

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

CITY OF LOWELL

-and-

AFSCME COUNCIL 93

ARB-23-10386

Date: December 20, 2024

Arbitrator:

Meghan Ventrella, Esq.

Appearances:

Garrett Beaulieu, Esq.

Evan Berwald, Esq.

- Representing the City of Lowell

- Representing AFSCME Council 93

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 City of Lowell did not fail to pay school nurses holiday pay in violation of Article XVII of the collective bargaining agreement. The grievance is denied.

Meghan Ventrella, Esq.

Arbitrator

December 20, 2024

INTRODUCTION

On December 19, 2023, AFSCME Council 93, Local 1705A (Union) filed a unilateral petition for arbitration with the Massachusetts Department of Labor Relations (Department). Under the provisions of M.G.L. Chapter 23, Section 9P, the Department appointed Meghan Ventrella, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a virtual hearing via Web Ex on May 23, 2024. The parties filed briefs on June 28, 2024.

Issues

The parties were unable to agree on a stipulated issue. While each party proposed an issue, the parties agreed that the arbitrator would decide the issue in this matter.

The Union proposed:

Did the City of Lowell violate Article XVII of the CBA with AFSCME Council 93, Local 1705A by not paying School Nurses holiday pay? If so, what shall be the remedy?

The City proposed:

Does the City of Lowell's method of calculating holiday pay for AFSCME Council 93, Local 1705A school nurses violate Article XVII of the CBA? If so, what shall be the remedy?

Arbitrator's Issue:

As the parties were unable to agree on a stipulated issue, I find the appropriate issue to be:

Did the City of Lowell fail to pay school nurses holiday pay in violation of Article XVII of the CBA? If so, what shall be the remedy?

Relevant Contract Language

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

ARTICLE XI: Hours of Work – Work Week

Section 1- The employer shall have the right to schedule work shifts and schedules. Each employee shall be scheduled to work a shift with regular starting and quitting times. Except for emergency situations and as herein otherwise provided, work shift and schedules shall not be changed unless mutually agreed on between the Union and the Employer.

The Clinical Nurses will adhere to the City Hall schedule.

Section 2 - Language giving the work schedules for nurses or any other group supersedes any conflicting general provision. The work year for all school nurses will be one hundred and eighty two (182) days long at current school hours. This will include one hundred and eighty (180) days the students are in session and two (2) days of training for which attendance shall be mandatory. This provides for one (1) day of training before school begins and one (1) day after the end of the school year for required CPR/First Aid training as well as other training determined by the Health Director. Since the City will be offering CEU and PDP classes pertinent to maintaining certifications, personal days cannot be taken. Clinic nurses will be included in pertinent training on a rotating basis in order to keep the clinic open.

The work week for school nurses does not include vacation days. With respect to the Nurses, the Employer and the Union agree that in order to continue to provide proper health service, some degree of flexibility in the hours of work and work week is essential but basically, the work week schedule shall be governed by the following principles whenever possible:

- (1) The present hours of work and work schedule shall continue in effect;
- (2) That the Employer reserves the right to change the hours of work and work schedule subject to paragraph (3) hereof;
- (3) That prior to implementing any change in the hours of work and/or work schedule, that the Employer shall meet with the Union and discuss said change, but the decision of the Employer shall be final as to whether or not to implement such change;
- (4) That during the school year, when schools are closed, due to school days off or school vacation, shall not be considered annual vacation time for those Public Health Nurses who are assigned to school duty. [sic]

- (5) That, except as conflicts with the present work schedule, the regular work week shall consist of five (5) consecutive workdays, Monday through Friday, inclusive, for said employees in this Unit.
- (6) In the event that a school building closes, the nurse or nurses assigned to that school will be reassigned to another school for the day.

Section 3 - Part-time employees who work twenty (20) or more hours per week shall be entitled to pro-rated benefits under this Agreement.

