

IN THE MATTER OF ARBITRATION BETWEEN

Des Moines Association of Professional Firefighters, AFL-CIO, Local 4, Certified Employee Organization and Nick Heuer,)	
)	
)	Grievance No. 4-1174
)	
Grievants,)	Rachel Goedken, Arbitrator
)	
and)	
)	
City of Urbandale,)	
)	
Public Employer)	

Appearances:

For the Certified Employee Organization:

Charles Gribble, Attorney for Des Moines Association of Professional Firefighters, Local 4

For the Employer:

Michael Galloway, Attorney for the City

Jurisdiction

Pursuant to the provisions of their collective bargaining agreement, the Des Moines Association of Professional Firefighters, AFL-CIO, Local 4 (“Certified Employee Organization” or “Local 4”) and City of Urbandale, Iowa (“City”) 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 June 13, 2023, in Urbandale, 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 July 25, 2023, the record was closed.

Issues

Does the City violate Article 12.B. of the collective bargaining agreement by denying a bargaining unit employee a requested vacation day off while granting the same requested day off to a non-bargaining unit supervisor?

If so, what shall be the remedy?

Factual Background

Local 4 and the City are parties to a 2021-2024 collective bargaining agreement ("CBA"). On Sunday, January 8, 2023, Driver/Engineer Nick Heuer was denied vacation time for December 4 and December 8, 2023, due to two personnel already being scheduled for time off those days. A grievance was filed by Local 4, asserting that "one of the two allowed spots for each day was filled by an officer (an employee not represented by the bargaining unit)." The grievance further asserted "denying an employee represented by the bargaining unit for time off in favor of an officer or any other employee not represented by the bargaining unit is a direct violation of the current agreement." The grievance claims the City's actions violate Article 2.B. (Definitions: Employee), Article 5 (Management Rights), and Article 12.B. (Vacation: Scheduling).

The remedy sought is to grant Mr. Heuer the requested time off for December 4 and December 8, 2023, along with the union member scheduled for the same days off. In addition, the grievance asks that going forward, the CBA be followed and that officers or any other employee not represented by the bargaining not count toward the two members allowed off per shift.

The grievance was processed in accordance with the CBA's contract procedures and reaching no resolution, now comes before this arbitrator for determination.

The parties' current CBA, dated July 21, 2021 - June 30, 2024, contains the following provisions.

Article 2 – Definitions

A. City or Employer

As used in this Agreement, the term “City” or “Employer” shall mean the City of Urbandale City, Iowa, or its authorized representatives.

B. Employee

As used in this Agreement, the term “Employee” shall mean all employees represented by the Union in the bargaining unit-as defined and certified by the Public Employment Relations Board as Bargaining Unit 1174.

...

D. Department

As used in this Agreement, the term “Department” shall mean the Fire Department.

Article 3 – Recognition

For the duration of this Agreement, the City recognizes the Union as the sole and exclusive bargaining agent for all employees in the bargaining unit certified by the Iowa Public Employment Relations Board as bargaining unit 1174. The job classification in bargaining unit 1174 is Fire Fighter/EMT.

Article 4 – Grievance Procedures

A. Definition

A grievance is defined as a dispute as to the application or interpretation of any part of clause of this Agreement that is signed and filed by the employee(s) involved or the Union.

...

C. Processing Grievances

5. Fifth Step

The arbitrator shall not have the power to decide a grievance which is a matter suitable for submission to the Civil Service Commission. Also, the arbitrator shall be without power to add to, subtract from or modify the terms of this Agreement, nor to make any decision in conflict with the laws of the United States or the State of Iowa.

Article 5 – Management Rights

Except as specifically modified in this Agreement, the City shall not be deemed to be limited in any way in the performance of the regular and customary functions of municipal managements, and hereby reserves and retains all such customary power, authority and prerogatives. It is expressly recognized, by way of illustration and not limitation, that such customary powers and authority include but are not limited to:

- A. Direct the work of its public employees.
...
- C. Maintain the efficiency of governmental operations.
...
- F. Determine and implement methods, means, assignments, and personnel by which the public employer’s operations are to be conducted.
- G. Take such actions as may be necessary to carry out the mission of the public employer.
...
- I. Exercise all powers and duties granted to the public employer by law.

Article 11 – Holidays

All shift employees will receive seventy-two (72) hours of paid personal holiday time. All forty (40) hour employees will receive twenty (20) hours of paid personal holiday time. Paid personal holiday time will be scheduled in the same manner as a day of vacation. . . .

Article 12 – Vacation

- A. Accrual

Employees will accrue vacation time in the following schedule. An employee who enters the employment of the City prior to the sixteenth (16) of the month, or who leaves City employment after the fifteenth (15) of the month shall earn vacation for that month. No more than one hundred sixty-eight (168) hours of

vacation time shall be carried over to another year, except by prior written approval from the City Manager.

Years of Service	Shifts Earned (56 hr week)	Days Earned (40 hr week)
1-7	10 hr./mo.	6.67 hr./mo.
7-13	14 hr./mo.	10 hr./mo.
13-19	20hr./mo.	13.34 hr./mo.
19+	28hr./mo.	16.67 hr./mo.

