

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 INTERNATIONAL BROTHERHOOD OF :
 ELECTRICAL WORKERS, LOCAL 196 :
 :
 and : Case 2
 : No. 42829
 : MA-4504
 ROCK COUNTY ELECTRIC :
 COOPERATIVE ASSOCIATION :
 :

Appearances:

Mr. Harold Eastwood, Business Manager, IBEW Local 196, appearing on behalf of the Union.
 Collins and Henderson, Attorneys at Law, by Mr. David Collins, appearing on behalf of the Co-op.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and Co-op respectively, were signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. A hearing was held on November 16, 1989 in Janesville, Wisconsin. The hearing was not transcribed and the parties did not file briefs. Based on the entire record, I issue the following Award.

ISSUES:

The parties stipulated to the following issues:

1. Whether Elroy Peterson has received his vacation credit for the time he worked for the Co-op?
2. Whether under the 1988-89 contract, Peterson is entitled to any additional vacation pay?

PERTINENT CONTRACT PROVISIONS:

The parties' 1988-89 collective bargaining agreement contained the following pertinent provisions:

ARTICLE III

Hours of Work - Working Conditions - Rates of Pay

* * *

Section 17. Vacations. All employees employed by the Cooperative at the time of the Agreement and any new employees that have completed one (1) year of continuous employment with the Cooperative, shall receive a vacation of one (1) week with full pay. Employees that have completed two (2) years or more of continuous employment with the Cooperative shall receive an annual vacation of two (2) weeks with full pay. Employees having five (5) or more years employment with the Cooperative shall be entitled to three (3) weeks vacation with full pay. Employees having fifteen (15) years of service with the Cooperative shall be entitled to a vacation of four (4) weeks annually with full pay.

Employees having completed twenty (20) years of service with the Cooperative shall be entitled to a vacation of five (5) weeks annually with full pay. Employees having completed thirty (30) years or more of service shall be entitled to a vacation of six (6) weeks annually with full pay. A week as used in this Section shall mean forty (40) hours' pay at the employee's regular straight time rate.

Should a holiday fall during the time of an employee's vacation period, said holiday shall not be considered a part of such vacation period.

On April 1 of each year the Cooperative shall furnish the steward that has been appointed by the Union a complete list of employees and their seniority.

Vacation periods may be taken from January 1 of each year up to and including December 31, providing the employee gives the Cooperative two (2) weeks notice. Choice of vacation periods is to be taken by the employees having the most seniority. Under no conditions can vacation periods be accumulated from year to year. It is also mandatory that employees take their vacations which they have coming, unless, by mutual agreement between the manager and the employee, they have taken some of their vacation time when they were off sick. Employees having more than fifteen (15) days vacation shall have their vacations as to all extra days over the fifteen (15) days before September 1 of the current year or later by mutual agreement between the employees and the manager. A maximum of four (4) persons subject to this contract shall be on vacation at a given time.

FACTS:

The facts are undisputed. Grievant Elroy Peterson began work for the Co-op on October 14, 1957 and retired on January 4, 1989. In 1988, he received six (6) weeks of vacation. Upon his retirement, a dispute arose concerning the amount of vacation he was to receive for 1989; the grievant contended he was entitled to a full vacation of six (6) weeks (240 hours) and the Co-op contended he was entitled to only a pro rata share of that time, specifically 54 hours. The Co-op ultimately paid Peterson \$872.64 for 54 hours of vacation for the period running from his last anniversary date (i.e. October 14, 1988) through his retirement date (i.e. January 4, 1989). The instant grievance was filed contending Peterson was entitled to six (6) weeks (240 hours) of vacation pay at retirement, not 54 hours. The Co-op denied the grievance and the matter was appealed to arbitration. Additional facts, as necessary, will be set forth in the Discussion section.

POSITIONS OF THE PARTIES:

It is the Union's position that the Co-op violated the contract by paying the grievant just 54 hours vacation for 1989. In its view, the grievant is entitled to six (6) weeks of vacation for 1989, not 54 hours. In support thereof, the Union submits that vacation is earned one year and paid out the following year, so the grievant is contractually entitled to a full vacation for 1989 because he worked all of 1988. The Union further contends that other employees who retired received a full vacation for their last year of employment and it requests that the grievant be treated similarly. As a remedy for this alleged contractual violation, the Union requests that the grievant be paid for six (6) weeks vacation, with interest.

The Co-op's position is that it did not pay the grievant an incorrect amount for vacation for his final year of employment and therefore it did not violate the contract. In its view, the grievant received the correct vacation credit for the time he worked (namely 54 hours), and he is not entitled to any additional vacation. According to the Employer, vacation is earned one year and paid out the same year, not the following year, and the contract supports this position. The Co-op acknowledges that it has not been consistent in its previous practice concerning vacation pay for employees who retire, but it contends those previous instances ought not be controlling here. It therefore requests that the grievance be denied.

