

IN THE MATTER OF THE ARBITRATION BETWEEN

WASHINGTON FEDERATION OF )  
STATE EMPLOYEES, ) ARBITRATOR'S OPINION  
 ) AND AWARD  
 UNION, )  
 )  
and ) JANET CARR  
 ) GRIEVANCE  
TACOMA COMMUNITY COLLEGE, )  
 )  
 EMPLOYER. ) AAA NO. 75 390 00323 10 CEPO  
\_\_\_\_\_)

BEFORE: JOSEPH W. DUFFY  
ARBITRATOR  
PO BOX 12217  
SEATTLE, WA 98102-0217

REPRESENTING  
THE UNION: PHEDRA QUINCEY  
COUNCIL REPRESENTATIVE  
AFSCME COUNCIL 28  
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REPRESENTING  
THE EMPLOYER: VALERIE B. PETRIE  
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HEARING HELD: OCTOBER 26, 2010  
TACOMA, WA

## OPINION

### Introduction

Washington Federation of State Employees (“union” or “Federation”) serves as exclusive bargaining representative for a bargaining unit of workers who are employed by Tacoma Community College (“employer” or “College”). The union and the employer (“parties”) submitted this dispute to arbitration under the terms of their July 1, 2009 - June 30, 2011 collective bargaining agreement (“Agreement”), a copy of which they introduced at the hearing as an exhibit. (S1, U2) The parties selected me to arbitrate this dispute from a panel of arbitrators supplied by the American Arbitration Association.

This arbitration arose from a grievance filed on February 12, 2010 by the union on behalf of the grievant, Janet Carr.

The hearing took place on October 26, 2010 at the union’s offices in Tacoma, WA.

At the start of the hearing, the parties agreed that the grievance is properly before me for a final and binding decision on the merits. (TR4:4-8) The parties also agreed that I should retain jurisdiction to aid in the implementation of the remedy, should that be necessary. (TR4:23-TR5:4)

The hearing proceeded in an orderly manner. The advocates did an excellent job of presenting the respective cases. Both parties had a full opportunity to call witnesses, to make arguments and to introduce documents into the record. Witnesses were sworn under oath and subject to cross-examination by the opposing party. A court reporter transcribed the hearing and provided a copy of the transcript to me and to the parties.

The union submitted eleven exhibits (U1-U11) and the employer submitted twenty-eight exhibits (C1-C28) into the record. A total of five witnesses testified at the hearing, including the grievant. They were: Ms. Carr, Leanne Foster, William Benjamin, Christina Petersen and Silvia Barajas. At the close of the testimony, the parties agreed to submit post-hearing briefs electronically to me on December 17, 2010 and to each other on the following day. (TR166:8-12) The parties later extended the deadline by mutual agreement. I received the briefs by the new deadline, and closed the record on January 18, 2011.

### Issue for Decision

The parties agreed on the following statement of the issue for decision in this case:

Did the Tacoma Community College violate Article 11 of the collective bargaining agreement between the Washington Federation of State Employees and the State of Washington by denying the grievant Janet Carr her requested vacation? If so, what is the appropriate remedy? (TR4:9-22)

### Background

The Human Resource Operations Office at the College includes human resources generalist staff and payroll staff. Leanne Foster serves as Assistant Director of Human Resource Operations. The staff consists of about eight people. The annual College payroll is approximately 33 million dollars and the College employs about 1,200 people. The primary role of the payroll processing staff at the College is to ensure that all employees are properly paid and that the appropriate deductions from employees' pay are administered in a timely and proper manner. (TR113:14-21)

The grievant, Janet Carr, went to work for the College in 1978. In 1985, the grievant took a job in the College payroll office and remained there until her resignation on June 18, 2010. (U10) She worked as payroll coordinator prior to her resignation. The grievant's supervisor, Ms. Foster, characterized the grievant as a valuable employee and an excellent payroll coordinator. (TR83-TR84)