In the year prior to the employee's anniversary date at each level of accrual, the employee shall start to accrue vacation time at the employee's new rate.

B. Scheduling

If two or more vacation requests for same date are received on the same date, the employee with the most seniority will have priority unless agreed upon by all parties involved. The Fire Chief will schedule such vacation leaves with regard to the Department's operating requirements and responsibilities and insofar as possible, with the request of the employees.

Two employees may be approved for vacation at the same time and the Fire Chief will schedule such vacation leaves with regard to the Department's operating requirements and responsibilities and insofar as possible, with the request of the employees. The following member status will not count toward the two employees on vacation leave: military leave, light duty, funeral leave, emergency leave, jury duty/subpoena leave, medical leave, sick leave.

Any vacation time not used at time of separation shall be paid out at the employee's hourly rate at the time of separation. . . .

Positions of the Parties

Local 4 argues that the language of Article 12.B. is clear and unambiguous. Article 12.B. states in part, "Two employees may be approved for vacation at the same time" unless the operating requirements make this not possible. "Employees" as defined by the CBA and the certification order issued by PERB means only Firefighter/EMTs. The Local acknowledges that the City has the unilateral right to grant as many vacation days off to non-bargaining unit employees as the City wishes. However, Article 12.B. provides a benefit for only bargaining unit

employees. Local 4 argues that Article 12.B. benefits cannot be reduced by granting only one instead of two employees off on the basis that the City granted one of the two days off to a non-bargaining unit employee.

The City argues that the plain language of the CBA gives the City discretion on granting up to two employees time off at the same time. The City further argues that even if the language were ambiguous, past practice establishes the parties' intent to allow the City to limit the number of employees who could be on vacation at one time, regardless of union membership. In support of this argument, the City provided evidence of Article 12.B.'s genesis in a letter of understanding, along with testimony of negotiations and the letter of understanding's subsequent incorporation into the CBA.

Local 4 argues that the City's reliance on a letter of understanding is not supported by the contract, law or the document itself and urges that this parole evidence not be considered unless the actual provisions of the contract are themselves ambiguous.

Discussion and Opinion

This is a contract interpretation case. In contract interpretation cases, the Arbitrator is charged with determining the parties' intent as to specific contract provisions. "In undertaking this analysis, an arbitrator will first examine the language used by the parties. If the language is clear and unambiguous, the words must be given their ordinary meaning." *Keota Community School District*, 05-GA-151 (Loeschen, 2006). See also Elkouri & Elkouri, 9.2.A. (8th ed., 2020), quoting *International Paper*, 137 BNA LA 373, 375 (Van Kalker 2017).

Both parties argue that the plain language of Article 12.B., Vacation Scheduling, supports their positions. The Article 12.B. language in dispute provides, “Two employees may be approved for vacation at the same time and the Fire Chief will schedule such vacation leaves with regard to the Department’s operating requirements and responsibilities and insofar as possible, with the request of the employees.”

Turning to the first phrase, “Two employees may be approved for vacation at the same time,” the words “two employees,” refer to bargaining unit employees. The next words, “may be approved for vacation at the same time,” are permissive, not mandatory. The word “may” is ordinarily used to indicate possibility or probability. <https://www.merriam-webster.com/dictionary/may>. “May” gives the City discretion to approve scheduling vacation for two bargaining unit employees at the same time but does not require the City to do so.

The City’s discretionary approval of two bargaining unit employees’ vacation leave is limited by language in the next part of the sentence, “. . . and the Fire Chief will schedule vacation leaves with regard to the Department’s operating requirements and responsibilities . . .” “Regard” is ordinarily used to mean attention or consideration. <https://www.merriam-webster.com/dictionary/regard>. “Department” is defined in Article 2.D. as the Fire Department. The parties agree that the Fire Department includes bargaining unit and non-bargaining unit employees. Local 4 Ex. 1. “Operating requirements and responsibilities” is not a defined term but refers to the Fire Department’s operating requirements and responsibilities, not just the bargaining unit’s operating requirements and responsibilities.

The core of Local 4’s argument is that Article 12.B. guarantees two bargaining unit employees vacation leave at the same time, regardless of how many non-bargaining unit

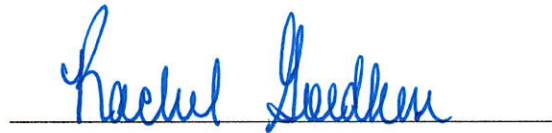
employees in the Department are taking time off on those same days. However, this argument does not give effect to the words “may” and “Department.”

The clear and unambiguous language of Article 12.B. permits the City to approve two bargaining unit employees vacation leave at the same time while requiring the Fire Chief to consider the entire Department’s operating requirements and responsibilities. In this case, the City demonstrated that it did so by taking into account the Fire Department’s minimum staffing requirements when denying Mr. Heuer’s request to schedule vacation on December 4 and December 8, 2023.

Award

For these reasons, the grievance is denied.

August 14, 2023



Rachel Goedken, Arbitrator