EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Petition of	
WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION	Case 28 No. 47230 MIA-1717
For Final and Binding Arbitration Involving Non-Supervisory Law Enforcement Personnel in the Employ of	Decision No. 27315-A
VILLAGE OF HALES CORNERS (POLICE DEPARTMENT)	

Appearances:
Davis & Kuelthau, S.C., Attorneys at Law, by Mr. Mark V. Vetter, for the Village.
Mr. Richard T. Little, Bargaining Consultant, for the Association.

By its Order of July 14, 1992, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator in the above-captioned matter to issue a final and binding award ". . . pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act."

A hearing was held at Hales Corners, Wisconsin, on September 2, 1992. No transcript of the proceeding was made. At the hearing both parties had the opportunity to present evidence, testimony and arguments. The record was completed on October 12, 1992, with the receipt by the arbitrator of the parties' post-hearing briefs.

There is one issue in dispute, Personal Leave. Personal Leave language in the parties' 1990-91 Agreement is as follows:

ARTICLE XX - PERSONAL LEAVE

A. All employees shall be eligible for three (3) personal days off each calendar year. Personal days may not be used for recreation or entertainment reasons. The employee shall notify the Chief of Police, or designee, in writing as soon as practicable that a personal day is needed. Personal days may be denied when the safety or welfare of the Village would be jeopardized.

B. Personal time off will be charged against the employee's accumulated sick leave time. An employee will not be paid for personal time off if:

1. The employee has no accumulated sick leave.

2. The employee requests that a sick leave deduction not be made.

C. Personal leave may be taken in units of not less than one hour. Any portion of an hour will be considered a full hour.

In the current proceeding, the Association's final offer does not include any change in the above-quoted language. The Village's final offer seeks to amend the second sentence of Paragraph A to read (the underlined language is what would be added):

Personal days may not be used for recreation or entertainment reasons or to sleep.

There was testimony about the bargaining which produced the 1990-91 Personal Leave language. Both parties proposed changes in the language and a compromise was reached. Police Chief Dzibinski testified that in the 1988-89 language, there was entitlement to five days of personal leave, but officers had to give reasons for the leave when requesting it. The Association sought to not have to give reasons. Dzibinski testified that the agreement reached was the reduction of the number of days of personal leave from five to three, and agreement that there would no longer be reasons required for using the leave. The language was changed, too, to make it clear that personal leave could not be used for recreation or entertainment. There was no discussion in the bargaining for 1990-91 of use of personal leave for sleep.

Dzibinski testified further that taking personal leave in order to sleep was not permissible under the 1990-91 Agreement, and in the current bargaining the Village's final offer is intended to make that clear. The language change was sought also because there was a grievance filed during 1990-91 (see below).

In response to a question from the arbitrator, Dzibinski testified about the Village's reasons for not wanting officers to use personal leave for sleeping. He testified that he understood that it was Village policy before his arrival ten years ago, to not allow personal leave use for sleeping. In accord with that policy, Dzibinski denied a leave request by an officer in the 1980s to use personal leave for sleeping. He testified further that sleeping has never been discussed by the parties as a reason for granting leave. He has been present as an observer in all bargaining sessions, he testified.

WPPA Business Agent Pechanach testified. He has serviced this bargaining unit for more than five years. He testified that in the bargaining for 1990-91, the Association initially proposed an increase of personal leave days to eight per year, but subsequently agreed to a reduction to three days in exchange for the Village's removal of restrictions on use of personal leave except for recreation and entertainment. He testified also that sleep was never discussed, and only became an issue in the above-referenced grievance.

In response to a question from the arbitrator, Pechanach testified about the reasons that officers would want to use personal days for sleep. One reason is that 3rd shift officers feel discriminated against because if they cannot use personal leave to sleep, there is very little other opportunity for them to make use of personal leave days. Also, officers on any shift, if they have to take care of family for sickness or other conditions, may need to sleep to "recharge their batteries" with a day off from work, and they don't want to have to make up other reasons for taking the time off when in fact it is to catch up on sleep.

The above-referenced grievance was filed on December 23, 1991, and was held in abeyance pending the outcome of the current proceeding. At the hearing the parties stipulated that they do not want the arbitrator to rule on the merits of the grievance. The grievance alleges a violation of Article XX. The facts alleged by the grievant, on the written grievance, are that the Chief denied his request to use a personal day to sleep. The Village's response, in part, stated, "It is the Village's position that personal leave was never intended for sleeping purposes."

