

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 CITY OF MENOMONIE :
 :
 and : Case 62
 : No. 42933
 : MA-5854
 MENOMONIE CITY EMPLOYEES, LOCAL 734, :
 AFSCME, AFL-CIO :
 :

Appearances:

Mr. John Higley, City Attorney, on behalf of the City.
Ms. Margaret McCloskey, Staff Representative, on behalf of the Union.

ARBITRATION AWARD

The above-entitled parties, herein the Employer and Union, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on December 20, 1989 in Menomonie, Wisconsin. Pursuant to the request of the parties, I issued a bench decision which this written Award augments.

ISSUE:

What is the proper method for calculating vacation accrual under Article 13 of the contract?

DISCUSSION:

The City for many years has used either the first or fifteenth day of the month for computing an employe's eligibility for vacation accrual purposes rather than the employe's actual anniversary date, depending on whether an employe was hired between the first-fifteenth or between the sixteenth to last day of the month. This has enabled some employes to pick up a few extra days for their vacation entitlement, while at the same time delaying said entitlement for others.

The Union on July 25, 1989, filed a grievance over this practice and claims that it violates Article 13 of the contract. The City, on the other hand, maintains that its practice is consistent with the contract and that a well developed past practice supports its position.

The resolution of this issue turns upon Article 13 of the contract, entitled "Vacations" which provides, inter alia, that:

Section 13.01 Accrual Employees shall earn vacation with pay as follows: (White collar employees hired prior to 9/23/88 will accrue vacation under the current schedules - Appendix C).

1. During the 1st through the 2nd year of employment, employees will earn 7 hours of vacation per month, accumulative to 124 hours of vacation; 35 hour/week - 6.13 hours of vacation per month, accumulative to 108.56 hours of vacation;
2. During the 3rd through the 5th year of employment, employees will earn 9 hours of vacation per month, accumulative to 148 hours of vacation; 35 hour/week - 7.88 hours of vacation per month, accumulative to 129.56 hours of vacation.
3. During the 6th through the 10th year of employment, employees will earn 12.5 hours of vacation per month, accumulative to 190 hours of vacation; 35 hour/week - 10.94 hours of vacation per month accumulative to 166.28 hours of vacation;
4. During the 11th through the 15th year of employment, employees will earn 16 hours of vacation per month, accumulative to 232 hours of vacation; 35 hour/week 14.00 hours of vacation per month accumulative to 203.00 hours of vacation.
5. During the 16th year of employment and thereafter, employees will earn 19 hours of vacation per month, accumulative to 285 hours; 35 hour/week 16.63 hours of vacation per month, accumulative to 234.56 hours of vacation.

Section 13.04 Probation and Anniversary Vacations cannot be used during the employees' original probationary period although vacation accumulation starts with the first day of employment. Employees' vacation eligibility shall be computed on an anniversary date basis and partial amounts shall be prorated for each month.

. . .

Since Section 13.04 refers to "the first day of employment" and provides that vacation eligibility shall be based "on an anniversary date basis . . .," this language supports the Union's claim. However, a well developed past practice has arisen which contradicts this proviso so that an employe's anniversary date in fact has been based upon either the first or fifteenth day of the month. This, then, is a classic case of where the contract language says one thing and past practice says another.

To resolve this problem and in order to reduce some of the inequities in this situation, I therefore find that an employe's anniversary date shall be computed as follows: employes hired between the first-seventh day of the month shall have an anniversary date of the first; employes hired between the eighth-fifteenth day of the month shall have an anniversary date of the fifteenth; employes hired between the sixteenth-twenty-third day of the month shall have an anniversary date of the fifteenth; employes hired between the twenty-fourth to last day of the month shall have an anniversary date of the first day of the following month.

In light of the foregoing, it is my

AWARD

That the anniversary date for vacation eligibility purposes shall be based upon the foregoing formula.

Dated at Madison, Wisconsin this 1st day of February, 1990.

By _____
Amedeo Greco, Arbitrator