

IN THE MATTER OF THE ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR SERVICES, INC.,	)	MINNESOTA BUREAU OF MEDIATION SERVICES
	)	CASE NO. 08-PA-1338
	)	
	)	
Union,	)	
	)	
and	)	
THE CITY OF ST. JOSEPH,	)	DECISION AND AWARD
	)	OF
Employer.	)	ARBITRATOR

APPEARANCES

For the Union:

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For the Employer:

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On July 13, 2010, in St. Joseph, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Union against the Employer. The grievance alleges that the Employer violated the labor agreement between the parties by failing to credit the grievant, Matthew C. Johnson, with one day of holiday pay. (References made in this Decision to the "labor agreement" are to the parties' labor agreement that was effective

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during 2008.) Post-hearing briefs were received by the arbitrator on July 25, 2010.

FACTS

The Employer is the City of St. Joseph, Minnesota, which is located in the central part of the state. The Union is the collective bargaining representative of all employees of the Employer's Police Department except the Chief of Police and those who are not licensed law enforcement officers. In early 2008, at the time of the occurrences that gave rise to the present grievance, the bargaining unit consisted of five Police Officers and one Sergeant.

The grievant has worked for the Employer as one of its full-time Police Officers for about five years; previous to that full-time employment, he was a part-time Police Officer for the Employer for about three years.

In the early part of 2008, Police Officers worked a ten-hour day, with days on and days off rotating in the following sequence every twenty-eight days:

Five days on duty  
Four days off duty  
Five days on duty  
Four days off duty  
Six days on duty  
Four days off duty

This sequence of days on and off duty was repeated throughout the year. The schedule for each individual Police Officer was established at the start of the year by the Sergeant, who provided each Officer with a written schedule, thus informing each of them of the particular dates he or she was scheduled to

be on duty and those he or she was scheduled to be off duty during the entire calendar year. Hereafter, I may refer to this schedule as the "Annual Schedule."

On February 2, 2008, the grievant underwent surgery for an emergency appendectomy. Just before the surgery, he notified the Chief of Police that he was going into surgery. The Chief told the grievant, "keep me informed." On February 15, 2008, the grievant gave the Chief a note from his physician, the full text of which I set out below:

For: Matthew Johnson                      Date:1/15/08  
Patient ok to participate in qualification  
shoot on 2/27/08. Also, patient may resume  
full duty starting 3/1/08.

Below, I set out the grievant's Annual Schedule for the relevant period, showing the dates he was scheduled to be on duty and the dates he was scheduled to be off duty and, in addition, showing the dates that he was compensated by taking sick leave:

<u>Date</u> <u>(2008)</u>	<u>Scheduled</u> <u>Work Day</u> <u>Or Day Off</u>	<u>Sick Leave</u> <u>Taken</u>
1-31	Off	No
2-1	Off	No
2-2	Off	No
2-3	Off	No
2-4	On	Yes - 10 Hours
2-5	On	Yes - 10 Hours
2-6	On	Yes - 10 Hours
2-7	On	Yes - 10 Hours
2-8	On	Yes - 10 Hours
2-9	Off	No
2-10	Off	No
2-11	Off	No
2-12	Off	No

<u>Date</u> (2008)	<u>Scheduled</u> <u>Work Day</u> <u>Or Day Off</u>	<u>Sick Leave</u> <u>Taken</u>
2-13	On	8 Hours Sick Leave, 2 Office Meeting
2-14	On	Yes - 10 Hours
2-15	On	Yes - 10 Hours
2-16	On	Yes - 10 Hours
2-17	On	Yes - 10 Hours
2-18	Off	No
2-19	Off	No
2-20	Off	No
2-21	Off	No
2-22	On	Yes - 10 Hours
2-23	On	Yes - 10 Hours
2-24	On	Yes - 10 Hours
2-25	On	1 Hour Sick Leave, 9 Light Duty
2-26	On	1 Hour Sick Leave, 9 Light Duty
2-27	On	10 Hours Work - Qualification Shoot
2-28	Off	No
2-29	Off	No
3-1	Off	No
3-2	Off	No
3-3	On	Returned to Regular Full-Time Duty

Thus, from the time of his surgery until he returned to regular full-time duty, the grievant took twelve full days of sick leave (February 4, 5, 6, 7, 8, 14, 15, 16, 17, 22, 23 and 24. In addition, there were three days during that period when the grievant worked part of his regular ten-hour shift and took sick leave for the remainder of the shift -- February 13, when he attended an office meeting for two hours and used eight hours of sick leave, February 25, when he did light duty work for nine hours and used one hour of sick leave leave, and February 26, when he also did light duty work for nine hours and used one hour of sick leave leave. The grievant also worked one entire ten-hour shift during the period, February 27 -- a day upon which he was scheduled to work by his Annual Schedule -- as he participated in the qualification shoot.