On January 21, 2010, the grievant turned in a vacation request for four weeks of vacation beginning on June 21, 2010 through July 15, 2010. The employer approved vacation for the period July 1 to July 15, 2010 but denied vacation for the June dates. The grievant then changed her request and the employer approved vacation for June 21 through July 1, but denied vacation for the remaining July dates. In other words, the employer approved two weeks but not four consecutive weeks of vacation during the period from June 21 to July 15, 2010. (U4, S13-S20) (TR12:11-TR13:4; TR13:24-TR14:16; TR121:1-TR129:12)

After some discussion between the parties, the union filed a grievance over the vacation denial. The grievance form, filed on February 12, 2010, describes the grievance as follows:

The grievant submitted leave slips to take vacation from June 21 to July 15, 2010 on January 21, 2010. The grievant's supervisor denied the requested leave stating too long an absence from position. The grievant spoke with Bill Benjamin V.P. of H.R. to try and resolve the issue but the two parties were not able to come to an agreement. The grievant contacted Gary Hill WFSE Counsel Representative on

Feb 9<sup>th</sup> to discuss the issue. Gary Hill called and left a message for Leanne Foster Assistant to the V.P. of H.R. on Feb 12 to try and resolve the issue however Ms. Foster never returned the phone call so the two parties were not able to come to an agreement. [<sup>1</sup>]

Contract Violation: The agency violated article 11 by denying the grievant the requested vacation.

#### SPECIFIC REMEDY REQUESTED

Grant the grievant the requested vacation from June 21 to July 15, 2010

Ensure that the language in the CBA is followed when dealing with vacation scheduling

To make the grievant whole (U1, C7)

Article 11 of the Agreement, entitled Vacation Leave, contains the following provision in Section 11.6B:

When considering requests for vacation leave the Employer will take into account the desires of the employee but may require that leave be taken at a time convenient to the Employer. (C1, p. 27)

The grievant sent an email to her supervisor, Leanne Foster, on February 16, 2010. The text of the email read in its entirety: "Vacation dates are June 21 – July 15." Ms. Foster responded the following day with an email, the text of which reads as follows:

You previously submitted this below request to me and I had approved 2 weeks off work. I assume the below is a second request from you for the same previous dates. The other two weeks were denied. Your 4 week requested vacation was denied for several business reasons:

1. We are down 1.6 FTE and it is a busy time of the year for staff as it is the final payroll for the fiscal year and the final payroll for full time faculty during your requested dates.
2. Other staff did not yet have the opportunity to submit their requests for summer vacation at the time your vacation was denied.

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<sup>1</sup> Ms. Foster testified that the phone call from Mr. Hill came when she was out of the office in a meeting and the grievance arrived less than two hours after the voice mail message and so she did not have a chance to respond. (TR132:13-23; U3A, p. 3)

3. Your payroll coordinator duties would have to be performed by other staff who already have full-time positions
4. There is a possibility that an absence of this length could result in additional cost to the college as it may be necessary to temporarily upgrade other staff.
5. We are working on an upgrade to the time and leave reporting system and your input as the payroll coordinator is important to the process. (C12)<sup>2</sup>

The grievant also requested leave without pay (“LWOP”) for the two additional weeks that the employer would not approve. The employer also denied LWOP. (C26, C27, U11)

The parties discussed the grievance in the steps of the grievance procedure but did not reach a resolution. (U3A, U3B, U3C, C8, C9, C10, C11) This arbitration followed.