DISCUSSION:

At issue herein is the grievant's vacation entitlement for his last year of employment (1989). The Union contends the grievant is entitled to a full vacation of six (6) weeks for 1989 even though he retired January 4 of that year. The Co-op disputes this assertion and contends the grievant is instead entitled to only a pro rata share of a full vacation which it calculates to be 54 hours for the period between the grievant's last anniversary date (October 14, 1988) and his retirement date (January 4, 1989). In resolving this question, the undersigned will review both the applicable contractual language (the vacation provision) and the Employer's previous practice concerning vacation pay for employees who quit or retire.

The vacation provision (Article III, Section 17) establishes that employees who work a specified length of time receive a specified amount of vacation. For example, employees who have completed two (2) or more years of employment get two (2) weeks vacation, employees who have completed five (5) or more years of employment get three (3) weeks vacation, etc. That provision goes on to provide that employees who have completed thirty or more years of service get six (6) weeks of vacation. This last category is involved here since the grievant completed more than 30 years of service with the Co-op.

The crux of this dispute centers on whether the vacation taken in a given year is for that year or the previous year. In the Co-op's view, vacation is earned one year and taken that same year while the Union contends vacation is earned one year and taken the next year. On its face, there is nothing in Section 17 that explicitly specifies whether the vacation that is taken in a

given year is for that year or the previous year. Nevertheless, the undersigned believes it is implicit from the provision that employes earn vacation one year and take it the next. This conclusion is drawn from the first sentence of Section 17 wherein it provides that an employe that has "completed one (1) year of continuous employment with the Cooperative shall receive a vacation of one (1) week with full pay." I read this clause to provide that an employe must complete a full year of employment before he receives a vacation. The employe cannot take vacation before then because he is still in the process of earning it. Since employes do not receive any vacation their first year of employment, the vacation taken in their second year of employment was earned the preceding year. For example, an employe hired March 1, 1988 would not receive any vacation in calendar year 1988, but would receive a one (1) week vacation after he passed his first anniversary date (i.e. March 1, 1989). Thus, in this example, the employe earned the vacation in 1988 and took it in 1989. Such would also be the case in succeeding years with the vacation earned in 1989 being taken in 1990, the vacation earned in 1990 being taken in 1991, etc. It therefore follows that the entire vacation system established in Section 17 is predicated upon employes earning a vacation one year and taking it the next. Said another way, the vacation taken in a given year is for the previous year.

Application of this rationale here means that the grievant is entitled to a full vacation allotment for 1989; not simply a pro rata share. Once the grievant worked past October 14, 1988 (i.e. his 31st anniversary date), he earned a full vacation for 1989. This outcome is not changed by the fact that the grievant retired several months after passing his anniversary date.

Aside from the contractual basis noted above, several other factors support the conclusion that the grievant is entitled to a full vacation for 1989. First, Joint Exhibit 4 indicates that those employes who have previously quit or retired received a full vacation allotment or more for their last year of employment. Here, though, this apparently was the first time the Employer gave a retiring employe less than a full vacation allotment for his last year of employment. As a result, the Employer's actions herein are not supported by any prior practice. Second, employer representatives acknowledged at the hearing that the grievant would have received a full vacation for 1989 had he given two weeks notice of his intent to take such vacation. Section 17 provides that employes are to give two weeks notice for vacation and the grievant never apparently gave such notice. However, testimony indicates that this provision has been interpreted loosely because numerous exceptions have been made to this notice requirement. That being so, this notice requirement will not be applied strictly herein to preclude the grievant from receiving his 1989 vacation.

In light of the above then, it is held that the grievant is contractually entitled to receive a full vacation for 1989, not simply a pro rata share. In order to remedy the Employer's contractual breach in this regard, the grievant is owed vacation pay for 186 hours (i.e. the difference between a full vacation allotment of 240 hours and the 54 hours he has already received).

Finally, attention is turned to the Union's request for interest on the amount awarded. It is not customary in arbitration for arbitrators to grant interest. 1/ Although there have been some cases where arbitrators did grant interest, these involved unusual circumstances which are not present here. Accordingly, interest is not included as part of the award.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

1. That Elroy Peterson did not receive his full vacation credit for the time he worked for the Co-op;

2. That under the 1988-89 contract, Peterson is entitled to additional vacation pay, to wit: \$3,005.76 (186 hours x \$16.16/hr. = 3,005.76);

3. That in order to remedy its breach of Article III, Section 17, the Co-op shall pay Peterson the amount noted above.

Dated at Madison, Wisconsin this 22nd day of December, 1989.

By _____
Raleigh Jones, Arbitrator

1/ Elkouri & Elkouri, How Arbitration Works, 3rd Ed., p. 357.