

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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IN THE MATTER OF THE ARBITRATION \*  
BETWEEN: \*

CITY OF PITTSFIELD \*

-and- \*

ARB-14-3826

PITTSFIELD SUPERVISORY AND \*  
PROFESSIONAL EMPLOYEE \*  
ASSOCIATION (PSPEA) \*

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Arbitrator:

Brian K. Harrington, Esq.

Appearances:

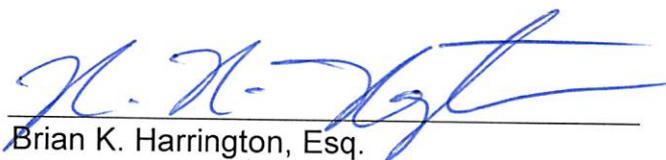
Fernand J. Dupere, Esq. - Representing City of Pittsfield.

Mitchell I. Greenwald, Esq. - Representing PSPEA

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The grievance is sustained. The Employer violated the Collective Bargaining Agreement when it denied the grievant's request for a vacation day for June 30, 2014.



Brian K. Harrington, Esq.

Arbitrator

July 28, 2015

### **INTRODUCTION**

On July 1, 2014, the Pittsfield Supervisory and Professional Employee Association (PSPEA or Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L., Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Brian K. Harrington Esq. to act as a single neutral arbitrator with the full power of the Department.<sup>1</sup> The undersigned Arbitrator conducted one day of hearing at the Department's office in Springfield on January 26, 2015.

The parties filed post hearing briefs on March 30, 2015.

### **THE ISSUE**

Did the City of Pittsfield violate the Collective Bargaining Agreement (CBA, or Agreement) when it denied the grievant's request for a vacation day for June 30, 2014?

If so, what shall be the remedy?

### **RELEVANT CONTRACT LANGUAGE**

The parties' Collective Bargaining Agreement contains the following pertinent provisions:

Article 10 – VACATION (In Part)

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<sup>1</sup> Pursuant to Chapter 145 of the Acts of 2007, the Department of Labor Relations "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the ... the board of conciliation and arbitration ... including without limitation those set forth in chapter 23C, chapter 150, chapter 150A, and chapter 150E of the General Laws."

The employees shall be entitled to periods of annual vacation in compliance with the following schedule....

...All vacation time shall be taken at a time approved by the Department Head, which approval shall not be unreasonably withheld.

### **THE FACTS**

The City of Pittsfield (City or Employer), a municipality in Berkshire County has a finance department as part of its organizational structure. Susan Carmel (Carmel) is the Director of Finance and Treasurer of the City. Benjamin Wax (Wax) is the City Accountant. Wax reports to Carmel as she is the Department Head. The fiscal year for municipalities runs from July 1 to June 30.

Donna Guzzo (Guzzo) started her employment in the finance department for the City on November 25, 1985 as a senior account clerk. She was promoted to the position of junior accountant in January, 2008 and continues to hold this position. In this position Guzzo reports directly to Wax. Guzzo directly supervises two senior account clerks.

The City and the Union are parties to an Agreement which is dated July 1, 2009-June 30, 2010. At the hearing the parties agreed that this is the CBA currently in effect. This Agreement covers supervisory and professional employees that work for the City, including Guzzo.

On May 2, 2014, Guzzo filled out a vacation request form and gave it to Wax, requesting two days of vacation, June 27 and 30, 2014. She explained the reasons for the dates chosen, that it was for a family event out of town which was

unique.<sup>2</sup>Wax had concerns about Guzzo's request for the June vacation days, as they were for the last two days of the fiscal year. Wax had previously worked in the private sector and was unfamiliar with the events surrounding the end of the municipal fiscal year. After Guzzo first submitted the request, Wax never spoke to her about it again and never asked her if there was additional work to be done on June 30, the close of the fiscal year. Wax discussed the matter with Carmel and decided to grant Guzzo's request for June 27 but deny her request for June 30. Wax's denial of Guzzo's request for June 30 made her planned vacation impossible. On May 8, Wax wrote in response that Guzzo's request for June 30 was denied "based on interference with the department's operation on the final day of the fiscal year and 6/30/14." The language that Wax quoted in his denial came from the City's Employee Orientation Manual (Manual). The Manual also stated on page 1 that "to the extent that the provisions of specific union contracts differ from the corresponding provisions outlined in this manual those specific contract provisions will supersede the provisions of this manual." The parties presented no evidence that the reasonableness standard enunciated in Article 10 of the Agreement was applied during any step of the grievance process prior to arbitration. Wax subsequently allowed Guzzo's request for vacation for nearly the entire month of December, 2014 which can be a busy time in the finance

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<sup>2</sup> Guzzo testified that she informed Wax that the only other alternate dates that conformed to her plans were July 11 and 14, and that she did not submit those dates as they would fall during the busiest time of the year for her office. From his testimony it was unclear whether Wax denied that Guzzo informed him of the alternate dates or did not recall the conversation. Guzzo believed that she took vacation around this time every year, but other witnesses disagreed. I need not resolve these differences in testimony because these facts are not outcome determinative.

office. This has been the only one of Guzzo's vacation requests that Wax has denied.

### POSITIONS OF THE PARTIES

#### **THE UNION**

The Union first argues that Wax applied the incorrect standard in denying Guzzo's vacation request by citing the interference with departmental operation language from the Manual rather than the reasonableness standard of Article 10 of the Agreement. Applying such a reasonableness standard requires an assessment of the needs of both parties on an objective basis. Since Guzzo's needs were never assessed, Wax acted in violation of the contract language by denying Guzzo's request for June 30. Guzzo suggested that June 27 and 30 was a better alternative to the only other time that worked for her plans, July 11 and 14, but Wax did not respond to her suggestion.

