BEFORE THE ARBITRATOR

In the Matter of a Dispute Between

WISCONSIN PROFESSIONAL POLICE ASSOCIATION / LAW ENFORCEMENT RELATIONS DIVISION / WATERLOO PROFESSIONAL POLICE ASSOCIATION

and

CITY OF WATERLOO

Case ID: 544.0000
Case Type: MA

AWARD NO. 7950

Appearances:

Roger Palek, Staff Attorney, Wisconsin Professional Police Association, 660 John Nolen Drive, Suite 300, Madison, Wisconsin, 53713-1469, appearing on behalf of the Association.

Troy Thompson, Attorney, Axley Brynelson, 2 East Mifflin Street, Suite 200, P.O. Box 1767, Madison, Wisconsin, 53701-1767, appearing on behalf of the City.

ARBITRATION AWARD

The Wisconsin Professional Police Association (WPPA)/LEER Division/Waterloo Professional Police Association (hereinafter referred to as the Association) and the City of Waterloo (hereinafter referred to as the City or Employer) were parties to a collective bargaining agreement (hereinafter referred to as the CBA) that provided for final and binding arbitration of unresolved grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide the instant grievance. A hearing on that grievance was held in Waterloo, Wisconsin, on December 19, 2017. The hearing was not transcribed. The parties filed briefs and reply briefs, whereupon the record was closed on February 16, 2018. Having considered the evidence, arguments of the parties, and the record as a whole the undersigned issues the following award.

ISSUE

The parties stipulated to the following issue:

Is the grievant entitled to the payment of any vacation benefit that has gone unpaid in connection with his voluntary resignation from employment on August 12, 2017? If yes, in what amount?

PERTINENT CONTRACT PROVISIONS

The parties' 2015 – 2017 CBA contained the following pertinent provisions:

Article XVII– Vacations.

Section 17.01 Allowance and pay

1 year of employment = six days of vacation
2 years of employment = 10 days of vacation
3 years of employment = 11 days of vacation
4 years of employment = 12 days of vacation
5 years of employment = 13 days of vacation
6 years of employment = 14 days of vacation
7 years of employment = 15 days of vacation
8 years of employment = 16 days of vacation
9 years of employment = 17 days of vacation
10 years of employment = 18 days of vacation
11 years of employment = 19 days of vacation
12 years of employment = 20 days of vacation
20 years of employment = 25 days of vacation

* * *

Section 17.02 Vacation Use

Effective January 1, 2015, the vacation schedule will be based on a calendar year rather than anniversary date year. It is intended that vacation time be used in the immediate following calendar year after which it is earned. If it is not possible to use vacation earned as stated, exceptions may be granted by the Chief of Police for carrying the unused vacation over to the immediate next calendar year. If carrying over of unused vacation time is denied for any reason, the remainder of unused vacation time shall be paid on a separate check along with the regular salary with the pay period that ends closest to the end of the calendar year.

(Emphasis in original)

Section 17.03 Calculation of Partial Vacation

> Vacation time shall be determined on a calendar year basis. When employment terminates during the course of the calendar year, the amount of unused vacation earned in the previous calendar year shall be computed and paid upon termination. The amount of vacation that has been earned in the current calendar termination year shall be prorated according to the number of months of work that the employee has performed and paid upon termination.

BACKGROUND

The City operates a police department. The Association represents the City's six non-supervisory police officers.

In 2014, when the parties were bargaining a 2015 – 2017 CBA, the City proposed changes to the vacation language so that vacation accrual would be based on the calendar year rather than the employees' date of hire (i.e. their anniversary date) as it had been. The Association agreed to that language change and it was incorporated into the parties' 2015 - 2017 CBA.

FACTS

Joe Rupprecht was employed by the City as a police officer effective January 6, 2013. On July 24, 2017, he notified the City in writing that he was resigning effective August 12, 2017. (Note: All dates hereinafter referred to 2017).

The next day – July 25 – Mo Hansen – the City's clerk/ treasurer – sent Rupprecht an email which identified the vacation time that Rupprecht still had available. This memo contained the following caption in the subject line: "*Calculating Vacation Based on an August 12, 2017 Employment Termination Date*". That memo provided thus:

> In reply to your request, below is your calculated available vacation time based upon an anticipated termination date August 12, 2017.
>
> - On January 1, 2017 you were granted **96 hours** of vacation time earned due to 2016 service per section 17.01 of the contract. "4 years of employment = 12 days of vacation."
>
> - Assuming a termination date of August 12, 2017 you will have earned **60 hours** of vacation for 2017 service. You will have

