Before
PETER R. MEYERS
Arbitrator

In the Matter of the Arbitration between:

ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL,

Union,

And

COUNTY OF COOK/SHERIFF OF COOK COUNTY,

Employer.

Grievant: **Shawn Murphy**

Grievance Nos.: **GR-190614-TDEK (19-0614-01)**
GR-190614-TWQI (19-0614-02)

DECISION AND AWARD

Appearances on behalf of the Union

Gary L. Bailey—Attorney
Kevin O'Donnell—Union President

Appearances on behalf of the Employer

Peter M. Kramer—Assistant General Counsel
Patrick Dwyer—Executive Officer

This matter came to be heard before Arbitrator Peter R. Meyers on the 18th day of November 2019 at the offices of the Fraternal Order of Police located at 5600 South Wolf Road, Suite 120, Western Springs, Illinois. Gary L. Bailey presented on behalf of the Union, and Peter M. Kramer presented on behalf of the Employer.

Introduction

Grievant Shawn Murphy is employed by Cook County, Illinois, and the Cook County Sheriff's Department (hereinafter, jointly, "the Employer") as a police officer. The Illinois Fraternal Order of Police Labor Council (hereinafter "the Union") filed the instant grievances on behalf of the Grievant, alleging that the Employer violated the parties' collective bargaining agreement when it refused to allow the Grievant a day off because another officer was on Injury On Duty (IOD) status. The Employer denied the grievance.

The grievances were processed, without resolution, through the contractual grievance procedure, and then were consolidated and came to be heard before Neutral Arbitrator Peter R. Meyers on November 18, 2019, in Western Springs, Illinois. The parties submitted written, post-hearing briefs, which were received on December 13, 2019.

Statement of the Issue

Where the Employer violated the parties' collective bargaining agreement when it denied Grievant Shawn Murphy a day off due to another officer being on Injury On Duty (IOD)? If so, what shall the appropriate remedy be?

Relevant Contract Provisions

ARTICLE II – EMPLOYER AUTHORITY

Section 2.1. Employer Rights:

The Union recognizes that the Employer has the full authority and responsibility for directing its operation and determining policy. The Employer reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon it and vested in it

by State and Federal statutes and Constitutions, and to adopt and apply all rules, regulations and policies as it may deem necessary to carry out its statutory and constitutional responsibilities. Employer rights shall be limited only by the specific and express terms of this Agreement. The Employer's rights include, but are not limited to:

. . .

C. To establish reasonable work rules, make work assignments, determining schedules of work, methods, processes, and procedures by which work is to be performed, place, methods, means and number of personnel needed to carry out the Employer's responsibilities and duties; as well as the right to determine reasonable work productivity, performance and evaluation standards.

ARTICLE VII – VACATIONS

Section 7.2. Vacation Preference and Scheduling:

By December 20th of each calendar year, all vacation scheduling shall be completed and posted by the Employer.

Vacation picks and scheduling procedures in effect at the time of this Agreement shall remain in effect. Vacations shall be selected within each shift or unit of assignment by departmental seniority; if a transfer occurs after the vacation selection, the affected employee's vacation selection shall remain as originally chosen.

Section 7.3. Baby Furlough:

In addition to regularly scheduled vacations, employees covered by this Agreement shall be permitted to take a "baby furlough," which may consist of no more than five (5) working days off, by using accumulated paid leave time (i.e. comp time, holiday time, personal days, etc.), but exclusive of sick leave.

ARTICLE XII – GRIEVANCE PROCEDURE

Section 12.10. Impartial Arbitration Procedure:

Only the Union may request arbitration under this Agreement. If the Union is not satisfied with the Step Two answer, or answer of the Chief of Police in cases of discipline, it shall within thirty (30) days after receipt of the Step Two answer submit in writing to the Employer notice that the grievance is to enter impartial arbitration. The parties will select an arbitrator from a permanent panel of arbitrators agreed

upon by both parties. The Union and the Employer will make arrangements with the Arbitrator to hear and decide the grievance without unreasonable delay subject to the general orders, rules and regulations of the Department. The decision of the Arbitrator shall be binding. Expenses for the arbitrator's services and the expenses which are common to both parties shall be borne equally by the County and the Union. Each party to an arbitration proceeding shall be responsible for compensating its own representatives and witnesses.

