
City of St. Cloud, Minnesota,

BMS File No. 13-PA-0556 and
BMS File No. 13-PA- 0691

Employer,

and

**GRIEVANCE ARBITRATION
OPINION AND AWARD**

Law Enforcement Labor Services, Inc.,

UNION.

- Pursuant to **Article VIII** of the collective bargaining agreement effective 1-1-2012 through 12-31-2014 the parties have brought the above captioned matter to arbitration.
- James A. Lundberg was appointed to serve as the neutral arbitrator from a list of arbitrators provided by the Minnesota Bureau of Mediation Services.
- The grievance of Officer Kean Raygor (BMS File No. 13-PA-0556 was filed on December 4, 2012.
- The grievance of Officer Dan Greenwald (BMS File No. 13-PA-0691 was filed on January 18, 2013.
- A hearing over both grievances was conducted on May 16, 2013 in the City of St. Cloud, Minnesota.
- The parties agreed that there are no procedural issues before the arbitrator and the two grievances are before the arbitrator for a final and binding resolution.
- Briefs were submitted by e-mail transmission and U.S. mail on May 23, 2013 and the record was closed.

APPEARANCES:

FOR THE EMPLOYER

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St. Cloud City Attorney
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St. Cloud, MN 56301

FOR THE UNION

Scott A. Higbee, Staff Attorney
Law Enforcement Labor Services
327 York Avenue
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ISSUE:

Whether the City of St. Cloud violated the collective bargaining agreement with Law Enforcement Labor Services when it refused to allow grievants, Officer Kean Raygor and Officer Dan Greenwald, the consecutive vacation days they requested for the current year.

RELEVANT CONTRACT PROVISIONS:

ARTICLE V – MANAGEMENT RIGHTS

5.1 It is recognized that, except as expressly stated herein, the City shall retain whatever rights and authority that are necessary for it to operate and direct the affairs of the City in all of its various aspects, including, but not limited to:

- *The right to direct the working forces.*
- *To plan, direct, and control all the operations and services of the City.*
- *To determine the methods, means, organization, and number of personnel by which such operations and services are to be conducted.*
- *To hire, promote, assign, and transfer employees.*
- *To contract for goods or services.*

- *To demote, suspend, discipline or discharge employees for legitimate reasons.*
- *To make and enforce reasonable rules and regulations.*
- *To change existing methods, equipment and regulations.*
- *To lay-off employees because of lack of work or lack of funds.*

ARTICLE XVI- VACATIONS

16.7 Requests for Vacation Leave. Vacation shall be granted at the time requested by the employee unless the nature of the work makes it necessary to limit the number of employees on vacation at the same time.

FACTUAL BACKGROUND:

Officer Kean Raygor has been employed by the Police Department of the City of St. Cloud, Minnesota for twenty- seven (27) and one half (1/2) years. He will turn fifty-five (55) years old in June and intends to retire. Under the terms of the collective bargaining agreement, Officer Raygor earned two hundred forty (240) hours of vacation plus one (1) personal day for the year 2013.

In anticipation of his retirement, Officer Raygor selected and submitted proposed vacation time for 2013. The times he selected for vacation gave him an extended amount of time off from work leading up to his retirement date.

Officer Raygor's vacation request was approved by his direct supervisor Sergeant Ellingson, because it met all of the established criteria for approval. Sergeant Ellingson determined that the vacation request did not involve any period of time, when the department normally would restrict vacations due to manpower needs under **Article 16.7** of the collective bargaining agreement. For example, vacations are not granted during summer festivals, the 4th of July or when college

students are returning in the fall because the department anticipates a greater need for a patrol presence. Also, the vacation request was made in a timely manner and it did not result in more than one member of Sergeant Ellingson's team being off during the vacation period. However, Sergeant Ellingson checked with Human Resources, because there was some question regarding a civil service rule that she thought might apply to Officer Raygor's request.

