

**ARBITRATOR'S OPINION AND AWARD**

*BETTY E. WAXMAN, ARBITRATOR*

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In the matter between:

BRAINTREE POLICE PATROLMEN'S CLUB, MCOP, LOCAL 365

And

TOWN OF BRAINTREE

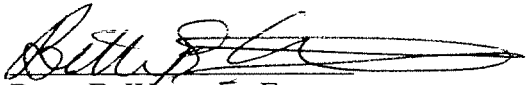
Grievant: Meredith Golden

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**AWARD OF ARBITRATOR**

The Undersigned Arbitrator, having been designated in accordance with the parties' Collective Bargaining Agreement and having duly presided at the parties' arbitration hearing, AWARDS as follows:

The Town did not violate the Collective Bargaining Agreement when it issued a written reprimand to Officer Meredith Golden on January 4, 2008. Accordingly, the grievance is denied.

  
Betty E. Waxman, Esq.  
May 11, 2009

**ARBITRATOR'S OPINION**  
*BETTY E. WAXMAN, ARBITRATOR*

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In the Matter between:

BRAINTREE POLICE PATROLMEN'S  
CLUB, MCOP, LOCAL 365

Grievant: Officer Meredith Golden

and

TOWN OF BRAINTREE  
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Appearances: For the Union: Leigh A. Panettiere, Esq.  
For the Employer: Carolyn M. Murray, Esq.

I. STATEMENT OF THE CASE

On January 4, 2008, Braintree Police Officer Meredith Golden received a letter of reprimand from Police Chief Paul Frazier for violating the Police Department's sick leave policy. The Union grieved the matter on January 22, 2008. Town Exhibit 2. Chief Frazier denied the grievance on January 29, 2008. Town Exhibit 1. The Union pursued the matter to the next step, supplying documentation identified as Town Exhibit 2. On July 7, 2008, a hearing officer designated by the Mayor again denied the grievance. An arbitration hearing was conducted on November 25, 2008 at Braintree Town Hall. Police Chief Paul Frazier testified on behalf of the Town and the Grievant testified on her own behalf. The parties submitted the parties' Collective Bargaining Agreement into evidence, Joint Exhibits A-H, Town Exhibits 1-11 and Union Exhibits 1-10. Following the hearing, Town Counsel submitted additional medical documentation, 2007 attendance

records pertaining to thirteen officers, and an affidavit of Chief Frazier. The parties submitted post-hearing briefs, at which time the hearing was declared closed.

## II. ISSUE

The parties agreed to the following issue:

Did the Town violate the provisions of the Collective Bargaining Agreement when it issued a written reprimand to Officer Meredith Golden on January 4, 2008? If so, what shall be the remedy?

## III. RELEVANT CONTRACT PROVISIONS

### ARTICLE 6 – MANAGEMENT RIGHTS

[T]he Town reserves to itself exclusively: ... the right to establish and enforce reasonable standards or (sic) performance as provided by statute; the right to promulgate and enforce rules of conduct; ... the right to maintain discipline, order, and efficiency; the right to determine operational methods, policies and procedures; the right to suspend, discharge or otherwise discipline employees for just cause; ... and the right to promulgate and enforce rules and regulations relating to the operation of the Police Department.

### ARTICLE 19 – SICK AND INJURY LEAVE

Section 19 – Sick Leave. After one (1) month of continuous employment, an employee shall be entitled to sick leave with pay for the following reasons: personal illness or injury, exposure to contagious diseases, or family illness, subject to the following limitations: when the spouse, child or parent of either the employee or the employee's spouse, or a relative living in the employee's immediate household is ill, the employee may utilize accumulated sick leave days up to a maximum of five (5) days per calendar year ... .

... The Department Head, in his discretion, may require the presentation of a Doctor's certificate after three (3) consecutive working days in connection with a request for sick leave, at the expense of the employee, and may, if he deems it advisable, send a doctor to investigate any absence alleged to be caused by sickness or injury. The cost of obtaining the Doctor's visit at the employee's house will be at the expense of the Town.

#### IV. EVIDENCE

Officer Meredith Golden (“Grievant”) has been a member of the Braintree Police Department since May of 1997. She works a four day on/two day off rotating schedule. Under the parties’ Collective Bargaining Agreement, she accrues 1.25 sick days per month and may accumulate an unlimited number of sick days. On September 1, 1998, the Grievant received a written reprimand for abuse of sick time but after meeting with the Union, the Police Chief converted the written reprimand into a letter of counseling. Town Exhibit 9.

Between 1995 and 2002, the Police Chief disciplined numerous officers for excessive absenteeism and/or using sick time in conjunction with other time off. Joint Exhibits A-G. The Union filed grievances on behalf of the officers. Some were denied and some were granted. Id.; Joint Exhibit H.

