

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
PROFESSIONAL FIREFIGHTERS OF OSHKOSH, LOCAL 316

and

CITY OF OSHKOSH

Case 466.0009

Case Type: MA

(Tanner Harrington Vacation Pay Grievance)

AWARD NO. 7981

Appearances:

Attorney Timothy E. Hawks, for Local 316.

Attorney Chad Wade, for the City.

ARBITRATION AWARD

On March 17, 2021, the Professional Firefighters of Oshkosh, Local 316 filed a request with the Wisconsin Employment Relation Commission asking that a member of the Commission's staff be assigned to serve as a grievance arbitrator as to a dispute between Local 316 and the City of Oshkosh. I was so assigned.

On July 13, 2021, a hearing was held in Oshkosh, Wisconsin. A transcript of the hearing was prepared. The parties thereafter filed written argument by September 15, 2021.

ISSUE

The parties were unable to agree on a statement of the issue to be resolved but did empower me to frame the issue after considering their views. Having done so, I conclude the issue to be resolved is:

Did the City violate the contract by denying the grievant's request to take paid time off? Is so, what remedy is appropriate?

DISCUSSION

The City had a staffing need to fill a vacancy on an overtime basis. No employees volunteered to fill the vacancy. The grievant was ordered to fill the vacancy. The grievant then asked to use paid leave. His request was denied. At the time in question, only three other employees were on paid leave.

Article XIII B. 2. states in pertinent part:

Unless the City determines that its staffing needs allow for larger numbers of employees to be on paid leave which is defined as vacation time, paid holiday, comp time and combo holiday, no less than a total of four (4) employees per shift shall be allowed on paid leave.

Local 316 asserts that although the grievant was correctly identified as the employee who could be ordered to take the overtime assignment, the above-quoted Article then clearly provided the grievant with an unqualified right to be the fourth employee to use paid leave. The City disagrees and points to Article VII A. 10. which provides in pertinent part:

10. An individual has the right to turn down any overtime assignment, except, if a position must be filled and no one else has been found to take the assignment. Then, the individual who has the least time in the position must accept the overtime assignment at the discretion of the Fire Chief.

While it is true that there are no expressed qualifiers to the **general** contractual right to have four employees on paid leave, I am persuaded that the contractual phrase “must accept the assignment” provides **specific** guidance as to whether the grievant could use leave time after being ordered to fill the vacancy. The most reasonable interpretation of “accept” conveys a contractual intent that the grievant was obligated to work the shift.

I also note that under Local 316’s interpretation of the contract, the City would be obligated to seek a replacement for an ordered employee multiple times if only one or two employees were on paid leave and each ordered employee then requested to use paid leave. It does not seem likely that the parties would intend such a result given the impact on the City’s interest in promptly staffing vacancies so as to avoid taking equipment out of service.

Given the foregoing, I conclude that the City did not violate the contract by denying the grievant’s paid leave request.

Issued at the City of Madison, Wisconsin, this 4th day of January, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter Davis, Arbitrator