

BEFORE THE ARBITRATOR

In the Matter of a Dispute Between

BLOOMER PROFESSIONAL POLICE ASSOCIATION OF THE
LABOR ASSOCIATION OF WISCONSIN, INC.

and

CITY OF BLOOMER

Case ID: 7.0001

Case Type: MA

AWARD NO. 7921

Appearances:

Douglas J. Nelson for the Labor Association of Wisconsin, Inc.

Stephen L. Weld, Weld, Riley, Prenn & Ricci, S.C., for the City of Bloomer

ARBITRATION AWARD

The Labor Association of Wisconsin, Inc. (the “Union”) and the City of Bloomer (the “City”) requested that the Wisconsin Employment Relations Commission provide a panel from which I was selected by the parties as the arbitrator to hear and decide this unit work grievance. This matter was heard in accordance with the grievance and arbitration provisions of the parties’ labor agreement. Hearing was held in Bloomer, Wisconsin, on November 12, 2015. No transcript of the hearing was created. The parties submitted briefs which were received on December 18, 2015, whereupon the record was closed. Based upon the stipulation of facts, evidence and arguments of the parties, the arbitrator makes and issues the following award.

ISSUE

The parties were unable to agree on a statement of the issue but did agree that I had authority to frame the issue after giving consideration to their respective positions. Having done so, I conclude the issue is as follows:

Did the City violate Article III of the collective bargaining agreement when it did not fill Officer Travis Wagner's shift with a bargaining unit member after granting Wagner's May 5, 2015 request to use compensatory time on May 14, 2015? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE III – JURISDICTION OF WORK

Except in emergencies, work customarily performed by members of the bargaining unit shall not be performed by supervisory or other personnel not in the bargaining unit consistent with the provisions of Article XIII of this Agreement.

...

B. A bargaining unit vacancy of greater than six (6) hours must be offered to members of the bargaining unit first (those scheduled off duty). If an attempt to fill a vacancy in this manner is unsuccessful, the vacancy may be filled as management sees fit.

C. A bargaining unit vacancy created by a vacation request made with less than 14 days' notice but granted by the [City's Police] Department may be filled as management sees fit.

* * *

ARTICLE XIII – OVERTIME/COMPENSATORY TIME

...

Section 13.02: If an employee selects compensatory time as compensation, such computed compensatory time shall be credited to his compensatory time account. When an employee wants to use some of his compensatory time, he shall make a request to the Chief of Police or his designee. The Chief of Police or his designee shall grant or deny the request based on the same considerations used when granting or denying vacation requests. No reasonable request will be denied.

...

Section 13.03: Available overtime shall be offered to bargaining unit members on the basis of seniority.

BACKGROUND AND FACTS

On May 5, 2015, Wagner, a bargaining unit member, submitted a request to use compensatory time during his scheduled 5 p.m. to 5 a.m. shift on May 14, 2015. On May 7, the request was granted. This created a vacancy of more than six hours during the May 14 shift. The City did not fill the entire vacancy. Instead, the City employed Sergeant John Bayer for an additional three hours on May 14. Bayer is not a bargaining unit member. Bayer was previously scheduled to work nine hours on May 14, concurrent with Wagner's twelve-hour shift. Officer Mark McElroy was the senior bargaining unit member available to work a vacant bargaining unit shift on May 14. The City did not offer Wagner's vacant shift to McElroy or any other bargaining unit member. Prior to Wagner's request to use compensatory time in May, 2015, the City and the Union resolved their April 1, 2014 – March 31, 2016 collective bargaining agreement in October, 2014. In this agreement, Section III.C was newly created.

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

DISCUSSION

Resolution of this case requires examination of the parties' intended meaning of the terms and provisions of their agreement. If the words of the agreement are plain, clear and convey one distinct idea, it is not necessary to resort to extrinsic evidence. When the language of an agreement is clear and unambiguous, the plain reading of the agreement must control. The instant dispute centers on whether the City may fill a vacancy created by use of compensatory time in the same way that it fills a vacancy created after it grants a vacation request made with less than fourteen days' notice. I conclude that based upon the plain reading of the parties' agreement, the City may not fill both types of vacancies as it sees fit.

Article XXI provides vacation benefits to bargaining unit members. That article additionally provides restrictions and rules regarding the use of vacation. The City applies several considerations when deciding to grant or deny a vacation request. According to City Police Chief Jared Zwiefelhofer, those considerations include staff availability, coverage needs and cost. If the request is for more than six hours of vacation time, the City is required to offer the resulting vacancy to members of the bargaining unit who are available, Section III.B, and then in order of seniority, Section 13.03. If the vacancy cannot be filled in this manner, then in accordance with the last clause of Section III.B, the City may fill the vacancy as it sees fit.

However, under the new Section III.C of the agreement, if a request for vacation is made with less than fourteen days' notice, which the City grants, the City is not required to offer a resulting vacancy of more than six hours to bargaining unit members. Instead, the City may fill the vacancy as it sees fit. Contrary to the City's arguments, Section III.C does not state a *consideration* to be applied when the City is deciding to grant or deny a vacation request. By its plain reading, Section III.C provides a *consequence* when a bargaining unit member makes a vacation request with less than fourteen days' notice.

Article XIII of the agreement covers the City's overtime policy for bargaining unit members. Each employee has the right to elect compensation in the form of pay or compensatory time when working overtime (subject to certain restrictions and rules). When a bargaining unit employee desires to use earned compensatory time, he files a request. By application of Section 13.02, the City may grant or deny that request based upon the same considerations used when deciding to grant or deny a vacation request. Again, those considerations are staff availability, coverage needs and cost. If the City grants the compensatory time use request, then Sections III.B and 13.03 apply, and the City must offer the vacancy to available bargaining unit members. Unlike the Section III.C vacation provision, Section 13.02 does not impose a consequence based on the timing of a compensatory time use request.

The plain reading of the agreement provides that if a request to use compensatory time is granted and it creates a vacancy in bargaining unit work of more than six hours, then the vacancy must be offered to the most senior bargaining unit member available to work. Contrary to the City's arguments, nothing in Section 13.02, or elsewhere in the agreement, permits the City to impose the consequence of Section III.C, which is applicable only to vacation requests, when a request to use compensatory time is made. The provisions of Section III.B apply when the City grants a bargaining unit member's request to use compensatory time. Because the contract language is clear, I need not and do not consider the evidence of bargaining history and past practice presented by the parties.

AWARD

Yes, the City did violate Article III of the collective bargaining agreement when it did not offer McElroy the option to fill Wagner's vacant May 14, 2015 shift. The grievance is granted. The City shall make McElroy whole for any and all lost wages and benefits.

Dated at Madison, Wisconsin, this 15th day of February 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Karl R. Hanson, Arbitrator