The Arbitrator, in issuing his/her opinion, shall not amend, modify, nullify, ignore or add to the provision of this Agreement. The issue or issues to be decided shall be limited to those presented to the Arbitrator in writing by the Employer and the Union. The Arbitrator's decision must be based solely upon his interpretation of the meaning or application of the express relevant language of the Agreement.

Fact Summary

The joint Employer, Cook County and the Sheriff of Cook County, employ a force of police officers who are members of a bargaining unit represented by the Union. The parties' current collective bargaining agreement has an effective term of December 1, 2017, through November 30, 2020.

Article VII of the Agreement addresses the earning and use of paid vacation leave and also provides for the taking "baby furloughs." The record in this matter includes evidence that the parties have followed a practice pursuant to which two officers per shift are permitted to be off at the same time.

The record shows that in October 2018, the Cook County Sheriff released a new Departmental Directive relating to time off requests during 2019. Under this directive, two officers per shift are allowed to be on furlough during any period in the Bridgeview and Rolling Meadows Districts, while only one officer per shift is allowed to be on furlough during any period at the Markham and Skokie Districts. The directive further specifies that only one sergeant and one lieutenant will be allowed on furlough per

period, per area.

The record establishes that during the time period relevant to this matter, the Grievant was assigned to the first watch in the Markham District. The evidence shows that during the entire month of July 2019, two other officers assigned to the first watch at the Markham District were out, one on FMLA leave and one on IOD leave. The Grievant submitted two separate requests for time off for July 7 and July 8, 2019. Both of these requests were denied on June 10, 2019.

The Grievant thereafter filed a grievance over this matter. During the hearing before this Arbitrator, Union President Kevin O'Donnell testified that pre-approved leave, such as IOD, never had been counted as "benefit time off" for purposes of determining the number of officers who could schedule time off. The record also shows that benefit time off is allowed on an "as available" basis, with time off available to employees when staffing allows for it.

The Union's Position

The Union initially contends that the Departmental Directive on time off specifically curtails requests for using furlough/vacation time when other officers are on furlough, not when other officers are off work on other leaves of absence, such as IOD or FMLA. The Union asserts that the Directive does not equate these other kinds of leave with furloughs for the purpose of approving requests for time off.

The Union argues that the 2019 Directive specifically provides that there cannot be more than one patrol officer on furlough in the Markham District at any one time. The Union maintains that the evidence establishes that no other officer on the Grievant's shift

was on furlough/vacation on the days that he requested. The Union submits that in accordance with the terms of the Directive, the Grievant's requests for time off should have been approved.

The Union emphasizes that although it asserts that the Sheriff improperly changed the number of officers in Markham and Skokie who could be on furlough/vacation at any one time, this argument actually is irrelevant in this case where no other officer was on furlough for the dates that the Grievant requested.

Addressing the Employer's position that the Grievant's request for time off on July 7 was properly denied because three other officers used medical leave that day and manpower therefore was reduced, the Union points out that there is no evidence that any of these other officers had requested these medical days prior to the Grievant's requests in June. The Union asserts that it is irrelevant whether this medical was or was not pre-approved because whether officers are on medical leave, IOD, or FMLA, the Grievant's request should have been granted because no other officers were on furlough/vacation on the days the Grievant requested. The Union submits that the Sheriff is not applying his own Directive. Sick leave is not a furlough/vacation day and therefore is not a basis for denying use of furlough/vacation days. The Union insists that the Sheriff violated the Agreement by denying the Grievant's furlough/vacation requests.

The Union notes that the Sheriff must abide by its own Directives if the time-off procedure is to be given any credence and be based on reason. The reason given to the Grievant for denying his time-off request was a departure from the factors set forth in the Directive, and his request was unlawfully denied.

The Union ultimately contends that the instant grievance should be sustained in its entirety, and the Sheriff should be ordered to cease and desist its unlawful practice of dying furlough/vacation days.

The Employer's Position

The Employer initially contends that the Union has failed to meet its burden of proof. The Employer asserts that the contract has not been violated, and the evidence shows that the members of the bargaining unit receive ample amounts of time off. The Employer argues that there is no evidence that the Union, during the parties' negotiations, ever presented an alternative proposal requesting additional slots for compensatory time off.