#### The Forced Resignation Issue

By letter dated June 18, 2010, the grievant notified the employer that she planned to retire effective August 19, 2010, but with accrued leave, the grievant’s last day of work was June 18. (U10, C24)

During the hearing, the union raised the issue that the grievant’s resignation/retirement had been coerced by the employer when the employer denied the grievant’s leave request. The employer objected to any evidence or argument on the forced resignation issue based on Article 30.3.C.Step 5.E.1.b of the Agreement, which states that in a grievance arbitration under the Agreement, the arbitrator will: “Be limited in his or her decision to the grievance issue(s) set forth in the original written grievance unless the parties agree to modify it.” (U2, p. 64) The parties did not agree to modify the grievance and the statement of the grievance does not refer to a forced resignation. (U1, C7) Based on the clear language of the Agreement, I ruled that the

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<sup>2</sup> Section 11.6D of the Agreement provides that requests for vacation leave will be approved or denied within ten calendar days, and, if denied, a reason will be provided in writing. (C1, U2, p. 28) The union pointed out that the reason for denial contained on the leave forms the grievant submitted was either blank or “too long an absence from position.” The union argued that this reason did not include the details about operational concerns that the employer included in the grievance responses and the later responses also did not meet the ten-day requirement for providing the reasons for denial in writing. I find, however, that Ms. Foster testified that the leave form only allows a small amount of space for describing the reason. (TR67:20-TR68:4) Ms. Foster also testified that she told the grievant the more detailed reasons during a conversation they had on about January 21 and the grievant also testified that Ms. Foster told her the reasons prior to the time the grievance was filed. (TR14:20TR15:2; TR130:17-TR132:6) Therefore, even if the ten day written reason for denial time limit was not met, that defect was cured.

forced resignation issue is not before me in this proceeding. (TR10:9-15; TR44:3-TR47:6; TR83:3-TR86:2; U3A, p. 3)

### Discussion

This case presents a question of contract interpretation. The union contends that the employer violated Article 11 of the Agreement when it denied the grievant's leave request. The general rule in labor arbitration is that the party claiming a contract violation has the burden to prove by a preponderance of the evidence that the alleged violation occurred.

Section 11.6B provides that when reviewing requests for vacation, the employer "will take into account the desires of the employee but may require that leave be taken at a time convenient to the Employer."<sup>3</sup> The employer contends that it acted reasonably, balancing the desires of the grievant with the needs of the College, when it denied the grievant's request for four consecutive weeks of vacation from June 21 to July 15, 2010. The union contends that the employer's decision to deny the four consecutive weeks was unreasonable and therefore was made arbitrarily or capriciously because the denial was not based on the actual needs of the College.

The principle that labor arbitrators typically apply when reviewing an exercise of discretion by an employer under the terms of a collective bargaining agreement is that the employer's discretion must be exercised reasonably and must not be exercised arbitrarily or capriciously. (Elkouri & Elkouri, *How Arbitration Works*, 6<sup>th</sup> Ed. (BNA Books; 2003) p. 480) An arbitrary or capricious decision is a willful or unreasoning decision made without regard to the attendant facts and circumstances. Obviously, then, a reasonable decision is one that can be tied directly to the specific facts and circumstances on which it is based.

In her testimony, the grievant made three principal points: 1.) She could have completed some of the critical year-end closing work either before or after her four-week absence and the work would have been timely. 2.) Some of the duties that the employer identified in the document that the employer prepared to illustrate the impact of the grievant's absence are duties that other workers perform and for which the grievant has only a review or oversight

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<sup>3</sup> This language from the Agreement corresponds with similar language from RCW 43.01.040, which states: "All vacation leave shall be taken at the time convenient to the employing office...." (C6) Ms. Peterson testified about the bargaining history related to Section 11.6B of the Agreement. (TR103:9-TR110:21) (C1-C5) Ms. Peterson testified that in the 2004 collective bargaining negotiations, the union proposed the following language: "Vacation leave will be scheduled in accordance with the preference of the employee." That proposal was not adopted and the parties later settled on the current language. (TR104:17-TR109:1; C4, C5)

responsibility. 3.) Upon her return from leave, the grievant would have been able to catch up any unfinished work that arose during her leave. (U8, C11, p. 3, C22)