February 18, 2008, was President's Day, and accordingly, it was one of the twelve "paid holidays" specified in Section 9.1 of the labor agreement. That day, as shown above in the table that provides information about the grievant's Annual Schedule, was a scheduled day off for him, and accordingly, he did not claim and the Employer did not provide him with sick leave for that day.

On about February 25, 2008, the grievant requested that he be credited with holiday pay for President's Day, February 18, 2008, maintaining that he was entitled to such pay under Section 9.2 of the labor agreement. On February 25, 2008, Judy A. Weyrans, City Administrator, directed that he be denied his request for a credit for holiday pay covering February 18, 2008.

On March 14, 2008, the grievant initiated the present grievance by letter directed to the Chief of Police. The grievance is set out below:

This letter is to inform you that I did not receive 10 hours of holiday pay in my holiday bank. . . I am requesting at this time to be reinstated to my 10 hours for 2-18-2008 (President's Day). I have discussed this with [the Sergeant and the Union] and feel this is in violation of the Union Contract.

Article 9 of the labor agreement is entitled, "Holidays." Relevant parts of Sections 9.1 and 9.2 are set out below:

9.1. The following twelve holidays shall be paid holidays for regular Employees:

. . .  
President's Day                      3rd Monday in February

9.2. Regular Employees who work on a paid holiday shall receive some other day off with pay. . . Should a paid holiday occur during an Employee's scheduled day off, the Employee shall receive some other day off with pay. . . .

Article 11 of the labor agreement is entitled, "Sick Leave." It has eleven sections, the first nine of which relate to sick leave. The last two of its sections relate to Funeral Leave and Military Leave. The two sections of Article 11 that are primarily relevant to the present case are Sections 11.5 and 11.6, which are set out below:

11.5. Certification by a physician may be required in any request for sick leave, according to the City Personnel Policy.

11.6. In order for an eligible Employee to receive sick leave, the employee must report prior to Scheduled work to the Chief the reason for a proposed absence from duty and keep the Chief informed of his condition of the absence [sic] if it is for more than three (3) days.

Section 21.1 of the labor agreement is set out below:

Where the Collective Bargaining Agreement conflicts with the Employee manual, the Collective Bargaining Agreement shall govern. Otherwise, the Police Officers shall be subject to the terms and conditions of the Employee Manual. The Police Officers shall also be subject to the policies and procedures set forth in the Police Policy and Procedure Manual. Where the Police Policy and Procedure Manual conflicts with either the Collective Bargaining Agreement or the Employee Manual, the Collective Bargaining Agreement and the Employee Manual shall govern.

Relevant provisions of the Employer's Personnel Policies are set out below:

10.2. It is the intent of the City of St. Joseph that this Personnel Policy Manual apply to all City employees, including police officers. To the extent that any policies in the manual conflict with the Collective Bargaining Agreement (CBA) which determines the terms and conditions of the police officers' employment, the CBA shall govern.

19.2. Paid Leaves of Absence. Time off for any reason during a working day will be deducted from the employee's sick or vacation days, as appropriate. Once an employee

has used all their earned sick and vacation days, time off may be granted without pay. All leaves of absence are granted on a case by case basis at the sole discretion of the Council.

19.3. Holidays. . . . An employee is not eligible to receive holiday pay when they are on leave of absence.

19.8. Sick Leave. . . . An employee may use their sick leave in units of no less than one (1) hour at any one time. An employee must notify the supervisor/department head as soon as possible that they will be absent from work due to illness; keep their supervisor informed of their condition. If the absence is for more than a three days [sic] in duration, a medical certificate must be submitted to the supervisor/department [head] for any absence.

Section 20 of the Policy Manual is entitled, "Unpaid Leaves of Absence." It has a preamble and several subsections that describe several kinds of unpaid leave, including "Medical Leave." Below are set out relevant parts from the preamble and from Subsection 20.1, which describes the "Medical Leave Policy":

Occasionally, for medical, personal or other reasons, any employee may need to be temporarily released from the duties of their job with the City of St. Joseph, but may not wish to submit their resignation. Under certain circumstances, an employee may be eligible for an unpaid leave of absence. An unpaid leave of absence may be granted up to twelve months, subject to approval of the City Council.

An employee must apply in writing for an unpaid leave of absence, setting forth the reason for the leave, the date on which they wish the leave to begin and the date on which they will return to active employment with the City of St. Joseph. Applications should be submitted to the City Council. . . .

20.1. Medical Leave Policy. The City of St. Joseph may grant an unpaid leave of absence for illness or disability. To request a disability leave of absence from the supervisor/department head, an employee should submit, or have someone submit for them, a statement of ill health or disability from their doctor. . . . An approved disability leave may be granted for up to ninety (90) days. If necessary, an employee may request extensions in thirty (30) day increments for a maximum of one (1) year. . . .

