

THE MATTER OF ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR)
SERVICES, INC.,)
)
)
Union,)
)
and) **SCHAULS SICK LEAVE**
) **GRIEVANCE**
)
)
CITY OF OAKDALE,)
)
)
Employer.)
) **BMS CASE NO. 12-PA-0561**
_____)

Arbitrator: Stephen F. Befort

Hearing Date: June 26, 2012

Post-hearing briefs received: July 13, 2012

Date of Decision: July 31, 2012

APPEARANCES

For the Union: Scott Higbee

For the Employer: John LeFevre, Jr.

INTRODUCTION

Law Enforcement Labor Services, Inc. (Union), as the exclusive representative of a unit of peace officers, brings this grievance claiming that the City of Oakdale (City) violated the parties' collective bargaining agreement by declining to waive the initial unpaid five day sick leave period applicable to an employee who is injured on duty. The City maintains that the agreement provides it with full discretion over the waiver decision. The grievance proceeded to

an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

Did the City violate the parties' collective bargaining agreement when it declined to waive the initial unpaid five day sick leave period applicable to an employee who is injured while on duty.

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

Article 26. Injury on Duty

26.1 Any employee injured on duty through no fault of the Employee, shall receive up to a maximum of ninety (90) working days, seven hundred twenty (720) hours, with pay after the first five (5) days, forty (40) hours, of missed scheduled work hours are deducted from sick leave. During that ninety (90) day period, the Employer shall reimburse the employee the difference between the Employer's regular earnings and Worker's Compensation benefits. For purposes of calculation of injury on duty benefits, one (1) day shall be defined as one (1) eight (8) hour day.

26.2 The initial five day sick leave period described in Section 25.1 may be waived at the Employer's discretion, if an employee (a) acting within the limits of the authority established by the Employer, (b) receives a disabling injury during the performance of assigned official duties performing acts required by law, (c) under risk conditions which are unique to law enforcement, and (d) the Employer has determined that the Employee has not contributed to the cause of the injury through negligence.

FACTUAL BACKGROUND

The grievant, Adam Schauls, has worked as a police officer for the City since 2004. At the time of the incident in question, he was assigned to work the night shift as a patrol officer.

At about 6:00 a.m. on September 3, 2011, Officer Schauls responded to a burglary dispatch at a convenience store. Officer Schauls observed a broken glass door panel at the store,

and a canine unit was called to assist with entry. Per normal protocol, the plan was for Officer Schauls to follow the canine unit into the building to determine whether the suspect was still on the scene. In order to gain entry, Officer Schauls had to crouch down and duck walk through the door opening. As he did so, he felt a pop in his left knee.

Officer Schauls worked through the next day's shift, but he awoke on the following day to increased swelling and discomfort in his knee. He visited a medical clinic that day, and he was diagnosed with a ruptured bursa sac. As a result of the injury, Officer Schauls missed work for several weeks.

Officer Schauls applied for worker's compensation, and the claim was accepted. In accordance with Section 26.1 of the parties' collective bargaining agreement, injury on duty pay began after a five-day waiting period, and Officer Schauls spent down five days of accumulated sick leave to obtain pay for the first five days of the injury leave period.

On September 28, 2011, Officer Schauls submitted a Request for Clarification seeking a waiver of the unpaid sick leave spend-down pursuant to Section 26.2 of the agreement. Chief William Sullivan denied the request stating that the waiver authorized by Section 26.2 was meant to apply only to an "extraordinary injury event such as being shot in the line of duty." The Union submitted a grievance challenging the Chief's interpretation.

The parties agree that the operative waiver language of Section 26.2 was first adopted in the contract effective on January 1, 2003. It appears that the Teamsters initially proposed this provision for the Sergeants and Captains unit in Oakdale with the language borrowed from a Hennepin County agreement. The language was added to the LELS contract with little discussion to make the two law enforcement units subject to similar requirements. Both Chief Sullivan and LELS Business Agent Dennis Kiesow participated in the 2003 negotiations, and

testified to their understanding of the resulting contract language. Chief Sullivan testified that it was his understanding that the waiver would be limited to serious injuries resulting from circumstances unique to law enforcement such as shootings and stabbings as opposed to more garden variety work-related injuries such as slipping on the ice. Business Agent Kiesow agreed that the intent was to cover injuries incurred in activities uniquely connected to police work, but he disagreed that the intent was to limit the waiver to hostile or extraordinary circumstances.

The parties agree that there is no past practice within the police officer unit concerning the application of the Section 26.2 waiver provision. The only other documented instance of such a waiver request was made under a similar provision in the Teamsters 320 agreement applicable to Sergeants and Captains. In 2006, Sergeant Jack Kettler sought a waiver of the sick leave spend-down for a work-related cartilage tear sustained while in pursuit of a crime suspect. The City denied that request, maintaining that Section 26.2 was meant to apply only to “injuries sustained during ‘unique’ conditions relating to law enforcement (i.e., shooting, stabbing).” That denial was not grieved.

POSITIONS OF THE PARTIES

Union

The Union contends that a unit employee is entitled to a waiver of the sick leave spend-down period once the City determines that all of the four factors listed in Section 26.2 of the parties’ agreement are established. The Union maintains that the evidence supports the conclusion that each factor was met in this instance and that Officer Schauls’ injury occurred “under risk condition unique to law enforcement.” While Section 26.2 refers to the City’s “discretion in granting such a waiver,” the Union argues that this discretion is to be exercised by the City in determining whether an employee’s injury satisfies the specific factors enumerated in

that provision, but that it does not give the City to an additional veto after that determination has been made. The Union asserts that the City's claim that an injury must be an extraordinary injury event impermissibly adds an additional requirement not encompassed in the plain language of Section 26.2.