> worked 7 full months. Sixty hours is a prorated amount for the current year as specified in section 17.03 of the contract.
>
> - 2017 vacation hours used as of the date of this memo is **48 hours.**
>
> - You have indicated that you wish to seek vacation for eight remaining eight-hour shifts, or **64 hours.**
>
> [January 1, 2017 vacation granted for prior-year service] + [prorated hours earned in current year] - [vacation hours used] - [anticipated vacation hours used between now and termination] = potential vacation balance as of August 12, 2017.
>
> (96 + 60) - (48 + 64) = 44 hours
>
> (Emphasis in original)

The next day – July 26 – Hansen sent Rupprecht another email which contained the following caption in the subject line: "*Corrected – Calculating Vacation Based on an August 12, 2017 Employment Termination Date*". That memo provided thus:

> Chief Sorensen asked that I review the memo I sent to you. I called Luann and talked through the details. Below is my correction.
>
> In reply to your request, below is your calculated available vacation time, based on an anticipated termination date of August 12, 2017:
>
> - On January 1, 2017 you were granted **96 hours** of vacation time for 2017 service. From section 17.01 of the contract "Years of employment = 12 days of vacation".
>
> - Assuming a termination date of August 12, 2017 you will be eligible to use **60 hours** of vacation for 2017 service based on using the calculation provided in section 17.03 Calculation of Partial Vacation of the contract. You have worked seven months.
>
> - 2017 vacation hours used as of the date of this memo is **48 hours**.
>
> - You have indicated that you wish to seek vacation for eight remaining eight-hour shifts, or **64 hours**.

- The vacation balance is 12 hours and not 44 hours as previously reported to you. 96 hours were granted as of January 1 for this calendar year 2017, but with termination, a proration takes place, meaning you are eligible for 60 hours (7/12 of 96) of vacation. You have already used 48 hours. The remainder is 12 hours.

Total hours available from all sources does not get you to 64 hours:

Vacation: 12
Banked holiday: 24
Comp time: 8
TOTAL: 44

(Emphasis in original)

Rupprecht resigned – as he said he would – on August 12. The record indicates that when he resigned, he had used up the 12 hours of vacation that Hansen's second memo indicated he had left as a (vacation) balance.

On August 18, the Association filed a grievance which averred that Hansen's "corrected" memo to Rupprecht (i.e. Hansen's second memo – the one dated July 26) calculated Rupprecht's vacation balance incorrectly. As a remedy, the Association asked that Hansen's first memo to Rupprecht (i.e. the one dated July 25) "be adhered to".

The grievance was appealed to arbitration.

DISCUSSION

At issue here is whether the City violated the CBA with respect to its calculation of any final vacation pay due to Rupprecht in connection with his voluntary resignation from employment. The Association asserts that additional vacation pay is owed him, while the City disputes that contention. Based on the following rationale, I find that no additional vacation pay is owed Rupprecht.

Since this is a vacation payout case, I'm going to start by reviewing two sections in the vacation language found in the CBA.

First, let's look at Section 17.01. That section contains a chart that identifies how many days of vacation an employee earns per year. The chart starts by listing "*1 year of employment = six days of vacation*". From there, it goes on to list an additional year on each line, with each line also containing a higher number of vacation days. To determine how much vacation an employee earns under this vacation schedule, all one needs to know is how many years of employment the employee has with the City. In the factual situation involved here, the grievant started with the City in 2013, so that meant that in 2017 he had 4 years of employment with the City. When one

looks at the vacation chart, it indicates that an employee with 4 years of employment gets 12 "days" of vacation. The word "day" just referenced refers to an eight (8)-hour day, so multiplying eight hours times 12 "days" equals 96 hours of vacation. That means that an employee with 4 years of employment gets 96 hours of vacation. That's it; an employee with 4 years of employment is not supposed to get more vacation than that.

Having just noted that an employee with 4 years of employment earns 96 hours of vacation, it is possible for an employee to get less vacation time than that. I'm referring, of course, to a factual situation where an employee leaves the City's employment sometime before the end of the year. The vacation time just referenced is based on the implicit assumption that an employee works the entire calendar year (in this case, the year 2017) for the City. If an employee leaves at any point before the end of the year (meaning they do not stay on the City's payroll till December 31), what generally happens in Wisconsin's public sector is that they do not get a full vacation allotment, but instead simply receive a pro- rata share of same.

Here, the parties have included language in the CBA dealing with the principle just noted. In this CBA, that language is found in Section 17.03 entitled "*Calculation of Partial Vacation*". As the name indicates, that section deals with what happens if an employee leaves the City's employment prior to December 31, namely that their vacation allotment is prorated. Specifically, it says that if "employment terminates during the course of the calendar year" then "the amount of vacation that has been earned in the current calendar termination year shall be prorated according to the number of months of work that the employee has performed and paid out upon termination". In this case, there is no dispute concerning what the appropriate prorated number is for Rupprecht because both sides use the number 60. Thus, when Rupprecht resigned on August 12, 2017, his prorated 2017 vacation allotment was 60 hours.