Section 4 - If the City requires supplemental coverage at the clinic during school vacations, volunteers will be sought. If there are insufficient volunteers, the least senior school nurse on a rotating basis will be required to supplement coverage at the clinic during school vacations. School nurses will be paid at their regular hourly rate while working at the clinic. The regular hourly rate is determined by the contract (Annual salary divided by 182 days divided by seven (7) hours).

ARTICLE XVII: HOLIDAYS

Section 1:

The following days shall be considered to be paid holidays:

New Year's Day	Independence Day
Martin Luther King, Jr. Day	Labor Day
Presidents' Day	Indigenous Peoples' Day
Patriots' Day	Veterans' Day
Memorial Day	Thanksgiving
Juneteenth	Christmas

School nurses do not receive additional holiday pay for Independence Day.¹ The day after Thanksgiving shall be used as a scheduled fourth personal day for Public Health Nurses only.²

Section 2

Holiday pay shall be one full day's pay at straight time rate. If a holiday occurs on a regular day off of an employee, he/she shall receive, in addition to his/her regular compensation, the holiday pay as above specified. Holiday pay does not include shift differential.

1 The following footnote appears in the CBA: "Language added: "school nurses do not receive additional holiday pay for Independence Day" per MOU FY08 to 10 signed March 2008."

2 The following footnote appears in the CBA: "Language added per MOU (July 1, 2012-June 30, 2015). Signed on April 2, 2013. Ratified by City Council on April 3, 2013."

Section 3

If a holiday occurs within an employee's vacation period, he/she shall receive an additional day's vacation, with pay.

Section 4

An employee required to work on a holiday shall receive, in addition to his/her holiday pay, time and one-half (1 1/2) for all hours worked.

Section 5

A holiday off shall be considered as hours worked for purposes of determining overtime during that payroll week in which holiday falls.

Section 6

Employees working on the actual holiday of Saturday or Sunday will be paid holiday pay at straight time plus time and one half for hours worked. The Friday (for Saturday) or Monday (for Sunday) holiday for legal purposes, will be treated as a skeleton day. The skeleton crew will work the day at straight time and will be compensated eight (8) hours holiday pay at straight time. The majority of employees who work Monday through Friday day shift and are not 24-hour operations for manpower purposes, will have the Friday off before a holiday or the Monday off after the Holiday rather than an extra day's pay. If an employee who is eligible for overtime pay works on a holiday which falls on a regular workday, he/she shall be paid time and one-half for such day and one additional days pay at straight time.

Section 7

To be eligible for holiday pay, any employee shall have worked on the scheduled workday preceding the holiday and have worked on the scheduled workday following the holiday unless on paid authorized leave. Employees on Worker's Compensation shall be compensated in accordance with Worker's Compensation Act 152 as amended, and shall not be eligible for additional day's pay.

Skeleton force time and/or any other days off or time off as may be granted by the City Manager do not constitute past policy or guarantee for the future grant of such time.

Stipulated Facts

1. The City of Lowell (the "City") is a public "employer" within the meaning of M.G.L. c. 150E, § 1 (the "Law"). The City is the employer for collective bargaining purposes.

2. The American Federation of State, County and Municipal Employees, Council 93, Local 1705A (the "Union") is an "employee organization" within the meaning of the Law.
3. The Union is the exclusive bargaining representative for School Nurses and Clinic Nurses (collectively "Nurses") employed by the City.
4. The City and the Union are party to a collective bargaining agreement (the "CBA"), and the relevant CBA was effective from July 1, 2021 to June 30, 2024.
5. Article XI of the CBA dictates the number of hours per week and days per year Nurses work.
6. Article XVII, Section 1, lists holidays that "shall be considered to be paid holidays" for Nurses.
7. Article XVII, Section 2, states the holiday pay rate for Nurses.
8. Article XVII, Section 7, dictates the holiday pay eligibility requirements for Nurses.
9. The Nurses["] yearly wages are in the grid attached to the CBA as articulated in Article XVII, Section 1 and submitted as Joint Exhibit 2.
10. School Nurses can elect to receive their yearly wages in bi-weekly payments according to a pay schedule over 42 weeks or 52 weeks of the year.
11. School Nurses["] hourly rate of pay is articulated in Article XI, Section 4, and Article XXVII, Section 5.
12. School Nurses' pay checks reflect their chosen pay schedule and not their hourly rate of pay.
13. Prior to beginning their employment with the City, Nurses receive an offer letter of employment from the City confirming their annualized rate of pay which is accrued hourly.
14. School Nurses do not work for the City when school is not in session unless they are working at a clinic pursuant to the CBA, or it is a training day prior to and after the school year as articulate[d] in Article XI, Section 2 of the CBA.
15. The City has calculated holiday pay for Nurses in the same way since 2018.
16. The grievances and demand for arbitration filed by the Union for this matter are timely.

