

**IN THE MATTER OF AN ARBITRATION
BETWEEN**

**Service Employees International Union,
District 1199 AFL-CIO**

**And
Union**

**DRC-2024-00861-12
Arbitrator: Jerry B. Sellman
Issue: Vacation Leave
Grievant: Timothy Yager**

**STATE OF OHIO
DEPARTMENT OF REHABILITATION
AND CORRECTION**

Award Dated: April 22, 2025

Employer

APPEARANCES

FOR THE UNION:

Tracy Cutright – SEIU Local 1199 Representative representing SEIU and Grievant
Geoffrey Davies - SEIU Local 1199 Representative and Co-Chair, Union Institutional Agency
Professional Committee (APC), Witness
Timothy Yager - Case Manager for State of Ohio Department of Rehabilitation and Correction,
Grievant and Witness
Ron Heskett – Case Manager for State of Ohio Department of Rehabilitation and Correction and
SEIU Local 1199 Delegate, Witness
Josh Norris – Executive Vice President of SEIU Local 1199 WV/KY/OH, Witness

FOR THE EMPLOYER:

Allison Vaughn, SPHR - Labor Relations Administrator 1/EEO Administrator, Ohio Department
of Rehabilitation and Corrections, representing the Ohio Department of Rehabilitation and
Corrections
Erica Bradley - South Unit Management Administrator in the Office of Reentry for the Ohio
Department of Rehabilitation and Corrections, Witness

I. NATURE OF THE CASE

Contract Interpretation: Management Right To Approve or Deny Vacation Request Based Upon Policy Considerations; Employee Right to Request and Use Vacation Accrual; Application of Reasonableness In Denying Request to Use Vacation Leave: This matter came for hearing before Arbitrator Jerry B. Sellman on February 5, 2025. The hearing was held at the Service Employees International Union, District 1199, offices located at 1395 Dublin Rd, Columbus, Ohio 43215. The proceeding arises pursuant to the provisions of the Labor Agreement (the “CBA” or the “Agreement”) between the State of Ohio, Department of Rehabilitation and Corrections, (hereinafter the “Employer” or “Management”) and SEIU District 1199 (hereafter “SEIU” or the “Union”). This case concerns a grievance filed by Timothy Yager (hereinafter “Grievant”) alleging that the Employer violated Article 10, Vacation Allowance, Section 10.03, Scheduling, and Article 6, Section 6.01, Non-Discrimination. It violated Section 10.03 when it denied his request for vacation leave for two hours on March 21, 2024, which request was made on March 20, 2024. Grievant, a Case Manager with the Ohio Department of Rehabilitation and Corrections¹, argues that while vacation leave shall be taken only at times mutually agreed to by the Employer, the CBA provides the vacation request cannot be unreasonably denied. Grievant alleges that, in the instant case, the denial was unreasonably denied, particularly in light of the practice of the Employer to grant such requests in the past to him and other employees. Grievant further alleges that the Employer violated Section 6.03 because it permitted other Union members to take vacation time under similar circumstances, and it discriminated against him because he was a Union member.

¹Currently at the Noble Correctional Institution, but at the time of the Grievance at the Belmont Correctional Institution.

The Employer argues that it denied Grievant's Vacation request because there would have been no unit coverage on his scheduled shift to comply with recent Policy changes, which were implemented to make Case Managers available to Incarcerated Persons (IPs) after normal shift hours. Because Grievant routinely would not be working his scheduled evening hours (4:00 P.M. to 6:00 P.M.) by requesting vacation leave, it was reasonable to deny his request under these circumstances so that its Unit Management Policy of making Case Managers available to IPs could be fulfilled. This rationale was also supported by the fact that Grievant engaged in a pattern of using his vacation leave to avoid complying with the Unit Management Policy by consistently not working scheduled evening hours.

At the beginning of the hearing, the Parties stipulated that the matter was properly before the Arbitrator for resolution. At the conclusion of the hearing, the parties requested permission to file post-hearing briefs, which were filed on March 21, 2025.