In a document dated June 1, 2002, the Police Chief issue a memorandum entitled “Sick Time,” which states, in relevant part:

Excessive absenteeism caused by sick leave affects the effective, efficient, and safe operations of this department. ... Officers who are excessively unavailable for work affect the personal safety of other officers, disrupt shift integrity, and preclude other personnel from internal job opportunities. Officers shall not establish patterns of absenteeism due to sick leave. Establishing a pattern of absenteeism due to sick leave will be considered a violation of this policy.

Town Exhibit 5.

On November 19, 2007, the Police Chief issued a written reprimand to Lt. Robert Moschella for sick leave abuse. The Chief noted that Lt. Moschella had taken 16.5 sick days in the calendar year 2007, nine of which were used in connection with days off, vacation days, or other time off. Joint Exhibit A. In his memorandum to Lt. Moschella, the Chief cited the fact that in 1995, Lt. Moschella had received a written verbal warning

for patterned sick leave abuse. Subsequently, the Chief agreed to reduce the written reprimand issued to Lt. Moschella to a written warning.

Following the Moschella reprimand, the Chief issued a written reprimand to the Grievant on January 4, 2008 for sick leave abuse. Town Exhibit 3. The Chief noted that the Grievant had taken 16 sick days in calendar year 2007<sup>1</sup>, mostly in conjunction with other time off factors such as vacation days or “time owed” days. Id. The Chief pointed to the fact that the Grievant had used all but 3.1 of the 160 sick days she had earned over her career. Id. The Chief also cited the fact that in 1998, the Grievant had received a written reprimand for abusing sick time that was modified, after negotiation, to a “letter of counseling.” Id.

Insofar as the Grievant’s sick leave history in 2007 is concerned, the evidence indicates the following. The Grievant took Friday and Saturday, January 26-27, 2007 as family sick days attributable to an illness of her son. The grievance form included a note from Crown Colony Pediatrics indicating that the Grievant’s son had been under a doctor’s care on January 26, 2007 but was able to return to school on January 28, 2007. Town Exhibit 2. The Grievant next took Saturday, March 10, 2007 as a sick day, followed by “time owed” and two regularly-scheduled days off on March 11-13, 2007. Town Exhibit 10. The Grievant next took Friday, March 23, 2007 as a sick day, followed by the weekend off and the next two days, March 26-27, 2007, as sick days. Town Exhibit 10. The grievance form included a note from Harvard Vanguard Medical Associates pertaining to a doctor’s visit on March 21, 2007 (a work day). Town Exhibit

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<sup>1</sup> The calendar indicates that the Grievant took 17 days whereas the Grievant’s letter of reprimand states that the Grievant used 16 sick days.

2. Documentation submitted at a subsequent stage in the grievance process indicates that Complainant sought medical attention for a migraine on March 21, 2007 and had a MRI on that date although no such reason appears on the Grievant's Employee Calendar. Union Exhibit 7.

The Grievant next took Monday and Tuesday April 9 and 10 as sick days sandwiched between "time-owed" on April 8 and ten days off from April 11-20, 2007 consisting of regular days off, time-owed, and vacation. Town Exhibit 10. The Harvard Vanguard note attached to the grievance form and subsequently-filed medical records indicate that Complainant visited her doctor on April 8, 2007 for a urinary tract infection and a strep throat. Union Exhibit 8.

The Grievant next took sick time on June 6, 2007 after two scheduled days off during which she saw her doctor for a migraine headache although her Employee Calendar lists June 6 as a "family" sick day. Union Exhibit 10. Medical records of the June 4, 2007 visit indicate that the Grievant was experiencing three to four migraine episodes per week and was placed on Topamax. Union Exhibit 9.

The Grievant next took a family sick day on Wednesday, June 27, 2007, followed by two regularly-scheduled days off, a vacation day, and a "time owed" day. Town Exhibit 10. The Grievant again took a family sick day on Monday, October 1, 2007, sandwiched between a "time owed" day on Sunday, September 30 and two regularly-scheduled days off on October 2 and 3, 2007. Town Exhibit 10.

The Grievant took sick time on Sunday and Monday, November 11-12, 2007, following a day off for "time-owed" on November 10 and prior to a combination of scheduled time off, time-owed, and a sick day from November 13-16, 2007. Town

Exhibit 10. Altogether, the Grievant was out of work for seven days, between Saturday, November 10, 2007 and Friday, November 16, 2007. The Harvard Vanguard note attached to the grievance and a medical record subsequently submitted indicate that Complainant sought medical attention on November 13, 2007 for cold sores consisting of a “large amount of swelling on Complainant’s upper lip with herpetic lesions on either end” and received Valtrex as medication. Union Exhibit 10; Town Exhibit 2.