Discussion

In making his decision, the arbitrator is required to give weight to the factors contained in the statute. There is no disagreement with respect to several of these in this dispute: (a) lawful authority of the employer; (b) stipulations of the parties; that part of (c) which pertains to the financial ability of the Employer; (d) (1) comparisons with employees in private employment in comparable communities; (e) cost of living; (f) overall compensation; (g) changes in circumstances during the pendency of arbitration. The other factors are discussed below.

One of the statutory factors, (c), includes "the interests and welfare of the public." The Village does not address this factor specifically, although it argues that its position, specifically barring use of personal leave for sleeping, is more reasonable than the Association's proposal. The Association argues that it is in the public's interest to have a well-rested

police force, and that if it is necessary for an officer to catch up on sleep, rather than be at work without adequate rest, it is in the public's interest to allow use of personal leave for that purpose.

The arbitrator is not persuaded that either party's offer is more in the public's interest than the other. He agrees with the Association (and with the Village for that matter), that it is important that officers be well-rested. That is not really the issue. The issue is whether there should be a specific prohibition on use of personal leave for sleep, or whether the personal leave language should be left as is, without specific mention of sleep. It is not clear to the arbitrator that either party's final offer is better than the other in assuring that there will be a well-rested police force.

Factor (d) pertains to comparisons of ". . . conditions of employment . . . with other employees performing similar services and with other employees generally: (1) in public employment in comparable communities."

The arbitrator has reviewed the language of other collective bargaining agreements in the Milwaukee area which are in evidence. None of the comparable provisions specifically ban sleep as a reason for use of personal leave. It is not possible to tell from a review of the language whether other departments permit use of personal leave for sleep, and there was no testimony about practices in other departments.

It is the arbitrator's opinion that since it is the Village which is seeking to change the language in this proceeding, by specifically barring use of personal leave for sleep, it is the Village's burden to demonstrate that its proposed language change is supported in comparisons with other communities. The Village has not met that burden.

The Village argues that its proposal is merely a clarification of bargained language, not a substantive change, and the burden should be on the Association to demonstrate the unreasonableness of the clarification. The arbitrator disagrees, for reasons discussed below.

Factor (h) pertains to "such other factors . . . normally or traditionally taken into consideration in the determination of . . . conditions of employment through voluntary collective bargaining (or) . . . arbitration . . ."

Both parties presented evidence pertaining to the bargaining history of the personal leave language, and the administration of that language in the past. It is undisputed that in the bargaining which resulted in the most recent agreement, there was extensive discussion of the personal leave section, including the number of days, and the conditions under which personal leave could be used. It is also agreed, however, that there was no

mention of "sleep" as either a legitimate use of personal leave, or as a reason for personal leave which would not be allowed. Under these circumstances, the arbitrator is not persuaded that the "or to sleep" language proposed by the Village is simply a clarification, rather than a substantive change. It is for that reason that the arbitrator places the burden of demonstrating the need for the change on the Village.

Prior to the aforementioned bargaining, there had been two instances over the years, apparently, in which the issue of leave for sleep purposes had been a subject of discussion. It was apparently not regarded as a problem of sufficient importance for either side to address the subject specifically in bargaining proposals. In 1990-91 there was a substantial change in the language governing personal leave. There was no evidence presented in this proceeding about any mutual intent to continue practices which may have developed under the old language.

Since the effective date of the most recent Agreement, the subject of use of personal leave for sleep has arisen and is the subject of a pending grievance. The fact that there is a grievance which is before a grievance arbitrator, but is in abeyance by agreement of the parties, does not provide an adequate demonstration of a need to change the contract language. Once the grievance is decided, one or both parties might want the language changed, or they might not want it changed. They can address the subject in subsequent bargaining if they wish to do so.

It must be emphasized that in this proceeding the parties agreed that this arbitrator should not address or decide the grievance. Thus, he has not taken any position with respect to what the existing language means. His selection of the Association's final offer should not be interpreted as an endorsement of the use of personal leave for sleeping.

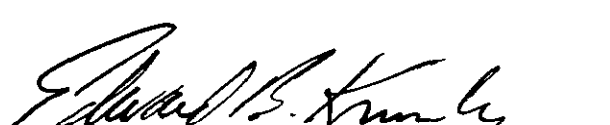
Conclusion

The arbitrator is required by statute to select one final offer or the other in its entirety. Based upon the above facts and discussion, the arbitrator hereby makes the following

AWARD

The Association's final offer is selected.

Dated at Madison, Wisconsin, this 9th day of November, 1992.



Edward B. Krinsky
Arbitrator