The issue in this proceeding, as stipulated by the Parties, is as follows:

Did Management violate the provisions of Article 6.01 and/or Article 10.03 when it denied the Grievant's request for two hours of vacation leave on March 21, 2024. If so, what shall the remedy be?

The applicable provisions of the Agreement in this proceeding are as follows:

COLLECTIVE BARGAINING AGREEMENT

ARTICLE 6 **NON-DISCRIMINATION**

6.01 – Non-Discrimination

Neither the Employer nor the Union shall unlawfully discriminate against any employee of the bargaining units on the basis of race, sex, creed, color, religion, age, national origin, political affiliation, Union affiliation and activity, handicap or sexual orientation or discriminate in the application or interpretation of the provisions of this Agreement, except those positions which are necessarily exempted by bona fide occupational qualifications due to the uniqueness of the job,

and in compliance with existing laws of the United States or the State of Ohio. In addition, the Employer shall comply with all the requirements of the Federal Americans with Disabilities Act and the regulations promulgated under the Act.

* * *

ARTICLE 10
VACATION ALLOWANCE

10.03 Scheduling

Vacation leave shall be taken only at times mutually agreed to by the appointing authority and employee. The appointing authority may establish maximum numbers of employees who can be absent from any given work site at one time.

* * *

Requests for vacation leave cannot not be unreasonably denied.

* * *

ORDC UNIT MANAGEMRNT POLICY
74-UMA-01(applicable parts)
EFFECTIVE FEBRUARY 1, 2024

V. POLICY

Unit management's primary responsibility is to know and provide hope to the incarcerated people in their unit by having meaningful contact with them on a routine basis to provide individually focused services. Unit management staff members shall facilitate personal contact and interaction with IP assigned to their specific caseloads by providing programming, maintaining unit office hours and regular visual inspections of living areas. Unit management staff at each facility shall provide programming based on the outcome of the annual needs assessment. Unit management staff shall assist in identifying and solving adjustment related problems to help IP make decisions, plan actions, and reach goals.

* * *

VI. PROCEDURES

C. Contact Hours

Core hours of unit management coverage shall be 8:00 AM -6:00 PM Monday-Thursday, 8:00 AM - 4:00 PM on Friday, and a minimum of four (4) hours coverage 8:00 AM - 4:00 PM on Saturday or Sunday. Each unit team shall provide coverage

for their areas of responsibility. Coverage by one person/team institution-wide is not permitted. Coverage, including weekends and evenings (4:00 PM - 6:00 PM), may be provided by unit managers, case managers, correctional counselors, and/or administrative professionals.

II. SUMMARY OF THE TESTIMONY AND POSITION OF THE PARTIES

Grievant currently serves as a Correctional Program Specialist (also known as a Case Manager) at the Ohio Department of Rehabilitation and Corrections (ODRC) Noble Correctional Institution. At the time of the filing of this instant Grievance, he was employed at the Belmont Correctional Institution in the same capacity.

He was initially hired by the state on February 28, 1994, which gave him almost thirty-one (31) years of experience with ODRC at the time of this arbitration hearing. During his tenure, he served as a Corrections Officer, Correctional Program Specialist, and as a Correctional Program Coordinator, commonly referred to as a Unit Manager. Per provisions of the Collective Bargaining Agreement, Case Managers select their assignments initially by a canvass, and when there is a vacancy and no canvass has taken place, the employee takes the assignment and schedule of his or her predecessor.

Article 10 of the Parties' Collective Bargaining Agreement provides for an employee's vacation allowance, as well as how and when it can be taken. As is pertinent here, Article 10.03 provides that "[v]acation leave shall be taken only at times mutually agreed to by the appointing authority and employee. The appointing authority may establish maximum numbers of employees who can be absent from any given work site at one time." It also provides that "[r]equests for

vacation leave cannot not (sic)² be unreasonably denied.”³ Article 10.04 provides that “[v]action leave which is used by an employee shall be charged in minimum units of one-tenth (1/10) hour.