No civil service rule applied to Officer Raygor's vacation request but Police Chief Anderson became aware of the vacation request and denied Officer Raygor's request. The Chief asked Officer Raygor to resubmit a request in smaller increments of time. Officer Raygor believed that his request conformed to the terms and conditions of the collective bargaining agreement and the applicable department policies and filed a grievance. The grievance was denied at all steps and the issue is before the arbitrator for a final and binding determination.

Officer Dan Greenwald has been employed by the Police Department of the City of St. Cloud, Minnesota for twenty-one (21) years. Officer Greenwald normally takes his vacation, during late autumn, because he is an avid hunter and trapper. Under the terms of the collective bargaining agreement, Officer Greenwald earned one hundred and ninety two (192) hours of vacation plus one (1) personal day for the year 2013.

In anticipation of the upcoming hunting and trapping season Officer Greenwald selected and requested vacation time in the autumn of 2013.

Officer Greenwald's vacation request was submitted to his direct supervisor Sergeant Ellingson. Sergeant Ellingson determined that the request met all of the

established criteria for approval. Sergeant Ellingson determined that the vacation request did not involve any period of time, when the department normally would restrict vacations due to manpower needs under **Article 16.7** of the collective bargaining agreement. For example, vacations are not granted during summer festivals, the 4th of July or when college students are returning in the fall because the department anticipates a greater need for a patrol presence. Also, the vacation request was made in a timely manner and it did not result in more than one member of Sergeant Ellingson's team being off during the vacation period.

Officer Greenwald's request for vacation was denied by Chief Anderson and Officer Greenwald was asked to resubmit his request in smaller increments.

Officer Greenwald believed that his request conformed to the terms and conditions of the collective bargaining agreement and the applicable department policies and filed a grievance. The grievance was denied at all steps and the issue is before the arbitrator for a final and binding determination.

SUMMARY OF UNION'S POSITION:

The same argument is applicable to both of the above grievances.

First, there are two restrictions found in the collective bargaining agreement and the department rules. The collective bargaining agreement allows the Employer to limit the number of employees off at the same time. General Order No. 175 limits the ability of employees to schedule vacations of two or less days. The General Order restrictions on two or less days is designed to prevent senior employees from scheduling short work weeks that make it impossible for junior employees to reserve longer vacations.

There is a well-established practice within the department of allowing officers to take vacations in excess of two weeks. The Union demonstrated that Officer Greenwald has routinely blocked his vacation time in the weeks of late autumn. Sergeant Ellingson confirmed that she has taken vacations that are longer than two weeks. In fact, testimony established that move-in day at St. Cloud State University, the Fourth of July, Granite City Days and Air Shows are historically days where vacations are restricted. The Employer has always approved earned vacation requests except when they conflict with **Article 16.7** or result in more than one officer on a team being off during the vacation period.

Managerial Rights established under **Article V** of the collective bargaining agreement do not over rule specifically negotiated contract terms. **Article V** retains managerial rights and authority "except as expressly stated herein." At **Article 16.7** the parties expressly agreed that vacation requests "*shall be granted at the time requested by the employee, unless the nature of the work makes it necessary to limit the number of employees on vacation at the same time.*" At the times that the two grievants requested vacation, there is no evidence that the nature of the work in the City of St. Cloud made it necessary to limit the number of employees on vacation.

The Union asks the arbitrator to apply the plain language of the collective bargaining agreement and direct the Employer to allow the vacations of both Officer Raygor and Officer Greenwald as requested.

SUMMARY OF EMPLOYER'S POSITION:

The Employer argues that at **Article V** of the collective bargaining agreement the City retained whatever rights and authority necessary to operate and direct the

affairs of the City. **Section 16.1** of the agreement must be read in conjunction with **Section 5.1** of the agreement. In this case, the Chief argues that considerations of efficiency were driving his decision. It is imperative that the efficiency of the department be improved and limiting vacations to a shorter duration allows for more efficient management of the police force. In support of his concern over efficiency, the Chief also cited many new initiatives he has implemented for community policing, and the level of service he wishes to attain for the community.

There is a shortage of police officers in the department. The patrol unit is short seven (7) officers with five (5) to be brought on in the upcoming months. However, three (3) of the officers are to be assigned solely to the St. Cloud State University Campus. The restrictions on the three (3) officers leave the patrol unit short.

