

IN THE MATTER OF ARBITRATION BETWEEN

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Employer:	)	
City of Ankeny	)	Grievance Case No. 22-GA-018
	)	(PTO accrual rate for Grievant S. Braun)
and	)	
	)	
Certified Employee Organization:	)	Rachel Goedken, Arbitrator
Ankeny Police Department	)	
Employees Union	)	
	)	

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**Appearances:**

For the Certified Employee Organization:  
Jill Hartley, Attorney for Teamsters Local 238

For the Employer:  
Matt Brick, Attorney for the City

**Jurisdiction**

Pursuant to the provisions of their collective bargaining agreement, the City of Ankeny (“City”) and Teamsters Local 238 (“Certified Employee Organization” or “Union”) submitted this grievance to the undersigned arbitrator for resolution. The arbitrator was selected by the parties from a list provided by the Iowa Public Employment Relations Board. The hearing was held on October 5, 2022, in Ankeny, Iowa, and was completed on that date. The parties agreed that this grievance was properly before the arbitrator. During the hearing, both parties were given a full opportunity to submit evidence, examine and question opposing party’s evidence, make objections, and present argument. Upon conclusion of the evidence submitted at hearing, the parties agreed to simultaneously file written briefs to the arbitrator. Upon receipt of the parties’ briefs on November 21, 2022, the record was closed.

**Issue**

The parties stipulated to the following issue:

Should Ms. Braun receive Paid Time Off accrual at the years of service rate for a “15 years or more” employee from the date she was hired as a peace officer on June 22, 2020?

**Factual Background**

Grievant Stephanie Braun was originally hired by the City on August 21, 2001, as an Ankeny police officer. She voluntarily left the City in September of 2019 to take another job, having served approximately 18 years. She was re-hired by the City as a police officer on June 22, 2020.

When re-hired, Grievant accrued Paid Time Off (“PTO”) under the parties’ collective bargaining agreement (“CBA”) at a rate for employees with less than 1 year of service. On April 4, 2022, Officer Braun filed a grievance asserting, “Article 11, Section 5 of the CBA, PTO is based on “Years of Service at the Department”, thus my PTO rate should reflect the “15 years or more” of service. . .”

The parties’ CBA, dated July 1, 2018 - June 30, 2023, contains the following relevant provisions:

**ARTICLE 1: RECOGNITION**

Section 1. The Employer recognizes the Union as the sole and exclusive bargaining agent for the purpose of establishing salaries, wages, hours and conditions of employment for all patrol officers and detectives.

**ARTICLE 2: MANAGEMENT AND UNION RIGHTS**

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Section 3. General. In matters not specifically covered by language within this Agreement, the Employer shall have the clear right to make decisions in such areas, on a unilateral basis.

Unless otherwise expressly limited by the terms of this Agreement, the exercise of any management prerogative, function, or right is not subject to the Grievance and Arbitration Procedure, and is not within the jurisdiction of any arbitrator.

## **ARTICLE 5: SETTLEMENT OF DISPUTES**

Section 1. Grievance and Arbitration Procedure. Any grievance or dispute which may arise between the parties regarding the application, meaning or interpretation of this agreement, shall be settled in the following manner:

Step 1. The Employee, with or without the Union Steward, shall take up the grievance or dispute in writing with the employee's Captain within ten (10) days of the date of the grievance or the Employee's knowledge of its occurrence. The grievance shall be reduced to writing and signed by the aggrieved employee and include the following information: 1) a statement of the grievance and the facts upon which it is based; 2) the remedial action requested; 3) the section of this Agreement to which the grievance relates. The Captain shall attempt to adjust the matter and shall respond in writing to the Employee or the steward within five (5) working days. . . .

Section 2. Time Limits. Failure by an Employee or the Union to comply with the above provisions shall constitute a withdrawal of the grievance. If the Employer fails to comply with the time limits the grievance is automatically moved to the next step.

Time limits may be extended only upon mutual agreement of the parties.

## **ARTICLE 11: PAID TIME OFF (PTO)**

Section 1. Policy. Paid Time Off (PTO) is an all-inclusive "paid time off" program that will provide income protection for "no fault" time away from work, including illness-related absences. Another portion of the PTO program is the Medical Leave Bank, which may be used for the employee's or immediate family member's extended illness, injury, disability, or hospitalization as described in Section 9. For purposes of this article, immediate family is defined as a spouse or a legal dependent.

Section 2. Scope. This policy applies to all employees of the bargaining unit. Whenever the provisions of this policy are in conflict with federal or state laws or regulations, the provisions of the laws or regulations shall prevail.

Section 3. Paid Time Off. PTO is intended to be used for a variety of traditional types of time away from work, including vacation, illness, personal business, doctor appointments, family time, personal holidays, and personal voluntary community service; however, an employee does not have to designate the reasons for the scheduled absences being requested.

Section 4. Eligibility. Regular full-time employees.