I'm now going to pivot away from the contract language and over to the two memos that clerk/treasurer Hansen wrote concerning the vacation time that Rupprecht had available (when he resigned his employment). These two memos have come to be known as the first memo and the second memo. The crux of this case is which memo accurately reflects Rupprecht's vacation balance at the time he resigned. Said another way, which memo controls. The Association wants the first memo to control, while the City asserts that the second memo should control. For the reasons noted below, I find that the second memo controls.

The first memo contained four bullet points followed - at the bottom of the memo - by what I'm going to characterize as a formula. That formula had numbers in two sets of parentheses. In the first parenthesis were the numbers 96 and 60. In the second parenthesis were the numbers 48 and 64. The numbers in the first set of parentheses represented the amount of vacation time that Hansen thought Rupprecht was entitled to get for 2017. The numbers in the second set of parentheses represented vacation time that Rupprecht had already taken at the time the memo was written, as well as vacation time that Rupprecht still wanted to take. For the purpose of my discussion here, the numbers in the first parenthesis are the most important because they deal with the amount of vacation time that Hansen thought Rupprecht was entitled to get in 2017. Once again, I'm referring to the numbers 96 and 60.

I conclude that that part of Hansen's formula/calculation in his first memo was incorrect. Here's why. It has already been noted that the number 96 refers to the amount of vacation that an employee with 4 years of service is entitled to get (with the caveat, of course, that an employee stays with the City till the end of the calendar year). What Hansen then did was to add a second number to the 96 just noted. The second number he added was the number 60, which as previously noted, refers to a prorated share of 96 hours when the employee leaves the City's employment in August. What Hansen did in his formula in the first memo was to add these two numbers together to determine how much vacation Rupprecht was entitled to in 2017. When one does the math and adds the numbers 96 and 60 together, those two numbers total 156 hours. Thus, under Hansen's first memo, Rupprecht was supposed to get 156 hours of vacation for 2017. When 156 hours are expressed in days (rather than hours), it equals 19.5 days. (Note: I got this number by dividing 156 hours by 8, as in 8 hours per day). However, there's a problem with giving Rupprecht 19.5 days of vacation for 2017. It is this: according to the vacation chart in Section 17.01, an employee must have 12 years of service to get that amount of vacation, yet Hansen's calculation gave that amount of vacation (i.e. 19.5 days) to an employee with just 4 ½ years of service. Obviously, Hansen's 2017 vacation determination for Rupprecht was incorrect because it gave Rupprecht two vacation allotments for the year (namely, both a full calendar year vacation allotment and a prorated vacation allotment). Doing that lacked a contractual basis. Once again, if Rupprecht had stayed on as an employee with the City till December 31, 2017 - and not left in August as he actually did - he would have received just 96 total hours of vacation for the year. When looked at that way, it just doesn't make sense that an employee who leaves in August (rather than December) would get 156 hours of vacation for the year. Consequently, I'm persuaded that the portion of Hansen's first memo giving Rupprecht a 2017 vacation allotment of 156 hours was just plain wrong.

In my view, the parties' bargaining history buttresses that conclusion. Here's why. If it was the parties' mutual intent when they changed the vacation language in 2014 and went from an anniversary year to a calendar year to give two vacation allotments to an employee (like Rupprecht) who left mid-year so that the employee would get both a full year's allotment of vacation as well as a prorated amount when they left, one would logically expect to find specific reference to it in the parties' bargaining history. However, there is none. That being so, it would be a circumvention of the bargaining process to now interpret the vacation language to provide such a result.

Having so found, the focus now turns away from the parties' bargaining history and over to Hansen's second memo. In bullet points one and two therein, Hansen stated that Rupprecht was contractually entitled to 96 hours of vacation for the year 2017, but assuming he resigned on August 12, 2017 that amount would be prorated to 60 hours. Both of those statements were correct and had a contractual basis. Then, in bullet points three and five, Hansen went on to say that as of the date of that memo, Rupprecht had already used 48 of those 60 hours, leaving a balance of 12 hours of vacation. That was also a correct statement. Given the foregoing, I find that Hansen's second memo accurately identified both the amount of vacation that Rupprecht was entitled to for the year 2017, and what his vacation balance was as of the date of that memo (i.e. a balance of 12 hours). I further find that the numbers contained in Hansen's second memo comported with Sections 17.01 and 17.03 of the CBA.

Finally, the record indicates that when Rupprecht resigned his employment with the City, he had used up the last 12 hours of vacation that Hansen's second memo indicated he had left as a vacation balance. As a result, no contract violation has been found.

In light of the above, it is my

AWARD

That the grievant is not entitled to the payment of any additional vacation benefit that has gone unpaid in connection with his voluntary resignation from employment on August 12, 2017. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 4th day of May, 2018.

Raleigh Jones, Arbitrator