Facts

Background

The City of Lowell (City) and the Union are parties to a CBA that was in effect at all relevant times to this arbitration. The Union is the exclusive bargaining representative for all employees listed in the recognition clause of the CBA, including school nurses.

The City pays the school nurses an annualized rate of pay based on a 35-hour workweek for the duration of the school year (180 days) plus two additional training days. The Lowell Public Schools are closed for holidays and holiday breaks. Therefore, the holiday breaks and holidays do not count towards the required 180 school days and 2 training days. Prior to 2023, the City paid the school nurses weekly. However, during 2023, the City started paying employees on a bi-weekly basis.³ As such, the City currently pays school nurses on a bi-weekly basis either over the course of forty-two (42) weeks or fifty-two (52) weeks which results in either the school nurses receiving twenty-one (21) or twenty-six (26) paychecks.

Since at least 2018, the City calculated compensation for school nurses based on the number of pay periods instead of the number of days worked due to the school nurses' work year only requiring 182 days. At the time of hire, a school nurse receives an offer letter stating that their 35-hour per week position receives an annualized rate, which is accrued hourly. An annualized rate is not a fixed, guaranteed amount, it is a calculation of the total amount that an employee will get paid over the course of a year if that individual

³ The parties submitted paystubs from unit members which demonstrated that the City paid the employees on a weekly basis until 2023. On or about February of 2023, the paystubs in the record established that City began paying unit members on a bi-weekly basis.

works or accrues 35 hours per week. The City utilizes annualized rates for the school nurses so that it can equally divide the annualized rate over the relevant amount of pay periods and the employee will receive the same amount in each paycheck.

Again, as there are more than 182 days in either 42 or 52 weeks, the City must calculate the compensation school nurses receive based on the number of pay periods (21 or 26), instead of the number of days worked. Therefore, the school nurses' annualized rate is equally divided based on the number of pay periods (21 or 26) and hours worked or accrued in a pay period (70 hours in a bi-weekly pay period). When the City calculates the annualized rates for each school nurse, the paid holidays are already accounted for and included in that annualized rate.

When the City issues a school nurse their paycheck, it lists the type of pay received (i.e. regular, holiday, etc.), the number of hours worked for each type of pay, and the hourly rate set by MUNIS.⁴ For example, a school nurse who worked a full 70 hours in a bi-weekly pay period would be compensated at their MUNIS rate for 70 hours of regular salary. If that nurse worked 63 regular hours in a biweekly pay period, and did not have approved sick, vacation, or holiday pay to cover the remaining 7 hours, then they would be compensated at their MUNIS rate for 63 hours of regular salary. During a biweekly pay period in which there is one paid holiday, a school nurse would work 63 hours but their paystub for that pay period would include 7 hours at their MUNIS rate for holiday pay. Despite only working 63 hours for that pay period, the school nurse is still compensated for a total of 70 hours at their annualized rate as calculated by MUNIS.

Mead's Pay History

⁴ MUNIS is the City's payroll system.