The Employer then maintains that the grievance should be dismissed because there has been no violation of the clear and unambiguous language of the parties' Agreement. The Employer also emphasizes that there is no evidence to support any Union claim of past practice. The Employer submits that the Union is asking the Arbitrator to create a rule, out of thin air, requiring the Employer to find additional officers for coverage when employees are on IOD. The Employer insists that the Union's proposed solution goes beyond a contract-interpretation issue and seeks to impose staffing obligations that are not feasible. The Employer asserts that the Union's position would require the Employer to move officers out of their bidded assignments in order to ensure the staffing numbers that would allow for additional time off. If the Union wants such a rule, it must bargain for such a rule instead of seeking contractual benefits through arbitration.

The Employer insists that the evidence demonstrates that the Grievant was not deprived of benefits under the Agreement. The Employer contends that the Grievant's record for the last year show that he was able to use ninety-seven compensatory hours, a ten-hour floating holiday, thirty hours of personal time, 150 medical hours, and 150 vacation hours. The Grievant therefore utilized more than forty-three working days' worth of benefit time. The Employer suggests that the Union is seeking to penalize the Employer for allowing such generous time off. Moreover, the Union's argument would penalize the officers who are on IOD in that they will be blamed for the calendar being tightened up until additional staff can be moved.

The Union has been on notice since the Kohn Award that it must bargain for additional time-off provisions if it wants them. The Employer argues that is has to staff the beats, so it might have to change the practice of how many officers can be allowed pre-approved vacation at a time if the Union is successful with its argument. The Employer is charged with maintaining the proper personnel to staff its operations. The parties' Agreement requires vacations to be bid by seniority on an annual basis, with the rest of pre-approved time off being arranged through the thirty-day calendar process, which is first-come, first-serve. There also are other types of time off apart from the pre-approved time off, and this includes sick time, bereavement days, and IOD. The Employer emphasizes that trying to staff a 24/7 law enforcement operation with these contractual restrictions can be difficult.

The Employer ultimately contends that the instant grievance should be denied in its entirety.

Decision

This Arbitrator has carefully reviewed all of the testimony and evidence in the record, as well as the parties' arguments in support of their opposing positions. The Union bears the burden of proof in this dispute over the proper interpretation and application of the parties' collective bargaining agreement. To satisfy that burden, the Union must establish that the Employer violated the Agreement when it denied the Grievant's requests to use furlough/vacation time on July 7 and 8, 2019.

There is little dispute between the parties as to the material facts giving rise to this matter. Under the parties' Agreement, there are a variety of forms of time off available to the Grievant and the other members of the bargaining unit. The Agreement provides for different types of leaves, furlough/vacation time, and sick time, among others. Given the stressful and dangerous duties shouldered by the Employer's police officers, such generous time off, which generally is compensated, is something of a necessity. The Employer faces another necessity, however, one that competes with the generous time off benefits available to the employees. In essence, the members of the Employer's police force, as first responders, handle such important law-enforcement and safety-sensitive duties that the Employer absolutely must maintain sufficient staffing at all times to properly handle these critical functions. There is a staffing level below which the Employer cannot allow its on-duty manpower to fall.

The Agreement provisions and the October 2018 Departmental directive reflect the importance of maintaining appropriate staffing levels at all times. Under the Agreement, police officers bid for their annual vacation time, and this process ensures

that multiple officers are not all on vacation at the same time. The Departmental Directive sets specific limits on how many officers may be off on furlough/vacation at any one time, also to ensure that multiple officers are not all on vacation at the same time. In order to utilize vacation time that is not subject to the annual bidding process, officers must request permission to take such vacation in advance, using the thirty-day calendar process. This process operates on a "first-come, first-served" basis, which again works to ensure that multiple officers are not all on vacation at the same time.