ODRC has implemented a number of policies over the years to give guidance in operating its facilities. In 1986 it implemented the concept of Unit Management at all of the State institutions, which, in addition to the creation of several classifications, created the Correctional Program Specialist (Case Manager) classification to implement the plan. Through its Unit Management Policy (Policy), it created “fixed shift schedules” so that a critical element to its success is unit staff being available to the prison population during evening hours. The concept of Unit Management is based, in part, on the premise that unit staff will be available outside of “normal business hours” to address the needs of the Incarcerated Persons (IPs), the IPs families, and other areas of the prison that may have issues. Different groups of employees work different hours to meet the needs of the operation. Prison staff work various hours to make themselves available to the needs of the population. It is not similar to a “normal” place of business where a person can see their counselor whenever is most convenient for them. Prisons are regimented, especially during the typical societal business day, which is why certain classifications need to be available during a portion of the evening hours.

Revisions were made to the Policy over the years for the benefit of all parties after Management/Union meetings were held to discuss the Policy. As an example, the February 1, 2024, Policy revised the April 15, 2019, Policy by reducing the late-night coverage hours of 12:00 P.M.- 8:00 P.M. to 8:00 A.M. to 6:00 P.M., and reducing a requirement of working eight (8) hours on weekends to four (4) hours

² The Arbitrator would note that this is either a typographical error or a mistake in grammar, for it was clear from all parties that the intent of this provision is that vacation leave cannot be unreasonably denied.

The most recent version of Policy 74-UMA-01 was effective February 21, 2024. The purpose of the Policy is stated as follows:

Unit management's primary responsibility is to know and provide hope to the incarcerated people in their unit by having meaningful contact with them on a routine basis to provide individually focused services. Unit management staff members shall facilitate personal contact and interaction with IP assigned to their specific caseloads by providing programming, maintaining unit office hours and regular visual inspections of living areas. Unit management staff at each facility shall provide programming based on the outcome of the annual needs assessment. Unit management staff shall assist in identifying and solving adjustment related problems to help IP make decisions, plan actions, and reach goals.

The Policy also provides, under paragraph **VI. Procedures**, the following:

Core hours of unit management coverage shall be 8:00 AM -6:00 PM Monday-Thursday, 8:00 AM -4:00 PM on Friday, and a minimum of four (4) hours coverage 8:00 AM - 4:00 PM on Saturday or Sunday. Each unit team shall provide coverage for their areas of responsibility. Coverage by one person/team institution-wide is not permitted. Coverage, including weekends and evenings (4:00 PM - 6:00 PM), may be provided by unit managers, case managers, correctional counselors, and/or administrative professionals.

Grievant successfully bid on his current schedule as a Case Manager to work four days, where he is scheduled to work from 7:30 A.M. to 3:30 P.M., and work one day, where he is scheduled to work from 10:00 A.M. to 6:00 P.M. He is also scheduled to work on Saturdays one time per month from 8:00 A.M. to 12:00 P.M. He has worked prior schedules that included two weekdays with "late nights," i.e. scheduled to work until 8:00 pm with split weekends. He testified that prior to his current schedule, he was scheduled to work one "late night," until 8:00 P.M. one day a week, and one Saturday per month.

Under prior similar schedules, as well as his current schedule, Grievant on numerous occasions placed requests to use his vacation leave time a couple of hours early on "late nights" (before 6:00 P.M.) and/or on a weekend shift. Those requests were often made the day before the requested vacation day and were routinely granted. While a vacation request does not require a

stated purpose, Grievant testified that he wanted to leave early to attend his child's sporting events or to provide assistance to his father. In Grievant's case, those requests were not sporadic, but frequent. Timecards reveal that from October 2023 to March 2024, Grievant had sixteen (16) vacation requests granted. During that period, he only actually worked to 6:00 P.M. on two (2) occasions.

After the introduction of the proposed revised Policy 74-UMA-01 in the summer of 2023 and discussion with the Union, ORDC had individuals observe how the late-night hours were working. Management's expectation was that 80% of coverage for the late-night hours (4:00 P.M. to 6:00 P.M.) and four hours on Saturdays would be met. It appeared that several institutions were struggling to meet this expectation. In February 2024 ODRC conducted an audit to actually determine how ORDC facilities in Ohio were complying with the Unit Management coverage requirements set out in the Policy. It was determined that the Belmont Correctional Facility and the Noble Correctional Facility were struggling to maintain coverage.

