

1909
In the Matter of Act 312 Arbitration Between:

CITY OF MONROE,
Public Employer,

-and-

MONROE POLICE COMMAND OFFICERS' ASSOCIATION,
Union.

MERC Case No. D86 C-411

Hearing: September 8, 1987
Monroe, Michigan

Appearances:

For the Public Employer: Paul H. Townsend, Jr.

For the Labor Organization: Jerome Sabbota

FINDINGS, OPINION AND ORDER

OF THE ARBITRATION PANEL

Benjamin A. Kerner, Neutral Arbitrator
Joseph S. Lybik, Employer Delegate
Eljay Bowron, Union Delegate

This case was initiated by the City of Monroe on May 27, 1987, by filing of a Petition for Arbitration pursuant to 1969 Public Act 312, as amended. As subsequently amended, the petition refers to only one issue, as follows:

Method of charging sick time. The City proposes that when an officer misses part of a day due to illness, his missed time should be charged to his yearly sick time.

The issue was duly set for hearing before a panel consisting of Mr. Joseph S. Lybik, Director of Labor Relations for the City of Monroe, Mr. Eljay Bowron, Consultant for the Fraternal Order of Police and the Monroe Command Officers' Association, and the undersigned neutral

arbitrator. Evidence and argument were concluded on September 8, 1987. Final best offers were presented at that time. The case is now ready for decision.

SUMMARY OF EVIDENCE.

At the hearing in this matter the City presented evidence showing that the non-uniformed work force of the City generally enjoyed a benefit whereby sick time is charged as used. If a City Hall secretarial employee or public-works department employee appears for work, and later goes home sick, that employee is charged actual hours used against his or her sick time bank. At the end of the year, all employees are entitled to a "sick leave bonus" for half of their unused sick time; the remaining time, up to certain limits, and under specified conditions, accumulates towards a lump-sum payment made upon termination or retirement.

The police command officers, as well as the police patrol officers, have enjoyed a condition of work for many years (dating to at least 1964) whereby an officer who leaves his shift for reasons of sickness is not charged the hours of that shift, or any part of it, as sick time. It is this condition of work that the City seeks to change in these proceedings.

In recent Act 312 proceedings with the Monroe Patrolmen's Association, the patrolmen and the City stipulated to a contractual clause as follows:

Officers who leave on-duty assignments due to illness will be charged sick time until the end of the shift and subtracted from that years [sic] earned sick time.

Thus, through collective bargaining procedures, the City succeeded in ending a practice of long duration applicable to patrolmen, and

achieved a working condition in the patrolmen's contract which is consistent with the working conditions enjoyed by non-uniformed City employees.

The Union presented evidence of the course of bargaining on the issue and contract here in dispute. The Union's witness, Sgt. George Krueger, currently Secretary-Treasurer of the Union, testified that in private discussions with the Union's consultant, he formulated a proposal to charge sick time as follows:

Command Officers who leave on-duty assignments due to illness during the first half of their assigned shifts will be charged one-half day of sick time; Command Officers who leave on-duty assignments due to illness after the first half of their assigned shifts will not be charged sick time for that shift.

This proposal, not in exact words, but in substance, was presented to the Director of Labor Relations, who communicated that he was favorable to this proposal. Other items separating the parties having been compromised, settled, or agreed to, the Union membership met at some time prior to March 20, 1987, "for the purpose of ratifying" a proposed contract, which, apparently included the Union's proposal on method of charging sick time. The membership approved all items in the proposed contract except for an item on overtime. Thus, Sgt. Krueger reported to the Director of Labor Relations that if the existing overtime language could be adopted, the entire contract could be settled.

Simultaneously, the patrolmen's negotiations were entering their final phase. The patrolmen received information to the effect that the command officers would be settling a contract which included the sick time proposal quoted above. The patrolmen, having just bargained away their rights to a long-standing working condition on

the method of charging on-duty sick time, caused a letter to be written to the Mayor. This letter protested the "unequal treatment" of patrol and command officers. It thus developed that City Council instructed its bargaining team to seek a contract clause in the command officers' contract similar to the one above-quoted from the patrolmen's contract, and to bring the provisions relating to on-duty sick time into a consistent format.

Thereupon, Director of Labor Relations Lybik reported to Sgt. Krueger that City Council would not accept the above-quoted proposal on the method of charging on-duty sick time. Further bargaining, including mediation, was attempted, but to no avail.

Furthermore, the Union presented evidence to show that its proposed method of charging sick time is not unique among City employees. The firefighters currently have a modified version of the command officers' proposal, whereby sick time up to half a shift (12 hours) is charged, but if a firefighter goes home sick thereafter, he is charged nothing.

The Union does not disagree with the City's characterization of the working condition here in dispute as one of long standing, nor does it quarrel with the evidence that the practice existed in 1964.

