

BEFORE THE ARBITRATOR

In the Matter of a Dispute Between

WALWORTH COUNTY DEPUTY SHERIFF'S ASSOCIATION

and

WALWORTH COUNTY

Case ID: 310.0002

Case Type: MA

AWARD NO. 7937

Appearances:

Joshua P. Grube, for the Association.

Daniel G. Vliet, for the County.

ARBITRATION AWARD

The Walworth County Deputy Sheriff's Association and Walworth County jointly requested that the Wisconsin Employment Relations Commission assign me to serve as arbitrator to resolve a sick leave grievance. The Commission honored that joint request. Hearing was held in Elkhorn, Wisconsin, on January 11, 2017. The hearing was transcribed and the parties filed written argument by March 14, 2017.

ISSUE

The parties were unable to agree on a statement of the issue to be resolved but did empower me to frame same after giving due consideration to their respective positions. Having done so, I conclude the issue is best framed as:

Did the County violate the contract by denying the grievant's sick leave request and, if so, what is the appropriate remedy?

DISCUSSION

In 2014, the parties had an ongoing dispute (raised by multiple grievances) as to the contractual right of employees to use various types of leave when they were scheduled to work on a holiday. As part of their ultimately successful efforts to settle a 2014 contract, the parties entered into the following agreement:

EXHIBIT "F"

GRIEVANCE SETTLEMENT AGREEMENT DEPUTY SHERIFFS ASSOCIATION

1. The Union agrees to withdraw, with prejudice, any and all grievances over the use of any type of paid leave on a holiday.
2. The Union agrees to accept the County's termination of past practice with regard to the use of any type of paid leave on a holiday.
3. Any use of benefit time to substitute for an employee's scheduled work day on an observed holiday, with the exception of sick leave as defined in Article XI, shall not be allowed to be substituted on a holiday unless specifically defined in Article VIII. The issue of the use of sick leave on a holiday is addressed in item 4 below.
4. The Union's agreement to accept the County's termination of past practice, as set forth in item 2 above, includes the use of sick leave on a holiday. The County will administer its payroll in a manner that will not permit sick leave to be substituted on a holiday. Nothing herein shall prohibit the Union from grieving this issue; however, the Union shall be precluded from citing past practice in any arbitration or proceeding.

The settlement agreement (by way of physical attachment) became part of the parties' 2014, 2015, and 2016 – 2018 contracts.

Since the settlement agreement was signed, there have been four instances in which employees sought to use sick leave on a scheduled holiday. In all four instances, the County

disallowed the employee request. The first three affected employees did not file a grievance. The fourth employee filed the grievance which is the subject of this award.

It is undisputed that the grieving employee was ill on a scheduled holiday.

During bargaining over the 2015 and 2016 – 2018 contracts, neither party made any proposals to modify the contract provisions related to sick leave or holidays.

The County contends that the absence of grievances since 2014 and the Association's silence at the bargaining table establish Association acquiescence to the County's view that sick leave cannot be used for absences that occur on a regularly scheduled holiday. Particularly in light of the last sentence of the settlement agreement, I do not find this argument to be persuasive. That sentence satisfies me that the Association was "keeping its options open" as to future leave denials that might arise while also understanding from other portions of the fourth paragraph of the agreement that the County would not be approving any such leave requests.

The County makes a related argument that the lack of prior grievances creates a binding past practice that warrants dismissal of this grievance. As was true for the County's "acquiescence" argument, the last sentence of the settlement agreement makes it clear that the Association has not accepted the County's denials as contractually binding. Further, there is no persuasive evidence that the Association was aware of the three denials that were not grieved.¹

The County also argues that it has a right to make reasonable work rules and has done so by its enactment of a 2013 ordinance prohibiting use of sick leave on scheduled holidays. However, the language of the ordinance itself acknowledges it cannot apply if a union contract "addresses the particular issue." The County, contrary to the Association, argues the contract is silent regarding the use of sick leave on holidays and that the ordinance/work rule controls. A response to this argument requires analysis of the contractual sick leave language itself.

The County contends that there is nothing in the contract that specifically allows the use of sick leave on a holiday. It asserts that the existence of the holiday pay benefit conveys a contractual intent that holiday pay is the only contractual benefit that can be utilized. The Association counters that the contractual sick leave language does not contain any limitation on which scheduled workdays it can be used. I am satisfied the Association has the better argument. Where, as here, a contract benefit is created, any limitations on its use will typically be located within the contract provision itself. There is no holiday usage limitation to be found in the sick leave provision. Thus, as long as the employee meets the eligibility requirements stated in the sick leave language, sick leave can be utilized on a holiday when the employee is

¹ The County contends that it was the Association's burden to establish that it was unaware that prior denials had not been grieved. On the contrary, because the County is advancing this binding past practice argument, it is the County that bears the burden of persuasion.

scheduled to work.² Therefore, I conclude that the County did violate the contract by denying the grievant's sick leave request, and the County is ordered to make the grievant whole by taking the action requested by the Association.

Dated at Madison, Wisconsin, this 17th day of March 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Arbitrator

² Given my determination that this contract benefit exists, it is apparent that I have also rejected the County's contention that the contract is silent and that the ordinance/work rule governs.