Meghan Mead (Mead) is a school nurse and a bargaining unit member. Mead's paystub for the week ending December 31, 2022, reflected that the City paid Mead at her MUNIS rate for 28 hours of holiday break pay and 7 hours of holiday pay for Christmas Day. Lowell Public Schools were closed for holiday break during the week of December 26, 2022, and Mead did not work. For the pay period ending January 7, 2023, the City paid Mead at her MUNIS rate for 28 hours of regular salary and 7 hours of holiday pay for New Year's Day. Mead did not work New Year's Day. For the pay period ending January 14, 2023, the City paid Mead at her MUNIS rate for 35 hours of regular salary. For the pay period ending January 21, 2023, the City paid Mead at her MUNIS rate for 28 hours of regular salary and 7 hours of holiday pay for Martin Luther King Jr. Day. Mead did not work Martin Luther King Jr. Day. For the pay period ending January 28, 2023, the City paid Mead at her MUNIS rate for 28 hours of regular salary and 7 hours for a snow day. For the pay period ending February 4, 2023, the City paid Mead at her MUNIS rate for 35 hours of regular salary.

Starting in February of 2023, the City paid the school nurses bi-weekly. For the pay period ending February 18, 2023, the City paid Mead at her MUNIS rate for 63 hours of regular salary and 7 hours of sick time. For the pay period ending March 4, 2023, the City paid Mead at her MUNIS rate for 28 hours of regular salary, 7 hours for a snow day, 28 hours of holiday break pay, and 7 hours of holiday pay for President's Day. The City's public schools are closed for holiday break the week of February 20, 2023, and Mead did not work. For the pay period ending March 18, 2023, the City paid Mead at her MUNIS rate for 63 hours of regular salary and 7 hours for a snow day.

For the pay period ending April 1, 2023, the City paid Mead at her MUNIS rate for 70 hours of regular salary. For the pay period ending April 15, 2023, the City paid Mead at her MUNIS rate for 63 hours of regular salary and 7 hours of holiday break pay. The paystub for the pay period ending April 29, 2023, showed that the City paid Mead at her MUNIS rate for 35 hours of regular salary, 28 hours of holiday break pay, and 7 hours of holiday pay for Patriot's Day. The City's public schools are closed for part of April for school vacation, and Mead did not work over the break. For the pay periods ending May 13, 2023 and May 27, 2023, the City paid Mead at her MUNIS rate for 70 hours of regular salary respectively. For the pay period ending June 10, 2023, the City paid Mead at her MUNIS rate for 63 hours of regular salary and 7 hours of holiday pay for Memorial Day. Mead did not work on Memorial Day. For the pay period ending June 24, 2023, the City paid Mead at her MUNIS rate of pay for 35 hours of regular salary. As Mead was an employee who opted for 21 paychecks, she did not receive another paycheck until September of 2023.

Reis' Pay History

Lindsey Reis (Reis) is a school nurse and bargaining unit member. For the pay period ending December 31, 2022, the City paid Reis at her MUNIS rate for 28 hours of holiday break pay and 7 hours of holiday pay for Christmas Day. During the week of December 26, 2022, the Lowell public schools are closed for holiday break, and Reis did not work. For the pay period ending January 7, 2023, the City paid Reis at her MUNIS rate for 28 hours of regular salary, 7 hours of holiday pay for New Year's Day, and 7 hours

at a higher rate of pay for “services.”⁵ For the pay period ending January 14, 2023, the City paid Reis at her MUNIS rate for 35 hours of regular salary. For the pay period ending January 21, 2023, the City paid Reis at her MUNIS rate for 28 hours of regular salary, 7 hours for holiday pay for Martin Luther King Jr. Day, and 7 hours at a higher rate for “services.” For the pay period ending January 28, 2023, the City paid Reis at her MUNIS rate for 28 hours of regular salary and 7 hours for a snow day. For the pay period ending February 4, 2023, the City paid Reis at her MUNIS rate for 33 hours of regular salary, 2 hours of sick time, and 9 hours at a higher rate of pay for “services.”

For the pay period ending February 18, 2023, the City paid Reis at her MUNIS rate for 70 hours of regular salary. For the pay period ending March 4, 2023, the City paid Mead at her MUNIS rate for 21 hours of regular salary, 7 hours of sick time, 7 hours for a snow day, 28 hours of holiday break pay, and 7 hours of holiday pay for President’s Day. The City’s public schools are closed for holiday break the week of February 20, 2023, and Reis did not work. For the pay period ending March 18, 2023, the City paid Mead at her MUNIS rate for 63 hours of regular salary and 7 hours for a snow day.