Through emails and testimony of Case Managers, it appears that management instructed Unit Managers (who are Case Manager Supervisors) to deny requests to use vacation leave for late hours when it appeared such leave was used on a frequent basis resulting in loss of coverage during these "late hours." Grievant was one of the individuals that had frequently used vacation leave to avoid working the late afternoon/early evening time period.

On March 21, 2024, Grievant was scheduled to work a late night until 6:00 P.M. On March 20, 2024, Grievant requested two (2) hours of vacation leave for the following day so he could leave early. His request was denied less than an hour and one-half later. The Request Form reflected that his leave request was "...denied due to employee preventing unit coverage on their scheduled late night." Grievant filed the instant Grievance on the same day.

Unable to resolve their dispute over the denial of vacation leave, the Grievance proceeded to arbitration. An arbitration hearing was held on February 5, 2025, at which time all parties were given the opportunity to present testimony and submit evidence in support of their respective positions.

The Position of the Union

The Union argues that Grievant was entitled to the two hours of vacation leave in question because (1) Article 10.03 of the CBA provides that a request for vacation leave cannot be unreasonably denied and the denial was unreasonable in this case; (2) he was discriminated against because others were permitted to use vacation leave and, on those other occasions, there was no unit management coverage for the late hours; (3) Policy 74-UMA-01 does not supersede the language of the CBA and the policy itself is arbitrary because it does not state that leave should be denied to accomplish the policies' core hour requirement of late night availability; (4) the Employer failed to present any testimony supporting the reasonableness of the denial; (5) there is no language in Article 10 that indicates that short duration vacation leave that is frequently requested is considered abuse and subject to denial; and (6) the Policy is unreasonable because it does not give guidance to the Unit managers as to how to deal with requests for vacation on late nights and scheduled weekends.

Article 10.03 is clear that requests for vacation leave cannot be unreasonably denied. The denial here is unreasonable because Grievant had been working on this and similar schedules, which included late-night hours (generally two hours) for years, and his short vacation leave requests (generally two hours or less) were always granted. Most of the time, when leave was granted, no one covered the duties of a Case Manager at the facility for that period of time. Upon these facts, it was unreasonable to now deny a request because no one is available to cover the

duties of the Case Manager, when such a requirement was not the criteria under any management Policy in the past that was enforced.

The Union argues it demonstrated that Grievant's request was proper under the Agreement and it further demonstrated that the denial was unreasonable. The Employer failed to demonstrate that its denial was supported by any reasonable application of its Policy. Because of the Employer's failure to meet its burden, the Grievance should be granted. It argues that this position is supported by a 1993 Arbitration Decision of Arbitrator Pincus⁴, in which he stated in the *Department of Youth Services and District 1199* (Jim Tennyson) case that "once a proper request has been provided by the union and or the employee, the burden then shifts to the employer to establish that its refusal was rationally based on its'... right to schedule employees to satisfy its operational needs." Pincus determined that the collective bargaining agreement provided that employee requests for alternative work schedules would be implemented subject to the employer's right to satisfy its operational needs. Arbitrator Pincus held that the employer failed to show there was a reasonable operational need that supported a denial of the requested alternative work schedule.

The Union argues that the Employer violated the provisions of Article 6, Non-discrimination, because his vacation leave was denied while others were permitted to use vacation leave and, on those other occasions, there was no unit management coverage for the late hours. Testimony from another Case Manager and work records were produced to support this position.

The Union argues that Policy 74-UMA-01 does not supersede the language of the CBA and the policy itself is arbitrary. First, the Policy does not state that vacation leave could be denied to accomplish the Policies' core hour requirement of late-night availability. Secondly, if it was the

⁴ THE STATE OF OHIO, THE DEPARTMENT OF YOUTH SERVICES, ATHENS REGIONAL OFFICE and DISTRICT 119, THE HEALTH CARE AND SOCIAL SERVICE UNION, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CASE NO: 35-10 (12-23-92) 01-02-12 (DECEMBER 1993).

intention of management that coverage was required at all times, and they did not want to pay overtime or mandate employees to work in the absence of a fellow employee, then they had every opportunity to address the issue during the agency specific portion of that bargaining process and include such restrictions in the CBA. As they did not, they unilaterally imposed a condition on the requesting of vacation time which is absent in the CBA.