City

The City argues that the language of Section 26.2 clearly states that the decision to waive, or not waive, the sick leave spend-down period is "at the Employer's discretion." Here, the City does not dispute that Officer Schauls' injury met the four prerequisites set out in Section 26.2. That section, however, confers discretion on the City even if all four factors are established. Because Chief Sullivan's understanding was that Section 26.2 should be reserved for very serious law enforcement-related injuries, it was within the City's discretion to deny the waiver request under circumstances that did not rise to that level of seriousness.

DISCUSSION AND OPINION

The language of the parties' collective bargaining agreement provides the starting point in any contract interpretation dispute. In this instance, Article 26 states as follows:

26.1 Any employee injured on duty through no fault of the Employee, shall receive up to a maximum of ninety (90) working days, seven hundred twenty (720) hours, with pay after the first five (5) days, forty (40) hours, of missed scheduled work hours are deducted from sick leave. During that ninety (90) day period, the Employer shall reimburse the employee the difference between the Employer's regular earnings and Worker's Compensation benefits. For purposes of calculation of injury on duty benefits, one (1) day shall be defined as one (1) eight (8) hour day.

26.2 The initial five day sick leave period described in Section 25.1 may be waived at the Employer's discretion, if an employee (a) acting within the limits of the authority established by the Employer, (b) receives a disabling injury during the performance of assigned official duties performing acts required by law, (c) under risk conditions which are unique to law enforcement, and (d) the Employer has determined that the Employee has not contributed to the cause of the injury through negligence.

A few undisputed principles may be extracted from this language. First, the City generally will reimburse an employee for any loss of pay for up to 90 working days due to the receipt of Workers Compensation benefits following an on-duty injury. Second, an exception applies for the first five days of the injury period during which the receipt of pay is deducted from the employee's available sick leave bank. Third, the City has the discretion to waive the five-day sick leave spend-down under conditions that satisfy each of the four factors listed in Section 26.2.

The question presented in this grievance is whether the City violated Section 26.2 by denying Officer Schauls' request for a waiver of the five-day spend-down period. Significantly, the parties agree that Officer Schauls' injury satisfies each of the four prerequisites listed in Section 26.2. Thus, the only issues in dispute are: 1) whether Section 26.2 is limited in purpose to an extraordinary injury event; and 2) whether the City has the discretion to deny the waiver request even if the four listed criteria are satisfied.

The Injury Event

The City denied Officer Schauls' waiver request on the grounds that his injury was not incurred in an "extraordinary injury event." Chief Sullivan testified to his understanding as a negotiator for the City that the language of Section 26.2 was meant to apply to a catastrophic injury unique to law enforcement such as a shooting or a stabbing. Consistent with this understanding, Chief Sullivan denied Officer Schauls' request as a non-catastrophic injury that could have occurred either in or out of uniform.

The Union, in contrast, contends that the plain language of Section 26.2 does not require an extraordinary or catastrophic injury, but only an on-duty injury sustained "under risk conditions which are unique to law enforcement." According to Business Agent Kiesow, who

also participated in the negotiations leading to the 2003 agreement, the intent of the parties in adopting this language was to limit the Section 26.2 waiver to injuries incurred in activities uniquely connected to police work, but without any requirement that an injury must be sustained under hostile or extraordinary circumstances. The Union concludes that Officer Schauls' request satisfies the requirement of Section 26.2 since he was injured on-duty while performing a dangerous assignment for the purpose of apprehending a criminal suspect.

As a general principle, the plain language of a collective bargaining agreement should control unless persuasive extrinsic evidence is available to explain the meaning of an otherwise ambiguous provision. In this instance, the plain language does not include a requirement that a qualifying injury must have occurred under hostile or extraordinary circumstances. In addition, the available extrinsic evidence of bargaining history and past practice is, respectively, equivocal and absent. Accordingly, I conclude that Section 26.2, in addition to the four expressly listed requirements, does not also require the occurrence of an extraordinary injury event. As a result, Officer Schauls' request for a waiver does not fail by virtue of not involving a particular hostile or catastrophic injury.

The City's Exercise of Discretion

Section 26.2 states that the decision to waive, or not waive, the sick leave spend-down period is "at the Employer's discretion." The Employer reads this language as giving the City full rein to approve or deny a waiver request even if the Union establishes all four of the prerequisites listed in that section. The Union, in contrast, contends that the discretion afforded to the City by Section 26.2 is limited to a determination of whether the Union has established the existence of that section's four criteria. The Union accordingly, argues that the City has no discretion to deny a waiver request in the event that all four Section 26.2 factors are established.

According to the American Heritage Dictionary of the English Language, the word “discretion” means: “freedom to act or judge on one’s own; latitude of choice and action.” On its face, Section 26.2 appears to give the City full freedom and latitude to grant or not grant a requested waiver. The plain language of that section does not limit that freedom and latitude to determining whether the four listed factors have been established. That language, instead, most comfortably describes those factors as a prerequisite to the exercise of the City’s discretion. That is, the most logical reading of Section 26.2 is that the City may not grant a waiver in the absence of the four listed factors, but it may or may not do so in the event that the four factors are established. Under this interpretation, the City’s denial of the waiver request does not constitute a violation of the contract.

The Union finally contends that such a construction of Section 26.2 ultimately means that no employee may ever qualify for a waiver under that section. That may be so, but that is the permissible result of a provision that confers decision-making discretion on one party. If a different result is desired, such an outcome must be accomplished at the bargaining table.

AWARD

The grievance is denied.

Dated: July 31, 2012

Stephen F. Befort
Arbitrator