Also, Guzzo needed vacation days on a Friday and Monday on either June 27 and 30 or July 11 and 14 due to a unique situation, one that could never recur. Wax denied the June 30 request because he assumed that the office would be too busy that day, but this did not occur. If Wax was unfamiliar with what happened in a municipal finance office on June 30, then he should have obtained this information. Guzzo had been allowed to be on vacation for nearly the entire month of December, 2014, a similarly busy time for her office, with absolutely no ill effects. Therefore, the grievance should be sustained. The City should be ordered to make vacation decisions in accordance with the CBA and not the Manual, and Guzzo should be granted an additional vacation day as compensation.

**THE EMPLOYER**

The Employer states that the contract does not require a department head to grant every vacation request. Requests can be denied if there is a reasonable basis to do so, particularly where there would be interference with the department's operations. At the time of the denial, Wax had been on the job for only six months and should be given latitude due to his unfamiliarity with the events surrounding the end of a municipal fiscal year. December is not nearly as busy a time as June, and by December, 2014, Wax was more familiar with his position and was able to grant Guzzo's vacation request.

The Employer also argues that June 30<sup>th</sup> is one of the busiest days in a municipal finance office, and there are many tasks which must be completed on that day and cannot be done either before or after.<sup>3</sup> As he had never been a part of the end of a municipal fiscal year before, Wax relied on Guzzo to both complete the necessary work and supervise the senior account clerks who worked for her. Wax has shown a history of being flexible in granting vacation requests for Guzzo, having granted all of them except for June 30, 2014. Therefore, the grievance should be denied.

**OPINION**

The issue before me is: did the City of Pittsfield violate the Collective Bargaining Agreement (CBA, or Agreement) when it denied the grievant's request for a vacation day for June 30, 2014? For the reasons stated below, I

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<sup>3</sup> Wax testified that several year end tasks were completed on June 30, 2014 but it was unclear whether those tasks actually had to be completed on that day, and no other.

find that the Employer did violate the CBA when it denied Guzzo's request for a vacation day for June 30, 2014. The grievance is sustained.

The most striking feature to this case is the minimal amount of discussion which took place between Wax and Guzzo concerning her vacation request. There was no indication that Guzzo made the uniqueness of the situation clear to Wax. More importantly however, Wax never sought Guzzo's opinion on the volume of work that needed to be done at the end of a municipal fiscal year and when that work could be completed. In this case, the supervisor should have taken the lead in resolving any communication issues with a subordinate and clearly, Wax did not do so.

An employee's ability to take a vacation at the time they prefer is a valuable benefit. While business needs are a concern, the employer should, whenever possible, try to do their utmost to meet the wishes of employees. *Elkouri and Elkouri, How Arbitration Works, 17-6 and n. 17-18 (7<sup>th</sup> Ed., 2012).* Where contract language is silent on how vacations are to be approved, it must be assumed that managerial discretion in denying vacations is greater than in those situations where contract language requires management to demonstrate a justification for denying a vacation request. *Elkouri, at 17-6.*

The contract language required Wax to not unreasonably withhold his approval of Guzzo's vacation request. No evidence was presented that Wax asked Guzzo why she wanted to use these particular days or if there were any other days that could work for her. Wax did not voice his concerns to Guzzo about being absent at the close of the fiscal year or ask her whether she would have a heavier work load that day. Wax made an assumption that there would

be a virtual whirlwind of activity on June 30 that would require Guzzo to be present, but this did not occur. Consequently, I find that Wax unreasonably withheld his permission for Guzzo to take vacation on June 30, 2014.

Additionally, the evidence clearly demonstrated that Wax applied an incorrect standard in denying Guzzo's vacation request for June 30, 2014. His stated written reason for the denial was "interference with department operations on the final day of the fiscal year". This language mirrors that which is found in the Manual concerning vacations and does not reflect the language of the Agreement.

#### **THE REMEDY**

In its brief, the Union sought relief in two parts. It first asked me to order the City to make vacation decisions in accordance with the standard set forth in the CBA rather than the one from the Manual, and to inform all supervisors who have the authority to deny vacation time of the results of this decision. Secondly, the Union requested that I give Guzzo an extra vacation day to compensate for the violation of her rights. I agree with the Union on compliance with the CBA, but I decline to order the City to communicate this award to its supervisors, and I decline to award Ms. Guzzo an additional vacation day.

I order the City to approve vacation requests in accordance with the CBA rather than the Manual. However, because I rely on the City to transmit this information in the same manner that they would any other administrative decision which affects their employees, I do not order the Employer to communicate the

decision in any particular manner, i.e. through a workplace posting.<sup>4</sup> The Union is free to enforce what it believes to be the provisions of the Agreement in any matter it sees fit including using this decision for whatever precedential value it might hold in the future.

I cannot award Guzzo an additional vacation day because she did not lose a day. To order an additional vacation day for Guzzo would give her more vacation time than the contract prescribes. This ruling is consistent with the majority of arbitral jurisprudence on this issue. *Elkouri*, at 17-14 through 17-15.

#### **AWARD**

The grievance is sustained. The Employer violated the Collective Bargaining Agreement when it denied the grievant's request for a vacation day for June 30, 2014.



Brian K. Harrington, Esq.  
Arbitrator  
July 28, 2015

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<sup>4</sup> Such a remedy exists for violations of M.G.L. Ch. 150E but is outside the scope of these proceedings.