Ms. Foster testified that she wanted to take into account the grievant's desire for vacation during the period June 21 to July 15, 2010 even though that time was a busy time for the payroll and human resources staff.<sup>4</sup> Therefore, she approved two weeks of leave. Ms. Foster had approved extended leave (more than two weeks) for the grievant in the past when the leave came at a different time of year. She had also approved two weeks during the June/July period before. Ms. Foster has never previously denied any of the grievant's leave requests. (see C21) Ms. Foster testified, however, that this time she could not approve the four consecutive weeks the grievant requested. The initial reason for the denial that Ms. Foster included on the leave request form was "too long of an absence from position."

Later, on February 17, 2010, Ms. Foster sent the grievant an email with detailed reasons for the leave denial. (C12) The employer also provided further explanation of the reasons during the grievance process. The employer's reasons can be summarized briefly as follows: 1.) The department is down 1.6 FTE and will not be able to fill those positions for an indefinite time. 2.) The end of the fiscal year (June 30) is a busy time because of the additional duties associated with year-end closing and reporting. 3.) The opening of a new fiscal year and the start of a new academic quarter on June 21 also involve additional work. 4.) Other staff would have to cover the grievant's work for four weeks during a busy time of year while continuing to perform their full-time jobs. 5.) Temporary upgrades and overtime expense would be necessary to cover the grievant's work for an extended period. 6.) A redesign of the time and leave reporting system is underway and the grievant's input is needed in that process. 7.) Although the grievant sincerely believes she could cover most of the necessary work either before or after her vacation, the employer does not believe that is possible under the present circumstances. 8.) Other employees had not yet had the opportunity to submit vacation requests at the time the grievant submitted hers. (C8, C9, C10, C22, U3A-U3C, U9; TR115:17-TR121:23)

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<sup>4</sup> Ms. Foster testified that other times of year can be extremely busy as well. (TR164:3-TR165:1) Ms. Barajas testified that in reviewing this grievance, she asked the staff to identify times of the year when extended leave could be taken by employees. Through that process the months of February, March, April, August, November and December were identified as times when extended leave would be more convenient for the College. Ms. Barajas testified she wanted to ensure that the desires of employees to take extended leave could be met during the year, but just not at the busiest times. (C8; TR168:14-TR173:1-15)

The grievant was a skilled employee with long-term experience in her job. Therefore, she had a reasonable capacity, based on that skill and experience, to estimate her ability to handle her workload. The manager, however, has a broader view of the work that has to be performed by the entire unit and a more detailed knowledge of the budgetary restraints on the department. The circumstances in 2010 were much different than circumstances in prior years since the State faced then and still faces a significant financial crisis. As a result of the financial situation, the employer has not been able to fill jobs or hire temporary help as it could in many previous years. In addition, expenses such as overtime and added compensation for upgrades are more difficult to justify in the present economic times. The employer also provided testimony to show that the demands of increased College enrollment have required the hiring of more instructional staff, which has created more work for payroll. (TR116:19-TR117:10)

After taking into account the entire record submitted by the parties, I find that the employer acted reasonably when it denied the grievant's request for vacation leave of four consecutive weeks for the period June 21 to July 15, 2010. The record clearly shows that the employer had substantial business justification for the decision. The evidence does not establish that the employer violated Article 11 of the collective bargaining agreement between the Washington Federation of State Employees and the State of Washington by denying the grievant Janet Carr her requested vacation. Consequently, the grievance must be denied and no remedy is appropriate.

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and	)	JANET CARR
	)	GRIEVANCE
TACOMA COMMUNITY COLLEGE,	)	
	)	
EMPLOYER.	)	AAA NO. 75 390 00323 10 CEPO
_____	)	

For the reasons set forth in the Opinion that accompanies this Award, the grievance must be and it is denied.

Dated this 17<sup>th</sup> Day of February 2011



Joseph W. Duffy  
Arbitrator