For the pay period ending April 1, 2023, the City paid Reis at her MUNIS rate for 70 hours of regular salary and 21 hours at a higher rate of pay for “services.” For the pay period ending April 15, 2023, the City paid Reis at her MUNIS rate for 63 hours of regular salary and 7 hours of holiday break pay. For the pay period ending April 29, 2023, the City paid Reis at her MUNIS rate for 7 hours of regular salary, 28 hours of holiday break pay,

5 Neither party explained the meaning for “services” on the paystub. However, the parties’ CBA does allow school nurses to work shifts as a clinical nurse at different rate of pay for the City’s health clinic.

28 hours of sick time, and 7 hours of holiday pay for Patriot's Day. Reis did not work while the schools were closed for part of April vacation. For the pay periods ending May 13, 2023 and May 27, 2023, the City paid Reis at her MUNIS rate respectively for 63 hours of regular salary and 7 hours of sick time. For the pay period ending June 10, 2023, the City paid Reis at her MUNIS rate for 63 hours of regular salary, 7 hours of holiday pay for Memorial Day, and 39 hours at a higher rate of pay for "services." For the pay period ending June 24, 2023, the City paid Reis at her MUNIS rate for 61 hours of regular salary, 2 hours of sick time, and 7 hours of holiday pay for Juneteenth.

Due to Reis opting for 26 paychecks, the City continued to issue her paychecks for her work as a school nurse as well as the other work she performed for the City at the clinic or summer school. For the pay period ending July 8, 2023, the City paid Reis at her MUNIS rate of pay for 35 hours of regular salary. Since this paycheck covered two different fiscal years, the City also paid Reis at her new MUNIS rate due to cost of living increases for 28 hours of regular salary, and 7 hours of holiday pay for Independence Day. For the pay period ending July 22, 2023, the City paid Reis at her MUNIS rate for 70 hours of regular salary. For the pay period ending August 5, 2023, the City paid Reis at her MUNIS rate for 70 hours of regular salary and 32.50 hours at a higher rate of pay for summer school. For the pay period ending August 19, 2023, the City paid Reis at her MUNIS rate for 70 hours of regular salary.

Grievance

In 2021, the parties agreed to include Juneteenth as a paid holiday under the CBA. For the pay period including Juneteenth in 2022, Mead submitted her timesheet which reflected 7 hours of holiday pay, to Beth Moffett (Moffett), the School Nurse Coordinator.

Moffett informed Mead that she would not receive a paycheck reflecting seven hours of holiday pay for Juneteenth because Mead was on a bi-weekly pay schedule for 21 paychecks, and Juneteenth fell in the 22nd-bi-weekly pay period when Mead would not receive a paycheck.

On or about June 21, 2022, Mead filed a grievance on behalf of all school nurses stating that the City was not paying its employees for any holidays in violation of Article XVII. The Union asserted that the City had *never* paid the school nurses for *any* holidays in the CBA. On or about June 29, 2022, the Union moved the grievance to Step II of the process. After the grievance was denied at Step II, the Union filed the grievance at Step III. On or about December 7, 2023, the City denied the Union's Step III grievance. On or about December 19, 2023, the Union filed a demand for arbitration with the Department.

Arguments

For the Union

The Union argues that the City failed to pay school nurses holiday pay pursuant to Article XVII of the parties' CBA. Apart from Independence Day, the CBA does not limit which unit members receive the paid holidays if the nurse worked the scheduled day before and after the holiday. According to Article XVII, all nurses shall receive one day's pay at their straight time rate for the holiday, and if the holiday occurs on a regularly scheduled day off for a nurse, that nurse shall receive the holiday pay in addition to any other pay received for the regular day off. However, the Union argues that despite clear contract language requiring such, the City has never paid school nurses for any holidays.