The Grievant next took sick time on December 6, 2007, followed by two scheduled days off. Town Exhibit 10. Three weeks later, the Grievant took sick time on Saturday and Sunday, December 29-30, 2007. The sick time followed “time owed” on December 28, 2008 and preceded scheduled days off on December 31, 2007 and January 1, 2008. Id.

To serve as comparators, the Union identified thirteen officers with high sick leave usage in 2007. The Police Chief testified that he only disciplined one of those officers because the sick leave of the others involved maternity leave, paternity leave, surgery, donation of sick days, attendance at an addiction intervention program, hospitalization, documented medical problems, and FMLA leave. With the exception of Officers 9 and 10, the officers had a range of 2 to 9.5 undocumented absences in 2007. Officer 9 had 16.75 undocumented sick days but, like the Grievant, received discipline. Joint Exhibit A. Officer 10 took 18<sup>2</sup> sick days in 2007, of which 3 were attributable to a thumb injury requiring surgery and 12 of the 15 were unexplained sick days that bridged to other days off. See Employee Calendar #10, attached to post-hearing Frazier affidavit.

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<sup>2</sup> The Union asserts that Officer 10 took 19 undocumented sick days, but Officer 10’s Employee Calendar establishes that a sick day taken on July 30, 2007 was changed to “time-owed.”

In comparison, the Grievant took 17 sick days in 2007 according to her Employee Calendar, of which 15 were a bridge to other days off. Town Exhibit 10.

## V. THE PARTIES' POSITIONS

### Union's Position

The Union argues that each of the sick days taken by the Grievant was for a legitimate illness and therefore the Chief did not have just cause to issue a reprimand. Chief Frazier did not request that the Grievant provide any documentation regarding her use of sick days, nor did he question her about her absences prior to issuing the reprimand. Even if the Grievant's pattern of sick leave usage created a presumption of sick leave abuse, her credible testimony and medical documentation were sufficient to overcome the Town's *prima facie* case.

Turning to the submission of evidence, the Union points to the fact that the Grievant produced a pediatrician's note stating that her son was under his doctor's care on January 26, 2007, medical records concerning a migraine condition in March of 2007, medical records dated April 8, 2007 about a strep infection and a urinary tract condition, medical documentation of a migraine on June 4, 2007, credible testimony about her son's stomach illnesses on June 27 and October 1, 2007, a medical record from November 13, 2007 about cold sores, and credible testimony about having the Norwalk virus on December 29 and 30, 2007. According to the Union, this evidence is unrebutted by the Town and should not be negated simply because the sick days in question were before or after other days off.



The Union also argues that the Town engaged in disparate treatment when it reprimanded the Grievant but did not discipline seven other officers for patterned sick leave use. According to the Union, those officers took between 12 and 36 days of sick leave in 2007, with a significant number of those days “bridged” to other time off.

#### Employer’s Position

The Town argues that many of the Grievant’s sick and family sick days in 2007 were contiguous to other time off, indicating that the Grievant used sick days to extend her time off. The Chief has consistently monitored sick leave over the years and thereby put officers on notice that abuse of sick leave would not be tolerated. The Chief’s discipline of officers for abuse of sick leave has been upheld in prior arbitration decisions. See Town of Braintree and Braintree Police Club, AAA Case No. 11-390-01299-97 (Dunn, Arb., 1998); Town of Braintree and Braintree Police Club, AAA Case No. 11-390-00320 98 (Litton, Arb., 1998). In these cases, arbitrators determined that patterned sick leave usage was sufficient to establish a *prima facie* case of sick leave abuse and that the presumption of abuse was not rebutted by testimony of the officers or other evidence.

The Town asserts that the Grievant was previously warned about her sick leave usage, improved her usage following the warning, but reverted to a pattern of sick leave abuse. The Chief offered to reduce the discipline to a written warning as he did in relation to Lt. Moschella but the proposal was rejected by the Grievant.

The Town notes that at the arbitration hearing, the Grievant produced some medical records but failed to present evidence to rebut an inference of patterned sick leave abuse relative to her absences on March 10, 2007, June 27, 2007, and October 1,

2007. Her testimony about suffering from the “Norwalk virus” on December 29 and 30, 2007 was not supported by any documents and, thus, was insufficient to rebut the inference that she took off the days to extend holiday vacation time.

Insofar as the Grievant presented medical records in relation to other instances of sick leave, the Town argues that the records do not justify the Grievant’s actions because some of her medical appointments preceded her time off by several days and none contain any mention of the need to stay home or remain out of work. Although under the parties’ contract the Police Chief could not demand medical documentation for sick leave of less than three consecutive days, the Grievant could have voluntarily provided such documentation.

The Town asserts that all officers were held to the same standard. Ten officers who took significant sick leave in 2007 submitted medical documentation to substantiate their leave unlike the Grievant who did not share documentation with the Chief until after her discipline. The only other officer who used a similarly high number of sick days without medical documentation was also disciplined.