The Employer failed to present any testimony supporting the reasonableness of the denial. John Ruiz was the Unit Manager and Grievant's Manager and presumably issued the denial, but he was not presented as a witness on behalf of the Employer to testify as to the reason for the denial. There was no signature on the vacation request denial, and the Union had no opportunity to question the person issuing the denial. While the form denying the vacation request gave "leave denied due to employee preventing unit coverage on their schedule late night," there was no testimony or other documentation supporting the reasonableness of this position.

From testimony and records, it appears that Grievant was deemed to have abused the use of vacation leave. However, there is no language in Article 10 that indicates that short duration vacation leave that is frequently requested is considered abuse and subject to denial.

The Policy requiring core hour coverage, or late-night coverage, which is the apparent basis for the vacation request denial, is unreasonable because it does not give guidance to the Unit managers as to how to deal with requests for vacation on late nights and scheduled weekends. As such, its implementation results in the disparate treatment and unjustified denials of vacation requests.

For all of the reasons set forth above, the Grievance should be granted.

Position of the Employer

The Employer argues that it did not violate any of the provisions of the CBA because (1) the Unit Management Policy that led to the denial of Grievant's request for vacation leave was promulgated pursuant to its Article 5 management rights, wherein management specifically retained the right to determine the starting and quitting times and number of hours its employees work, work standards, work assignments, and make any and all rules and regulations necessary to carry out the operations of the agency; (2) there was no action taken by the Employer that constituted discrimination as defined in Article 6.01; (3) Management did not act unreasonably in denying the Grievant's vacation request because the vacation leave was not "mutually agreed to by the appointing authority and the employee," and it had determined that its Policy to increase late-night coverage was not being followed and needed to improve; (4) the Policy is a reasonable exercise of the Employer's rights and it did not act unreasonably, when it denied the Grievant's request for vacation leave.

The Employer has the right to implement policies that are pursuant to its reserved management right to manage its operations by determining the starting and quitting times, number of hours its employees work, work standards, and work assignments under the specific language of Article 5. The Unit Management Policy that led to the denial of Grievant's request for vacation leave was promulgated pursuant to these Article 5 management rights. This Grievance seeks to erode these rights retained by the employer.

Before addressing the reasonableness of the action taken by the employer, the facts demonstrate that there was no action taken by the Employer that constituted discrimination, defined in Article 6.01, as alleged by Grievant. There was no evidence that the Employer discriminated against Grievant on the basis of race, sex, creed, color, religion, age, national origin,

political affiliation, Union affiliation and activity, handicap or sexual orientation or discriminate in the application or interpretation of the provisions of Vacation Allowance in this Agreement. Grievant may have meant that he was being treated in a disparate manner because other employees were granted vacation leave under similar circumstances, but that too is not supported by the facts of this case. This conclusion is based on several facts.

First, Grievant bid on his schedule based on his seniority, which included being scheduled to work until 6:00 P.M. one day a week, which was intended to provide coverage under the Unit Management Policy that has been in effect for a number of years. For approximately six (6) months, prior to March 21, 2024, Grievant's numerous requests for vacation on his scheduled coverage day, were approved, as were other employees. He cannot argue that his requests were denied when his and other employee requests under similar circumstances were granted. What is different when compared to other case managers, however, is that the other case managers generally worked their full scheduled coverage day and provided IPs with the opportunity to meet with them on the "after hours." They infrequently requested vacation leave. Over the prior six-month period, Grievant conversely worked only two (2) of the late-night periods.