The Union also argues that the holidays enumerated in the CBA fall on regularly scheduled days off for school nurses. The Union explains that holidays are regularly

scheduled days off for school nurses because the holidays are never scheduled on the required 182 days that school nurses work. As such, the City must treat holidays under the CBA as regular days off for school nurses, or like Saturdays and Sundays for employees who work Monday through Friday. Therefore, the City should pay the school nurses seven hours of pay in addition to their regular compensation.

The Union further contends that the holiday pay displayed in the school nurses' paystubs is the MUNIS rate of pay for the school nurses working 182 days, and not additional wages for an observed holiday. While paystubs may reflect payment of a "holiday," it is merely coded as a holiday in the payroll software and is only the equally divided yearly annualized salary for that day. The Union contends that the school nurses have never been paid for any holidays, and that the City is merely paying school nurses their MUNIS rate of pay on days that happen to fall on holidays.

The Union argues that the City did not provide any explanation for why school nurses have never been paid for holidays, except through disingenuous testimony about annualized rates and that the holidays are "baked into" the school nurses' wages. The Union asserts that neither the nurses' offer of employment letters, nor the CBA, clearly state that the holidays are "baked into" the school nurses' annualized pay. The Union argues that the holiday pay displayed in the school nurses' paystubs is the MUNIS rate of pay for the school nurses working 182 days, and not additional wages for an observed holiday.

In sum, the Union contends that the City has failed to adhere to the contract which requires that the school nurses receive seven hours of straight time for all enumerated holidays in the contract in addition to their regular compensation. In fact, the Union asserts

that the City's defense that it has been paying school nurses holiday pay in the same manner for years does not supplant the clear and unambiguous language in the CBA. The Union requests that I find that the City violated the contract and require the City to pay the school nurses holiday pay for all applicable holidays from the filing of this arbitration's underlying grievance and continue to do so until the parties change or amend the contractual language during successor collective bargaining.

For the City

The City argued that it has paid the school nurses for all applicable holidays listed in the CBA. The City contends that a school nurse's annualized rate is divided based on the number of pay periods, not the number of days actually worked. Article XVII states in relevant part that: "holiday pay shall be one full day's pay at straight time rate." The City asserts that one full day's pay for school nurses is calculated by MUNIS. The City contends that MUNIS calculates a school nurse's hourly pay as follows: annualized rate divided by number of pay periods divided by number of hours in a pay period. Then, to calculate one full day's pay, MUNIS multiplies the hourly rate by 7 because there are 7 hours in a school nurse's workday. When observing a school nurse's paystub from a pay period containing a paid holiday, it clearly shows that a school nurse is compensated "REG SALARY" (regular salary) for the number of hours worked at their hourly rate calculated by MUNIS. Also, that paystub shows that the school nurse is compensated 7 hours (one full day) at their hourly rate calculated by MUNIS for "HOLIDAY" (holiday pay).

The City argues that the Union is misguided in its argument that the MUNIS rate of pay is different from holiday pay under the CBA. The City asserts that under the CBA, school nurses who work shifts at the clinic are paid a different hourly rate than when they

are performing their normal job duties during the school year. The City calculates the hourly pay for school nurses working at the clinic by taking their annualized salary divided by 182 days, divided by 7 hours.

Again, the City argues that the CBA only requires the above formula for determining hourly rates when the school nurses work at the clinic. The City contends that the CBA does not state that this formula should be applied to school nurses when they are performing their regular job duties at school. The City argues that the school nurses' work year is only 182 days, but they do not get paid over the course of only 182 week days. The City pays the school nurses for 182 work days over the course of either 210 weekdays (42 weeks) or 260 weekdays (52 weeks). The City claims that the numbers would not add up if it calculated the school nurses' rates of pay based on the same formula for when they work at the clinic.

