for seminar expenses. Initially, these directives articulated a fiscal concern, *i.e.*, that the Sheriff's Department was responsible for payments which were not budgeted and not authorized by the Sheriff. As the year progressed, these directives articulated restrictions on "out of state" travel and, then, on "resorts." On August 29, 2009, Inspector Carr stated "The Sheriff does not approve of training conferences in locations such as Las Vegas."

The focus of these Sheriff's Department directives were seminar/travel reimbursements, rather than use of LAP. Prior to Ms. Pope-Wright's meeting with the Grievant on October 8, 2009, Ms. Pope-Wright knew that the parties had agreed to return to the former seminar reimbursement procedures (in which the Office of the Sheriff has no role other than to pay reimbursements approved by the Union and Yvonne Makowski). Neither these Sheriff's Department directives, nor any other record evidence, establish the existence of a "past practice" of not permitting LAP to be used for attending conferences or seminars in "locations such as Las Vegas."

In his Award, Arbitrator Gordon held that Sec. 2.27(c) "grants in the County the discretion to give or withhold permission, but also puts on the County the obligation to provide

a suitable reason for withholding.” There is evidence that the Sheriff did not “approve” of training conferences in locations such as Las Vegas. Neither the Office of the Sheriff, nor Ms. Pope-Wright, has articulated a reason, suitable or otherwise, for this disapproval.

This record warrants the conclusion that, on October 8, 2009, Ms. Pope-Wright unreasonably withheld permission for the Grievant to use LAP when Ms. Pope-Wright rescinded her prior approval of LAP for September 14, 15 and 16, 2009. By this conduct of its supervisory employee, the County violated Sec. 2.27 of the parties’ collective bargaining agreement.

The appropriate remedy for the County’s contract violation is to make the Grievant whole for the County’s unreasonable withholding of permission to use the three days of LAP on September 14, 15 and 16, 2009. In the e-mail of October 8, 2009, the Grievant indicates that she intends to use LAP days later in 2009.

This record indicates that the Grievant is allotted five (5) LAP days per calendar year. If, in 2009, the Grievant used all of her allotted LAP days, then it would be appropriate for the Grievant to have used personal time on September 14, 15, and 16, 2009 and then, under the make-whole remedy, the Grievant would not be entitled to the restoration of any holiday or vacation days used on those dates.

If the Grievant did not use all of her allotted LAP days in 2009, then, under the make-whole remedy, the Grievant is entitled to substitute such unused LAP days for the holiday and vacation days that were used on September 14, 15 and 16, 2009. Any holiday and/or vacation day so substituted shall be restored to the Grievant.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following

AWARD

1. The County violated the contract when it changed Grievant Pam Prince’s hours for September 14, 15 and 16, 2009 from LAP to 1 day of Holiday and 2 days of vacation.
2. In remedy of the County’s contract violation, the County is to immediately make-whole the Grievant consistent with the above discussion.

Dated at Madison, Wisconsin, this 13th day of January, 2011.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator

CAB/gjc
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