Management did not act unreasonably in denying the Grievant's vacation request because the vacation leave was not "mutually agreed to by the appointing authority and the employee," and it had determined that its Policy to increase late-night coverage was not being followed and needed to improve for the benefit of the IPs and their families in the correctional institutions.. While the Union focuses on the reasonableness of the Employer's decision to deny the vacation request on this one occasion, it ignores the first paragraph of Article 10.03 which required mutual agreement of the time vacation leave is requested. Here, the Employer did not agree to the "next day" request, so there was no mutual agreement.

There was no agreement on the part of the Employer in this particular instance for a number of reasons. First, an audit of the Unit Management compliance indicated that the correctional facilities where Grievant worked were not meeting the standards of making case managers available to IPs on a regular basis because they were being granted requests to use leave to avoid working the night hours (until 6:00 P.M. or on Saturdays). The Employer wanted a higher percentage of coverage than existed. Secondly, Grievant, since starting to work in the bid position, routinely did not work the two-hour coverage during the week or on weekends due to the granting of vacation time requests. As shown through testimony and documentary evidence, unit staff needed to be accessible to IPs after 4:00 P.M. because many of them may be working or in school during the day so we need unit staff accessible a little later. Grievant cannot complain that his vacation leave request denial was unreasonable when he had his vacation leave denied one (1) time after being approved forty-seven (47) times.

It should be noted from documentary evidence and testimony of the Employer that the Employer did not take the position that all vacation requests involving evening hours would be denied, but that improvement on coverage was the goal. As an example, following the denial of using two (2) hours of vacation on March 21, 2024, Grievant had some vacation requests to take off on his coverage day, approved. On May 23, 2024, he was approved to use two (2) hours of vacation leave to reduce his scheduled workday. On June 20, 2024, he was approved to use eight (8) hours of vacation leave on his scheduled coverage day. There is no demonstration that the two (2) hour vacation request denial was unreasonable.

The Policy used to deny Grievant's vacation request is a reasonable exercise of the Employer's rights, and it did not abuse its discretion, when it denied Grievant's request for vacation leave. The Union was given advance notice of the Employer's intention to implement a

Unit Management approach at ODRC. Management met with the Union on July 6, 2023, to discuss the implications of the change in unit management policy 74-UMA-01, (changes benefiting their members). Specifically, the parties discussed changes from late nights to core hours, reduced coverage hours, flexibility in scheduling, etc.; they also discussed the ability to use leave, which, according to one of the Union's witness's own notes, Management said that case managers could still use leave, but did not want employees to abuse it. The Union was put on notice that unit management staff, which include case managers, were expected to work the schedule they selected, including a coverage day once per week until 6:00 P.M. The Policy provides schedules to be submitted by the 15th of the preceding month to allow employees the flexibility to modify their schedules to meet their personal needs, or request time off providing the supervisor with the opportunity to get coverage, if possible.

The Case Manager's position (Grievant's position) was literally created to implement the concept of unit management where a critical element to its success is unit staff being available to the prison population during evening hours. When the audit of several facilities revealed that this concept was diminished because leave was being granted during the evening hours and coverage was missing, some leave requests started to be denied. Supervisors were asked to tighten control over unit management employees using vacation leave to avoid working their coverage day.

ODRC has the right to implement and enforce policies, including the right to require employees to work their assigned schedule in a way that does not violate the parties' contract. Here, we maintain that we did not violate the parties' contract.

Grievant testified that he had the seniority to bid on his schedule, including the Monday coverage day. He stated that he wanted to see his kid's games, yet he bid on scheduling knowing that the coverage day he selected was on a day that his kid had a game, expecting to nullify the

schedule with discretionary vacation leave. That was in violation of the Policy about which he was aware.

The Employer did not implement a policy that dictated that vacation time could never be used on a coverage day. In fact, both parties introduced evidence showing that Grievant, along with other case managers, requested and had approved, vacation for the entire day or towards the end of the shift on their coverage day after Ms. Bradley's observation in early 2024 and after the policy went into effect.