For example, if the City took a school nurse's annualized rate of \$100,000, then divided it by 182 days, and divided that number by 7 hours to get an "hourly rate," that number would be approximately \$78.49 per hour. If the City then used that hourly rate and multiplied it by 70 hours per pay period, the sum would equal \$5,494.30 per pay period. Finally, using \$5,494.30 per pay period and multiplying it by 21 pay periods, the annualized rate equals \$115,380.30 (over 26 pay periods the annualized rate would equal \$142,851.80). However, the annualized rate for this hypothetical school nurse should be \$100,000. Thus, the numbers cannot possibly add up if a method other than the MUNIS formula referenced above is used to calculate hourly rates.

Additionally, the City asserts that the holidays that the school nurses receive under the contract are "baked into" their annualized rate. Again, the school nurses' receipt of

holiday pay is reflected in their paystubs and the holiday pay rate is the school nurses' MUNIS rate. The City contends that the holidays are incorporated into the annualized salary amounts offered to the school nurses. The City argues that its method of calculating holiday pay does not violate the CBA, is consistent within the plain meaning of the CBA, and is also necessary considering the unique circumstances under which school nurses receive their annualized rate.

If a school nurse's rate of pay is calculated based on 182 days instead of using the MUNIS rates of pay, which are calculated based on number of pay periods, it creates an endless cycle of increases in the annualized rate and disparities in pay for school nurses based on the number of pay periods each nurse selects. Moreover, the City's method of calculating holiday pay is fully consistent with the clear and unambiguous language of the CBA because school nurses are compensated an additional one full day's pay, as calculated by MUNIS, for holidays in which they are not actually working and accruing hours, as evidenced on their paystubs for pay periods containing a paid holiday.

Although the City contends that it pays the school nurses holiday pay in accordance with the clear and unambiguous language of the contract, it also argued that the parties had a binding past practice. Since 2018, the City has calculated and paid school nurses for holidays as described above. Furthermore, the City argued that the parties had a valid past practice because the City's method of calculating paying holiday pay to school nurses was readily ascertainable by bargaining unit members for at least 5 years. The City argues that the unit members could see how holidays were paid on every paystub covering a pay period containing a paid holiday from at least 2018 through 2023

when the underlying grievance was filed. For all the above reasons, the City argues that it did not violate the contract, and the grievance should be denied.

Opinion

As this is a contract interpretation case, I must first decide whether the language of the collective bargaining agreement is clear and unambiguous in addressing the issues presented in this matter. If the language of the collective bargaining agreement is clear and unambiguous, this decision will be dictated by the collective bargaining language. If, however, the collective bargaining agreement language is ambiguous, I may look into whether the parties have a binding past practice that addresses the conflict.

Article XVII, Section 2 states: "Holiday pay shall be one full day's pay at straight time rate. If a holiday occurs on a regular day off of an employee, he/she shall receive, in addition to his/her regular compensation, the holiday pay as above specified. Holiday pay does not include shift differential." I find this language is clear and unambiguous. Moreover, I find that the City has complied with the language in the contract.

In accordance with the CBA, the City does provide the school nurses with seven hours of holiday pay when applicable. The Union has asserted that the City has never paid the school nurses for any of the holidays in the CBA. According to the Union, the school nurses only received their MUNIS rate of pay for a holiday, which is the pay rate they are already entitled to receive because it is an equalized payment for working 182 days a year. However, the holiday pay for the school nurses is incorporated into their annualized salary, thus the City does pay the school nurses 7 hours of holiday pay when applicable as demonstrated by the unit members' paystubs.

The Union argued that the City did not prove that the holidays were “baked into” the school nurses’ annualized salary. First, the Union argued that the City’s Chief Financial Officer (CFO), Connor Baldwin’s (Baldwin) testimony was disingenuous. However, I find that Baldwin’s testimony that the holidays are “baked into” the school nurses annualized salary is credible. Unlike the Union’s witnesses, Baldwin possesses specialized knowledge and understanding of how holiday pay is calculated for school nurses in the City. Additionally, Baldwin has firsthand knowledge of how the City calculates the annualized salaries for school nurses. Moreover, the Union failed to demonstrate that the holidays were not “baked into” the annualized salaries for school nurses.