The Employer also argues that overtime expenses need to be held down and in support of the argument note that the patrol unit in 2012 used all but approximately \$10,000 of the \$245,000 budgeted for overtime.

The City also argues that because of the shift scheduling that is used by the department, both grievants would simply be off duty for extensive blocks of time. For example, Officer Raygor's request would have him unavailable for work from April 22 until May 24, when he planned to work one day. The balance of his vacation request would have him off work for the entire month of June.

The practice of vacation scheduling was established under the prior Chief of Police. Chief Anderson is not required to grant any vacation requests if he believes

the nature of the work and the particular situation of the City warrants a limitation of time off. The grievances should be denied.

OPINION:

Vacation time under the collective bargaining agreement is part of the Police Officer's compensation package. It is an earned benefit and receives strong protection in the collective bargaining agreement at **Section 16.7**, which creates the general rule that a vacation request "shall be approved". The general rule does have an exception. Vacation time under **Section 16.7** may be restricted but only in very limited circumstances may the Employer deny an Officer's request for vacation, because it is a benefit that has been earned by the Officer, just as wages are earned.

The past practice of the parties helps define what the parties meant by the phrase "*unless the nature of the work makes it necessary to limit the number of employees on vacation at the same time.*" The parties have historically recognized that the community needs a full complement of Patrol Officers during festivals, on the Fourth of July and on the days when students at St. Cloud State University are returning to classes and vacations are appropriately restricted. Furthermore, crisis situations require Officers to be called out from time to time. However, the plain language of the contract and the past practice of the parties establish that the authority to limit a vacation request is only available to management when it can clearly establish facts that support the need to limit a vacation request.

In this case the Chief testified that he preferred to have Officers take shorter vacations to enhance departmental efficiency, to support community-policing initiatives that the Chief would like to undertake and to control overtime expenses.

However, there is no evidence that requiring an Officer who has earned two hundred and forty (240) hours of vacation time or an Officer who has earned one hundred ninety two hours of vacation time to take vacation in increments of perhaps two (2) weeks will improve departmental efficiency, will better support community police initiatives or will reduce overtime. In other words, the nature of the work did not make it necessary for the vacation requests of Officer Raygor and Officer Greenwald to be denied.

The Union established by clear and convincing evidence that the Employer violated the collective bargaining agreement, when the vacations requests made by Officer Raygor and Officer Greenwald were denied. No evidence was submitted in arbitration to establish that “at the time the requests were made” “the nature of the work [in the City of St. Cloud] makes [made] it necessary to limit the number of employees on vacation at the same time.” **Section 16.7** of the collective bargaining agreement directs that requests for vacations shall be approved, unless the nature of the work at the time of the request makes it necessary to limit time off. Since the Employer did not establish any fact regarding the nature of the work that would make it necessary to limit either Officer’s earned time off, both grievances must be upheld.

AWARD:

- 1. The Employer violated Section 16.7 of the collective bargaining agreement when it denied vacation requests made by Officer Raygor and Officer Greenwald.***

- 2. The Employer is directed to reinstate and honor the vacation request made by Officer Greenwald. If the vacation of Officer Greenwald conflicts with any other Officer's vacation request, the other Officer's vacation must be changed, because Officer Greenwald's vacation request met all departmental requirements at the time it was made and no conflicts existed at the time.**
- 3. The Employer is directed to reinstate and honor the vacation request made by Officer Raygor to the extent possible. If the vacation of Officer Raygor conflicts with any other Officer's vacation request, the other Officer's vacation must be changed, because Officer Raygor's vacation request met all departmental requirements at the time it was made and no conflicts existed at the time.**
- 4. If Officer Raygor cannot utilize all of his vacation time before his retirement, the Employer shall compensate Officer Raygor for all unused vacation time that was improperly denied.**
- 5. The arbitrator will retain jurisdiction over the remedy for a period of thirty days to assist the parties in resolving any disputes over the remedy.**

Dated: June 3, 2013


James A. Lundberg, Arbitrator