LAST BEST OFFERS.

The City's last best offer is as follows:

Officers who leave on-duty assignments due to illness will be charged sick time until the end of the shift and subtracted from that years [sic] earned sick time.

The Union's last best offer is as follows:

Command Officers who leave on-duty assignments due to illness during the first half of their assigned shifts will be charged one-half day of sick time; Command Officers who leave on-duty assignments due to illness after the first half of their assigned shifts will not be charged sick time for that shift.

ANALYSIS, FINDINGS, AND CONCLUSIONS.

An Act 312 award must be based on the factors outlined in the statute at M.C.L.A. 423.239. The evidence must be judged against the standards set by the nine factors outlined therein. Here, the City's position is, in essence, that the requirements of fairness and consistency favor its last best offer, that the command officers should be given the same condition of work as patrolmen. Thus, the City is relying on M.C.L.A. 423.239 (d), "Comparison of the wages, hours and conditions of employment" of the subject employees with the wages, hours, and conditions of employment of the patrolmen, who perform similar services, and of other City employees generally.

The Union, on the other hand, points out there is no showing that patrol officers' and command officers' working conditions have always gone hand-in-hand; to the contrary, argues the Union, the patrol officers gave away a long-standing condition of work on the method of charging on-duty sick time only by virtue of receiving a working condition not seen in the settlements reached between the City and the command officers, namely, step-up pay. Thus, argues the Union, there is no foundation for asserting that consistency should be sought or applied here. Furthermore, the Union relies on the traditional factor [M.C.L.A. 423.9 (h)] that the uniformed services have enjoyed distinguishable conditions of work, precisely because of

the "at-risk" nature of their employment. The other uniformed service, the firefighters, enjoy a working condition parallel to the one sought by the Union herein.

In deciding between these two positions, the panel notes that there was no evidence presented on factors other than (d) and (h) as identified in Section 9 of the statute. Thus, in determining this issue, the panel is required to rely on the evidence relating to factor (d), as presented by the City; and the evidence refuting factor (d) and supporting factor (h), as presented by the Union. A majority of the panel finds as follows:

(1) The patrol officers of the City of Monroe, in particular, and other City employees, generally, with the exception of the firefighters, now enjoy a condition of work with respect to on-duty sick time which is the same as the condition of work defined by the City's last best offer.

(2) The police command officers for over 20 years have enjoyed a condition of work whereby an officer who goes home sick is not charged sick time for any part of that shift.

(3) The patrol officers, likewise, for over 20 years have enjoyed a condition of work whereby an officer who goes home sick is not charged sick time for any part of that shift.

(4) The 1986-89 collective bargaining agreement between the Monroe Patrolmen's Association and the City of Monroe ended that practice for police patrolmen, and substituted a working condition which is consistent with the condition of work enjoyed by other City employees.

In view of these findings, we conclude that the evidence in support of the City's last best offer is the more persuasive. Fairness and equality of treatment, as between command officers and patrol officers, as well as between the subject employees and other employees of the City generally, are factors that point towards the acceptance of the City's last best offer.

We are not persuaded that any historical pattern has been shown, such that a benefit enjoyed by the patrolmen must automatically be granted to the command officers. However, it appears that equality of treatment, as between command officers and patrol officers, is an end which can be justified under Section 9 (d) and by the comparison here made between the two units' working conditions.

Furthermore, there is evidence that other non-uniformed City employees have a method of charging on-duty sick time which is identical to that being sought by the City herein. While there are acknowledged differences between police officers and other employees who are not at risk to their health and their lives in the line of duty, it is nevertheless reasonable to apply Section 9 (d) of the statute to the end of bringing consistency to certain personnel practices--particularly when, as here, there is no evidence that the source of the working condition for police officers arises from the intrinsic nature of the job or the risks of the work. Rather, the source of the working condition currently enjoyed by the command

officers is tradition. In view of the disappearance of that tradition from the patrolmen's contract, little justification remains for continuing the sick leave practice for command officers in the modified form proposed by the Union in its last best offer here. Set against the command officers' tradition is the fact that the patrol officers and all non-uniformed employees of the City now enjoy a condition of work as defined by the City's last best offer. In comparing the subject group of employees with other City employees, this uniformity is a persuasive factor.

ORDER

The last best offer of the City is accepted. The contract to be formed by the parties herein shall include the following condition of employment:

Officers who leave on-duty assignments due to illness will be charged sick time until the end of the shift. Charged sick time will be subtracted from that year's earned sick time.

Benjamin A. Kerner
10/6/87

Benjamin A. Kerner,
Neutral Arbitrator

Joseph S. Lybik
10/6/87

Joseph Lybik,
City Delegate

I respectfully dissent from the Order above-stated.

Eljay Bowron
10-6-87
Eljay Bowron,
Union Delegate