The City must calculate the compensation school nurses receive based on the number of pay periods (21 or 26), instead of the number of days worked, and it has done so since at least 2018. As stated above, the school nurses receive an annualized rate of pay accrued hourly, and the holiday pay is incorporated into their annualized rate. For example, during a pay period with one holiday, a school nurse will submit a timesheet stating that they worked 63 regular hours and 7 hours for a holiday. The school nurses’ paycheck for that pay period will reflect 63 hours of regular salary and 7 hours of holiday pay. Therefore, a school nurse who works 63 hours will be compensated for 63 hours of regular salary and 7 hours of holiday pay. Both the school nurses’ timesheet and paycheck clearly demonstrate that the City provides the school nurses with seven hours of holiday pay when applicable.

Next, the Union argued that the CBA does not expressly state that the holidays are “baked into” the school nurses’ annualized rate. However, the CBA’s silence on the

subject does not mean that the holidays are not incorporated in the school nurses' annualized salary. Also, the Union argued that the school nurses' offer letters did not explicitly state that the holidays are incorporated into their annualized salary. Despite the Union's argument, the offer letters for City employees are not part of the parties' CBA. Even if the school nurses' offer letters do not expressly state that holidays are built into the annualized pay, the City has calculated holiday pay for the school nurses in this manner since at least 2018.

The Union argued that the holidays listed in the CBA are regularly scheduled days off for the school nurses. The Union asserts that holidays are always regularly scheduled days off for the school nurses because schools are only scheduled for 180 days a year, and these days will never occur on a holiday. Additionally, the City would never schedule the two training days required for the school nurses on any of the holidays. As such, the Union asserts that the holidays must be treated as regular days off for school nurses, or like Saturdays and Sundays for employees who work Monday through Friday. However, the CBA does not state that holidays for school nurses are regularly scheduled days off. Moreover, the City, as explained above, does pay the school nurses 7 hours of pay for the holidays listed in the CBA.

Even if the relevant contract language was not clear and unambiguous, which it is, the parties had a binding past practice on how holiday pay is applied to school nurses. For a binding past practice to exist, it must be: (1) unequivocal; (2) clearly enunciated and acted upon; and (3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both parties. Here, the City presented evidence on how the parties have historically and consistently applied Article XVII of the contract to school

nurses. Since at least 2018, the school nurses have received an annualized rate of pay based on the number of hours they work in a pay period, and holiday pay was incorporated or “baked into” their annualized rates. Since at least 2018, the City has used MUNIS to calculate the school nurses’ hourly rate of pay when working at the school by dividing their annualized salary by the number of pay periods (21 or 26) divided by the 70 hours of work accrued in each pay period.

Additionally, since 2018, when a holiday occurs the school nurses submit timesheets for 63 hours of work and 7 hours of holiday pay based on their annualized rate. As the school is closed, the school nurse has the day off work, but still receives seven hours of holiday pay at their MUNIS rate. If the school nurse does not take any other time off in this two-week time period, the City pays the school nurse for 70 hours of pay even though they only worked 63 hours. The City demonstrated that the above-described practice was unequivocal, clearly enunciated and acted upon, and that the practice was accepted by both parties for a significant period of time.

In accordance with the CBA, the City does provide the school nurses with seven hours of holiday pay. As referenced above, City must calculate the compensation school nurses receive based on the number of pay periods (21 or 26), instead of the number of days worked, and has done so since at least 2018. The school nurses receive an annualized rate of pay accrued hourly, and the holiday pay is included in their annualized rate. Both the school nurses’ timesheet and paycheck clearly demonstrate that the City provides the school nurses with seven hours of holiday pay when applicable.

For the above-described reasons, the Union failed to demonstrate that the City failed to compensate holiday pay to the school nurses for any of the holidays in the

contract. Both the clear and unambiguous language of the contract and the parties' past practice establish that the City has paid school nurses for holidays in accordance with the CBA.

AWARD

The City did not fail to pay school nurses holiday pay in violation of Article XVII of the parties' collective bargaining agreement. The grievance is denied.



Meghan Ventrella, Esq.
Arbitrator
December 20, 2024