At the time the disability leave begins, any accrued vacation or sick leave can be used. These benefits will not continue to accrue during a leave of more than thirty (30) calendar days. This policy applies to all employees.

Employees who develop an illness or physical condition which requires medical treatment or restrictions and precautions as to their health will be required to submit a physician's statement. The statement must give approval that continued full-time employment in their present position will not jeopardize their health or the safety of others, in the event they continue to work. A similar statement is required upon return from a disability leave.

#### DECISION

The Union's primary argument is that the following sentence from Section 9.2 of the labor agreement is controlling by its plain meaning:

Should a paid holiday occur during an Employee's scheduled day off, the Employee shall receive some other day off with pay.

The Union argues that there is no doubt that February 18, 2008, was a "paid holiday," i.e., President's day, or that that day was a "scheduled day off" for the grievant under his Annual Schedule.

The Employer makes the following primary argument. Section 9.2 of the labor agreement must be interpreted in conjunction with the provisions of the Personnel Policies. Though the labor agreement and the Personnel Policies both provide that the labor agreement is to prevail when the two documents are in conflict, a fair reading of the Personnel Policies shows that they are not in conflict with Section 9.2 of the labor agreement, but, instead, merely provide additional detail as a supplement to that provision.

The Employer argues that Subsection 19.3 of the Personnel Policies, which provides that "an employee is not eligible to receive holiday pay when they are on leave of absence," should be read as a controlling supplement to Section 9.2 of the labor agreement. The Employer argues further that the grievant was on a "leave of absence" within the meaning of Subsection 19.3 of the Personnel Policies. According to the Employer, that leave of absence fit the description given in Subsection 20.1 of the Personnel Policies, which describes "an unpaid leave of absence for illness or disability."

I make the following ruling. I agree with the Union that the plain meaning of Section 9.2 of the labor agreement is controlling. It clearly states on its face that, when a paid holiday falls on an employee's scheduled day off, the employee is to receive some other day off with pay. This is a categorical statement of the parties' bargain; it does not make an exception that, when the employee uses sick leave the previous day, he is to lose the holiday, and there is no evidence that the labor agreement has been so administered in the past.

Even if, arguendo, one assumes, contrary to this interpretation of Section 9.2, that its meaning is in doubt, thus requiring that it be supplemented by the Personnel Policies, I do not interpret the provisions of the Policies as relevant in this case -- for several reasons.

First, as I read Subsection 19.3 of the Personnel Policies, it does not mean that any use of sick leave should be characterized as a "leave of absence" making an employee using

sick leave ineligible for holiday pay. Rather, I interpret Subsection 19.3 as referring to the kind of leave of absence described in Section 20 of the Personnel Policies, including the "Medical Leave," described in Subsection 20.1. The preamble to Section 20 states that "the employee must apply in writing for an unpaid leave of absence, setting forth the reason for the leave" and the proposed starting and ending date of the leave. This description is not a description of what is required for the use of sick leave, which the Employer concedes is available upon oral notice to a supervisor. Though Subsection 20.1 does not clearly state that an application for leave for illness or disability must fit the requirements of the preamble, as I read its text, the requirements of the preamble are included in the Medical Leave Policy described in Subsection 20.1.

Second, as shown by the grievant's work record set out above, he did work on some of his scheduled work days from February 2 through March 1 -- the period originally projected for his recovery by the physician's note of February 15. He worked for two hours on February 13, attending an office meeting, for nine hours of light duty on February 25, for nine hours of light duty on February 26, and for his regular ten-hour shift on February 27, as he participated in the qualification shoot. These periods of work indicate that the nature of the grievant's period of recovery was neither that of a "leave of absence," as that term is used in Subsection 19.3 of the Personnel Policies, nor the kind of long-term medical leave described in the preamble to Section 20 and in Subsection 20.1

of the Personnel Policies. The record of sporadic work indicates that the grievant was not on such a "leave of absence," but was working as he was able and otherwise taking sick leave, a leave not included in Subsection 19.3 of the Personnel Policies.

I note that the Employer argues that the grievant could not have been called back to work, if he had been needed on February 18, and that, for that reason, he should not be considered eligible for the holiday pay credit specified in Section 9.2 of the labor agreement.

I accept the Union's response that there is nothing in the labor agreement that disqualifies an employee from the holiday credit established in Section 9.2 if he is unavailable for a possible call-back on a scheduled day off -- a condition that may often occur if the employee is traveling.

AWARD

The grievance is sustained. The Employer shall credit the grievant's holiday leave bank with ten hours' pay at the rate of pay in effect in February of 2008.

September 25, 2010

  
Thomas P. Gallagher, Arbitrator