The 74-UMA-01 Policy allows for flexibility in scheduling, which includes the ability of unit management employees to work different coverage days each month. It also allows unit management employees the ability to switch coverage days, with supervisor approval after the monthly schedule has been set. The Policy does not require employees to switch coverage days instead of using leaving; it is an option offered to employees if they choose with supervisory approval. Contrary to the Union's argument that shift trades can only be used for medical appointments, nothing in the parties' contract prohibits this as part of flexible scheduling options. The Union argues that the sentence, "In addition to, the trading of shifts may also be granted, by mutual agreement, for pre-scheduled medical appointments" restricts Management from allowing employees to trade shifts for other reasons. However, the language does not state that "trading shifts may ONLY be granted, by mutual agreement, for pre-scheduled medical appointments." In fact, the language suggests that there may be other reasons to grant a request to trade shifts, and/or if there is no alternative/flexible work schedule, a request to trade shifts for medical reasons may be granted.

Because the Policy is reasonable in scope and application and Grievant's vacation allowance rights have not been abridged, the Grievance should be denied.

III. DISCUSSION AND OPINION

While the Parties stipulated that the two issues in this proceeding are whether the Employer violated the provisions of Article 10.03 and Article 6.01, there are a number of factors that need to be addressed and considered before a resolution of these issues can be made.

Before turning to an examination of the merits of the Parties' positions and arguments regarding an alleged violation of Article 10.03, it can be concluded that the Employer did not violate any of the provisions of Article 6, specifically Section 6.01. There is no evidence that the Employer discriminated against Grievant on the basis of race, sex, creed, color, religion, age, national origin, political affiliation, Union affiliation and activity, handicap or sexual orientation or discriminate in the application or interpretation of the provisions of this Agreement. Grievant alleges that others were granted vacation leave under similar circumstances under which his request was denied. Grievant did not demonstrate that any of his denials, however, were based on considerations of race, sex, creed, color, religion, age, national origin, political affiliation, Union affiliation and activity, handicap or sexual orientation. In considering whether the Employer engaged in disparate treatment in denying his requests, Grievant may be correct that coverage for the late-night hours may not have been provided when others also requested and were granted vacation leave during late-night hours, but the others infrequently requested leave during these hours making Grievant's frequent requests dissimilar. He made a habit of circumventing the Policy. The vacation request denials were not based on discrimination or the result of disparate treatment but were based upon a policy determination under which expectations in achieving the purpose of the Policy were not being achieved.

The Employer is correct that it has retained the right to manage the workforce, which right includes the right to establish work schedules, to determine the starting and quitting times and

number of hours its employees work, work standards, work assignments, and make any and all rules and regulations necessary to carry out its operations. Those rights are, however, subject to any provisions in the collective bargaining agreement that have been specifically abridged, deleted, granted or modified by the express and specific written provisions of the agreement. An employer also has the right to establish reasonable policies, rules, and regulations to carry out its reserved rights.

Here the Union does not dispute the Employer's right to set work schedules of case workers, or the right to establish a Unit Management Policy that sets forth guidelines regarding the accessibility and responsibilities of unit personnel assigned to monitor and provide services to Incarcerated Persons (IPs). If it did believe that the exercise of those rights conflicted with the language in their collective bargaining agreement, it would have filed a grievance long ago.

The primary dispute here is the basis upon which vacation leave was denied. For the following reasons, I find that the Employer's basis for denying Grievant's request for two hours of vacation leave was in conformance with the provisions of Article 10.03.

The first factor considered by the Arbitrator was the scope of this Grievance as set forth in the Grievance filing. The Grievance was based upon the denial of two hours of vacation leave that Grievant considered unreasonable, because he was not an essential employee, does not canvas vacation time, and overtime was never used to cover case managers when they are absent from work for any reason. The hearing expanded into an exploration of the reasonableness of Policy 74-UMA-01 to denying vacation requests in general, an alleged discriminatory practice in handling case manager vacation requests, and a past practice of granting two-hour vacation requests in the past to him, as well as similar vacation requests for other case managers. The scope of this Grievance, based upon the language of the Grievance, is determining the underlying rationale

given by the Employer for denying the request and whether that rationale was reasonable. While this decision may have applicability to other vacation denials by the Employer, caution is given that the focus is not being expanded to an analysis of the implementation and impact of the Unit Management Policy on vacation leave in general, but on the narrow application of it to the facts of this case.