Section 5. PTO Accrual Schedule. PTO shall be accrued on a bi-weekly basis during the fiscal year, July 1 through June 30. PTO increases with years of service in accordance with the following schedule and is allocated accordingly on a bi-weekly basis.

<u>Years of Service</u>	<u>Bi-Weekly / Annual Paid Time Off Eligibility</u>
Less than 1 year	4.846 hours bi-weekly = 126 hours per year (14 days)
1 year through 4 years	8.654 hours bi-weekly = 225 hours per year (25 days)
5 years through 9 years	10.385 hours bi-weekly = 270 hours per year (30 days)
10 years through 14 years	12.115 hours bi-weekly = 315 hours per year (35 days)
15 years or more	13.846 hours bi-weekly = 360 hours per year (40 days)

An eligible employee shall accrue PTO but shall not be eligible to use it or receive reimbursement for accrued PTO upon termination of employment until he/she has successfully completed the FTO program. Only the Police Chief will have the right to grant approval of PTO usage or reimbursement during this time period if he/she deems appropriate PTO accrual shall begin in the first full pay period following the employee's date of employment.

An employee in an unpaid leave status shall not accrue PTO.

Changes in the bi-weekly PTO accrual rate shall become effective at the beginning of the pay period in which the anniversary date of the qualified employee falls.

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**Ankeny Police Department Teamsters Local Union #238  
And the City of Ankeny, Iowa**

**RE: Memorandum of Understanding**

The parties agree to amend the contract language of Article 13: Wages, for the remainder of the current collective bargaining agreement (CBA), effective the date of this signed agreement. The changes in this side agreement will be incorporated into the CBA at the next renewal.

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**ARTICLE 13: WAGES**

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Section 2. Lateral Transfers

New employees who at the time of hire are currently certified law enforcement officers and have the appropriate sworn experience as stated below are eligible for lateral transfer if they meet the following conditions:

Completion of 12 months (1 year) post academy service shall be paid at Step 2.

Completion of 24 months (2 years) post academy service shall be paid at Step. 3.

Completion of more than 36 months (3+ years) post academy service shall be paid at Step 4.

However, if a lateral transfer employee starts at a wage above a current employee, who would have been eligible for a lateral transfer at the time of their hire, those current employees will be moved to an equivalent pay step on the same date as the new hire.

### Section 3. Signing Bonus

New employees who at the time of hire are currently certified law enforcement officers shall receive a \$5000 signing bonus payable on the pay check following completion of the following terms:

- \$1500 upon passing the Field Training period
- \$1500 at the completion of 2 years of service
- \$2000 at the completion of 3 years of service

Employees hired under this provision have the one-time option to use the first bonus to purchase up to 45 hours of paid time off (PTO) at their current hourly rate, after successful completion of the field training period.

Dated this 27<sup>th</sup> day of January, 2020.

### **Positions of the Parties**

Two issues are before this arbitrator: the timeliness of the grievance and the merits of the grievance. Turning first to the timeliness question, the City argues that this grievance is not arbitrable because it was not filed within ten days of the employee's knowledge of the grievance, as required by Article 5. The City asserts that during the third step grievance hearing, Grievant blamed the delay in filing a grievance on the Union. However, Article 5 provides that the employee "shall take up the grievance *with or without* the Union Steward" (emphasis added). The City maintains that Grievant was notified of her PTO accrual rate before she was re-hired, yet waited more than 600 days to file a grievance, well beyond the Article 5 time limits.

The Union asserts that the City bears the burden of proving that the grievance was not timely filed, and it is a high burden given the presumption favoring arbitrability. The Union makes



several arguments in support of its position that the grievance is timely.<sup>1</sup> First, it argues that the grievance is timely because every paycheck issued to Officer Braun that included the lesser PTO was a new violation, that is, that the grievance filing time limit recommenced each time the claimed violation occurred. Second, the Union argues that the City waived its right to assert a timeliness objection because it was first raised at the arbitration hearing, not earlier in the grievance process. Third, the Union argues that Grievant had a good faith belief that she could not file a grievance during her probationary period and should not be punished for that good faith belief.

Turning to the merits of the grievance, the Union argues that Grievant is entitled to accrue PTO at a rate for employees with 15 years or more of service. Grievant has been employed by the City for twenty years: initially for eighteen years, followed by nine months of employment elsewhere, and since her re-hire in 2020, for approximately two years. The Union argues that the plain language of the CBA requires the City to grant Officer Braun a PTO rate consistent with all her years of service; the CBA contains no limiting language. The Union further argues that PTO accrual is expressly covered by the CBA and is not subject to the management rights clause. Finally, the Union maintains that the City has failed to establish a past practice and cannot rely on a handbook that was not bargained.

The City argues that Grievant has correctly accrued PTO as a re-hired employee. It maintains that the phrase “years of service” is not defined in the CBA and as such, the CBA’s management rights clause gives management the right to determine its meaning. Further, the City maintains that Officer Braun’s PTO accrual was handled consistently with past practice.