It simply is not reasonable to assume, however, that necessary and proper staffing levels may be maintained only through spreading out officers' use of vacation time. As previously noted, the parties' Agreement provides for extensive time-off benefits in the form of leaves of different types, personal days, compensatory time off, sick days, and other forms of allowable and mostly compensated time off. It is evident that the Employer must consider how many officers are off duty at any given time, for whatever reason and utilizing whatever type of allowable leave or other time off, in order to determine whether its critical operational needs will allow for an officer to take furlough/vacation time as requested through the thirty-day calendar process. This process for taking shorter periods of furlough/vacation time than are typically taken through the annual bidding process appears to be designed in full keeping with the Employer's need to maintain adequate staffing levels. The thirty-day calendar process allows the Employer to fully analyze its staffing needs for the requested furlough/vacation time and to determine how many officers will be off duty during that time period.

It is important to note that neither the Agreement nor the Departmental Directive

contain any language that guarantees any officer the right to take furlough/vacation time based only on the officer's request. The simple fact that such time must be requested and approved demonstrates that whether or not requested furlough/vacation time will be granted depends upon, among other factors, the Employer's operational and staffing needs, which includes information about other officer absences during the relevant time period. Moreover, the Departmental Directive places a cap on the number of officers that may be on furlough from each shift at each District, but it does not establish that officers are entitled to take furlough upon request so long as the established cap has not been met. Because of the long list of time off available to officers as a benefit under the Agreement, and because staffing and operational needs may be seriously impacted by events that have nothing to do with how many other officers may be off work due to furlough, leave, or other reason, it is obvious that the Employer must evaluate each request for furlough under the thirty-day calendar process based on more than just how many other officers are on furlough at the same time.

I find that nothing in the Agreement or the Departmental Directive limits the Employer's ability to review all necessary and relevant circumstances, including the number of officers on furlough at the same time, as well as those off on Injury on Duty or Medical Leave, when determining whether to grant or deny an officer's request for furlough under the thirty-day calendar process. There is no rational basis, moreover, for limiting the Employer's review of such requests to nothing more than how many other officers are on furlough during the time period covered by each such request. To properly fulfill its obligations to the community that it serves, the Employer must be able

to grant or deny requests for furlough under the thirty-day, also known as "baby furloughs," calendar process by reviewing all of the relevant factors that impact its operational and staffing needs, not just how many other officers are on furlough during the relevant time period.

This Arbitrator recognizes that the October 2018 Departmental Directive that went into effect in 2019 states that, in its Markham District, ". . . only one officer per shift will normally be allowed on furlough during any period" and that on July 7 and 8, 2019, no officers were out on furlough in Markham. The problem was that one of the Grievant's colleagues was off on FMLA and another was off on IOD leave. And even though the Union President testified that preapproved leave such as IOD had never been counted before to determine the number of officers who could be off work, the fact remains that, as stated above, the Sheriff has the obligation to make sure that enough employees are available to perform the necessary work of the Department. The Directive uses the terms "normally be allowed," and in July of 2019, apparently things were not normal. In Section 2.1A of the parties' collective bargaining agreement, the Sheriff retained:

> The exclusive right to determine its policies, standards of services, and to operate and manage its affairs and to direct its workforce in accordance with its responsibilities. The Employer has all the customary and usual rights, power and functions of management.

In Section 2.1C of the parties' collective bargaining agreement, the parties also agreed that the Sheriff could:

> . . . establish reasonable work rules, make work assignments, determine schedules of work, methods, processes and procedures by which work is to be performed, place, methods, means, and number of personnel needed to carry out the Employer's responsibilities and

duties; as well as the right to determine reasonable work productivity, performance, and evaluation standards.

Of course, the Sheriff's management rights are limited by other sections of the collective bargaining agreement. This Arbitrator, however, finds that there were no limitations in the collective bargaining agreement that prevented the Sheriff from denying the Grievant the ability to take baby furlough days on July 7 and 8, 2019, given the short staffing situation that the Sheriff was dealing with that month.

In light of all of these considerations, this Arbitrator finds that the Union has failed to meet its burden of proving that the Employer's denial of the Grievant's request to take two days of furlough during July 2019 violated the plain language of the parties' collective bargaining agreement. Accordingly, this Arbitrator finds that the instant grievance must be, and hereby is, denied in its entirety.

Award

The grievance is denied.

PETER R. MEYERS
Impartial Arbitrator

Dated this 3rd day of February 2020 at Chicago, Illinois.