While Article 10.03 provides that leave shall be taken only at times mutually agreed to by the Employer and Employer, I would agree with the Union that the additional restrictive language in paragraph 4 of that section, that “Requests for vacation leave cannot not be unreasonably denied,” is the controlling language. So, the outcome of this Grievance is based upon that language.

The second factor considered by the Arbitrator was the reasonableness of a policy that sought to place case managers with the prison population during evening hours. Grievant can dispute the logic of this based upon his opinion, but it is within the Employer’s prerogative to set a schedule that it believes meets the needs of the prison population. Testimony clearly demonstrated that the policy was not rigidly adhered to in the fall of 2023 and early 2024, but if management finds that a lax policy is ineffective in achieving its goals, it can change its implementation to reach it goals as long as it does not thereby violate other provisions contained in the CBA. Here it did not violate Article 10 because it did not agree in March 2024 to allow virtually all late-night hours to be avoided by the use of vacation leave in order to achieve its policy expectations which, in general, cannot be found to be unreasonable.

The third factor considered was Grievant’s practice of avoiding working a schedule that he bid into and agreed to work. An employee will need personal days and will be sick from time to time. Here the use of vacation time was purposefully used to avoid working his agreed-to schedule.

He was abusing his right to voluntarily use vacation time to subvert a schedule and policy of the Employer.

While the Union argued that Grievant was discriminated against because others were permitted to use vacation leave and, on those other occasions, there was no unit management coverage for the late hour, the facts surrounding the other case managers were dissimilar. As stated above, while others did use vacation leave to leave early, evidence indicates that the other employees worked most of their late-night hours and only occasionally asked, and were granted, vacation leave under similar circumstances. The evidence does not support any disparate treatment or “discrimination” as alleged by Grievant.

The Union is correct that there is no language in Article 10 that indicates that short duration vacation leave that is frequently requested is considered abuse and subject to denial. But, if the guidelines of a reasonable policy are not met because of the specific use of vacation leave to avoid them, the Employer has the right to deny its mutual agreement based upon a reasonable basis.

The evidence indicates that the Employer does continue to allow some vacation leave when late-afternoon hours are involved, but on a case-by-case basis and not on the basis used by Grievant. As a result, this Decision is based upon the focus previously described.

The Union’s reliance on the Pincus Decision, *supra*, is misplaced in this instance. Arbitrator Pincus decided that the employer could not deny a requested alternative schedule when the employer did not demonstrate that its denial was based on demonstrated operational needs. Here, the issue does not involve an alternative-schedule request and the CBA does not require that the employer demonstrate that operational needs support the denial. Here the determining issue is whether the Employer’s denial was unreasonable under the circumstances of the facts presented, which I have determined was not.

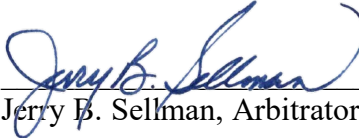
Another factor considered was the Union's argument that the Employer failed to present any testimony supporting the reasonableness of the denial. I do not agree with that viewpoint. While the decision maker did not present testimony (it is assumed to be Mr. Ruiz), the documentation clearly indicates that a granting of the vacation leave request would prevent coverage on the scheduled late night. Other testimony and documentation supported this reasoning.

The final factor considered by the Arbitrator was the Union's argument that the Policy is unreasonable because it does not give guidance to the Unit managers as to how to deal with requests for vacation on late-nights and scheduled weekends. The Union's statement is correct, but it ignores management's right to manage the workforce, which requires making decisions often on a case- by- case basis to satisfy undefined situations that arise under a mutually agreed-to collective bargaining agreement. While both parties to an agreement desire specific language to address every situation, it is often unattainable or not in the interest of both parties to do so. Here, it is up to an arbitrator to decide if the decision to deny vacation was reasonable under the circumstances, which the Arbitrator has found to be the case.

IV. AWARD

For the foregoing reasons and conclusions, the Grievance is denied.

Dated April 22, 2025



Jerry B. Sellman, Arbitrator