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<sup>1</sup> The Union’s brief was extensive and well argued, including more than 50 authorities cited in favor of its position.

## **Discussion and Opinion**

Turning first to the timelines issue, the City bears the burden of proof. Where the parties' collective bargaining agreement contains specific language and requirements regarding the filing of grievances, a grievance will be denied where the procedure is not followed, at least in the absence of mitigating circumstances. Here, the Article 5 language is clear: "The Employee, with or without the Union Steward, shall take up the grievance or dispute in writing with the employee's Captain within ten (10) days of the date of the grievance or the Employee's knowledge of its occurrence." Section 2, Time Limits, provides: "Failure by an Employee or the Union to comply with the above provisions shall constitute a withdrawal of the grievance. . . Time limits may be extended only upon mutual agreement of the parties."

Grievant reached out to the City approximately five months before she was re-hired, inquiring about her PTO accrual rate. At that time, she also asked about another officer, believing that he had kept his PTO upon re-hire. The City's Human Resources Director notified Grievant that upon re-hire, her PTO would start over, as it had for the other re-hired officer. The paystub from Grievant's second paycheck, dated July 24, 2020, reflected this new hire PTO accrual rate. Whether the date of the grievance or the Employee's knowledge of its occurrence was Grievant's date of hire or the date of the first paystub reflecting the accrual rate, Grievant did not file this grievance challenging the PTO accrual rate until approximately one year and nine months after she was re-hired, well beyond Article 5's ten-day filing period.

Grievant testified that she did not file the grievance earlier because she believed she was unable to file a grievance during her nine-month probationary period. She also believed that her PTO issue would be resolved through bargaining when the CBA was reopened in October 2021.

These reasons do not fully account for the delay, however. Six months passed between the end of Grievant's probationary period in March 2021 and contract negotiations in October 2021. Following the brief contract negotiations, another five and one-half months elapsed before Officer Braun filed this grievance on April 4, 2022. Throughout this time, both before and after her re-hire in June 2020, the City's responses to Officer Braun's inquiries about her PTO accrual rate were unequivocal, putting her on notice of the grievance. The parties did not agree to an extension of time limits. There was no evidence that the parties were lax in enforcement of Article 5's time requirements. Furthermore, Article 5 permits employees to file a grievance with or without the Union Steward, allowing Officer Braun to proceed without the Union. Accordingly, the Grievant's proffered reasons for delay in filing the grievance do not overcome Article 5's ten-day grievance filing requirement.

The Union argues that the grievance is timely because the City's contractual violation is continuing in nature, with each paycheck starting a new violation. Here, however, placement on the accrual scale was a discrete event, Grievant was on notice of that event even before it occurred, and she had ample time to timely avail herself of the grievance process. These circumstances do not give rise to a continuing violation challenge.

Finally, the Union argues that the City waived its ability to assert untimeliness by not raising the objection until the arbitration hearing. However, testimony from the Grievant and City's Human Resources Director as well as notes from the Step 3 hearing show that the City raised the timeliness issue at the Step 3 hearing, a week after the grievance was filed, putting the Union on notice of the objection. It was raised again at the arbitration hearing. Accordingly, the objection to timeliness was preserved.



Given these facts, the grievance was not timely filed.

Even if the grievance had been timely filed, the contract language does not support Grievant's contention that "years of service," as used in Article 11 for PTO accrual, includes years of service earned before she voluntarily left the City's employ plus years of service earned after she was re-hired by the City. The Union argues that the phrase "years of service" is clear and unambiguous. The Union further argues that the phrase contains no limiting language in the CBA or in the Lateral Transfer Memorandum of Understanding dated January 27, 2020 ("MOU"),<sup>2</sup> and accordingly, "years of service" should be given an expansive meaning. It should not re-set following a break in service, as the City argues. However, the plain text of the CBA and MOU, along with the application of that phrase, do not support this conclusion.

Turning to the language of the CBA, the parties agree that "years of service" in Article 11 is not defined. The MOU is of limited use in interpreting Article 11's "years of service" because the MOU modified only Article 13: Wages and in doing so, used "post academy experience," not "years of service." Neither party identified language elsewhere in the CBA that addresses re-hired employees or "years of service."

The Director of Human Resources testified about how "years of service" has been applied. The evidence demonstrates that "years of service" is applied differently to existing City employees who transfer into the bargaining unit (and are credited with years of service in non-bargaining unit positions) than was applied to one police officer who left the City and subsequently was re-hired

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<sup>2</sup> The MOU was subsequently incorporated into the parties' July 1, 2022-June 30, 2026, CBA. (Joint Exhibit 3)

(and was not credited with years of service earned prior to his break in service). The examples show that credit has been given only for continuous years of service.

Grievant asks that she receive PTO accrual at the years of service rate for a “15 years or more” employee from the date she was hired as a peace officer on June 22, 2020. The language of the CBA, as well as its application, do not support doing so.

**Award**

For these reasons, the grievance is denied.

December 27, 2022



Rachel Goedken, Arbitrator