## VI. CONCLUSIONS

It is noteworthy that all but one of the Grievant’s sick and family sick days in 2007 were taken as a bridge to regular days off, time owed, and vacation days, rather than between regular work days. Based on this pattern, the Chief was justified in suspecting that the Grievant used sick leave, not to recuperate from illness or to nurse her son, but to extend her time off.

While a four day on/ two day off schedule presents greater opportunity for such bridging than does a five day on/ two day off schedule, the patterned nature of the Grievant's sick time can neither be ignored nor attributed to pure chance. For instance, the Grievant took March 10 as a sick day prior to taking March 11 as time owed; she took March 23 as a sick day prior to having the next four days off; she took April 9-10 as sick days followed by eleven days of time owed, regular days off, and vacation; she took a family sick day on June 6 after two regular days off; she took June 27 as a family sick day prior to having the next four days off; she took October 1 as a family sick day in conjunction with three days (before and after) of time owed and regular days off; she took November 11-12 as sick days followed by five days off; and she took December 29-30 as sick days in combination with five days, before and after, of time-owed, regular days off, and vacation. The Grievant was previously warned about her sick leave usage, improved her usage following the warning, but reverted to a pattern of sick leave abuse in 2007.

The Grievant's pattern of sick leave usage establishes a *prima facie* case of sick leave abuse. See *Town of Braintree and Braintree Police Club*, AAA Case No. 11-390-01299-97 (Dunn, Arb., 1998) (pattern of sick leave usage establishes a *prima facie* case of sick leave abuse which, unless rebutted by credible evidence, justifies discipline); *Town of Braintree and Braintree Police Club*, AAA Case No. 11-390- 00320 98 (Litton, Arb., 1998) (officer taking six of eight sick days on or around weekends creates pattern sufficient to establish a *prima facie* case of sick leave abuse which Union failed to rebut). These cases stand for the proposition that patterned sick leave usage, without more, can establish a *prima facie* case of sick leave abuse. The Union can overcome a *prima facie*

case of sick leave abuse with a credible explanation for the absences, but I conclude that the Union has failed to do so in this case.

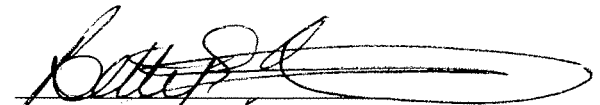
The Grievant has presented credible explanations for family sick days on January 26-27, 2007 and sick days on April 9-10, 2007. Less convincing, but arguably-acceptable rationales were provided for three days of migraine-related absences on March 23, March 26 and 27, 2007, a migraine-related absence on June 6, and three days off for cold sores on November 11, 12 and 16, 2007. These absences appear unduly protracted, are inconsistently labeled in different documents, and serve to extend non-medical days off, but the evidence produced by the Grievant entitles her to the benefit of the doubt in these cases. Nonetheless, the fact remains that the Grievant failed to provide a satisfactory explanation for six other absences on March 10, 2007, June 27, 2007, October 1, 2007, December 6, 2007, and December 29-30, 2007. In regard to the latter two absences, the Grievant claimed to suffer from the "Norwalk virus" but such an explanation without more was not credible in light of the fact that the days off allowed the Grievant to extend holiday vacation time.

In sum, the record indicates that over the course of 2007, the Grievant took six sick days with an insufficient explanation, seven with a questionable explanation, and four with an adequate explanation. In totality, the Grievant has failed to overcome the presumption of abuse established by the number and pattern of sick days taken. The Grievant appears to have numerous health challenges and home responsibilities, but her sick days invariably had the effect of extending vacation, weekend, or other time off. The Union correctly points out that the contract does not require medical documentation unless an officer is absent for three or more days but even so, the Grievant should have

been more forthcoming about her sick time usage in light of her number and pattern of her sick days in 2007 which, in conjunction with prior sick leave usage, eradicated eleven years of accrued sick time in small increments. The Grievant was previously warned about sick leave abuse and demonstrated an improved attendance following the warning. Having once been warned for sick leave abuse, a written reprimand on this occasion is appropriate.

The evidence also establishes that the Chief was impartial in imposing attendance standards. The record contains numerous examples of the Chief, over the years, disciplining officers for attendance issues. Besides the Grievant, another officer of higher rank received a written reprimand in 2007 for sick leave abuse. The Chief subsequently reduced that written reprimand to a written warning. He offered to do the same for the Grievant, who rejected the offer. While other officers took sick days in 2007 without being disciplined, the reasons for their absences are distinguishable from the present matter.

Based on the foregoing, I conclude that the Chief had just cause to issue a written reprimand to Officer Meredith Golden on January 4, 2008 and, accordingly, did not violate the parties' Collective Bargaining Agreement when he took this action.

  
Betty E. Waxman, Esq.  
May 11, 2009