BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
PIERCE COUNTY COURTHOUSE EMPLOYEES, LOCAL 556, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO	Case 88 No. 45575 MA-6649
and	
COUNTY OF PIERCE	

Appearances:

Ms. Margaret McCloskey, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1203 Knollwood Court, Altoona, Wisconsin 54720, appearing on behalf of Pierce County Courthouse Employees, Local 556, American Federation of State, County and Municipal Employees, AFL-CIO, referred to below as the Union.

Mr. Richard J. Ricci, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 715 South Barstow, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of County of Pierce, referred to below as the County.

ARBITRATION AWARD

The Union and the County are parties to a collective bargaining agreement which was in effect at all times relevant here, and which provides for the final and binding arbitration of certain disputes. The Union requested, and the County agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Shirley Quinn, who is referred to below as the Grievant. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on July 17, 1991, in Ellsworth, Wisconsin. The hearing was not transcribed. During the briefing schedule, the parties requested that the matter be held in abeyance to permit them to engage in informal settlement discussions. The parties were unable to resolve the matter, and filed briefs by December 19, 1991.

ISSUES

The parties did not stipulate the issues for decision. I have determined the record poses the following issues:

> Did the County's refusal, without prior notice to the Grievant or the Union, to pay the Grievant the vacation and longevity benefit it originally approved in 1988 violate the parties' 1989-90 collective bargaining agreement or past practices?
>
> If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 3 - MANAGEMENT RIGHTS

. . .

> Section 2. The rights, power and/or authority herein claimed by the County are not to be exercised in a

manner that will cease to grant privileges and benefits the employees enjoyed prior to adopting this Agreement, and that are not incorporated herein . . .

. . .

ARTICLE 7 - LEAVE OF ABSENCE

. . .

Section 3. Seniority shall continue to accrue during leaves of absence for personal illness and disability due to accident. Employees on a leave of absence do not accrue additional fringe benefits.

. . .

ARTICLE 11 - VACATIONS

. . .

Section 3. Vacations must be taken in the anniversary year following the year in which it was earned, or be forfeited, except where unusual circumstances prohibit the taking of vacation, in which case the employe may, at his/her option, be paid for the unused vacation in cash or take the vacation in the following year or forfeit same.

. . .

ARTICLE 12 - SICK LEAVE

. . .

Section 6. Once an employee's sick leave accumulation reaches the maximum, the added monthly earned sick leave day shall go into a mutual bank. Employees may borrow from the bank in the event that their own accumulation has been consumed.

. . .

ARTICLE 14 - TERMINATION

. . .

Section 3. At the time of termination of employment, the employee shall receive his/her unused, earned vacation time in cash, at his/her regular classified rate.

. . .

ARTICLE 16 - WORKER'S COMPENSATION

. . .

Section 1. In the event of an occupational injury, the following will apply:

a) An employee disabled for less than ten (10) consecutive days will receive three (3) days pay from the County. A time slip with an explanation covering these days must be turned in;

b) An employee disabled for ten (10) consecutive days or more shall be paid entirely from Worker's Compensation.

. . .

ARTICLE 23 - LONGEVITY

Section 1. Employees completing five (5), ten (10), fifteen (15) years of service with the County shall respectively receive one percent (1%), two percent (2%) and three percent (3%) of their wages as an annual bonus.

. . .

BACKGROUND

The parties stipulated the following facts:

The Grievant is on Worker's Compensation as a result of a work related incident.

On May 28, 1987, the Grievant incurred the injury underlying the present grievance.

On July 5, 1988, the Grievant went off work onto Worker's Compensation.

From July 1, 1990 through September 14, 1990, the Grievant worked on a part-time basis, between 107 and 139 hours.

From September 15, 1990, the Grievant has not worked.

> During the time for which the Grievant received Worker's Compensation benefits, the County was supplementing the difference between Worker's Compensation and her regular rate of pay with sick leave.

The Grievant was hired on November 1, 1973, as a Housekeeper/Jailer in the Sheriff's Department. On May 28, 1987, the Grievant, having purchased some supplies, returned to the Sheriff's Department and slipped. She held on to the box and its contents as she fell. None of the contents of the box was broken. She had, however, injured her own back. As noted above, she tried, without success, to return to work either on a full-time or on a part-time basis.

In 1988 and in 1989, the Grievant submitted an invoice for the payment of her vacation benefit. The County paid each invoice in full. She also received the full amount of her longevity benefit for 1988 and 1989.

On October 29, 1990, she submitted an invoice for her vacation benefit earned in 1989 and 1990. She requested payment of 20 days of vacation earned in 1989, and a prorated benefit of 17 days earned for the period from January through October of 1990. The Sheriff approved the invoice, but the County denied any payment on the invoice. The County did pay make a payment to her for longevity. This, in effect, denied her any vacation benefit for the year ending in her employment anniversary of November 1, 1990, and most of her longevity benefit for that year. The Union responded by filing the grievance at issue here.

The Evidence On Past Practice

It is undisputed that the Grievant was permitted to use sick leave to supplement her Worker's Compensation payments. The net result was that she was paid her full salary until she exhausted her sick leave entitlement. That entitlement also included sick leave drawn from the Article 12 sick leave bank.

Ruth Winkler is presently employed by the County's Highway Department as its Bookkeeping Assistant. She originally worked for the County in the Clerk's Office. She testified that for at least ten years the County has supplemented Worker's Compensation payments with an injured employe's sick leave. In those cases in which an employe exhausted the sick leave benefit, the County would, she stated, allow the employe to draw on unused vacation. Most of the cases she was aware of during that period involved short-term leaves. In each of the cases, the injured employe continued to accrue longevity and vacation benefits. Most of the cases she was aware of involved Highway Department employes.

Laurie Unseth is employed by the County as a Secretary in its Veterans Service Office. She was the Union's Steward at the time the Grievant filed her grievance. She testified that she investigated past County payments of benefits during long-term absences compensated with Worker's Compensation.

She stated that the County originally denied her request for information, and then informed her that four employes had received some form of benefit payment during a long-term absence compensated by Worker's Compensation: the Grievant; Rudy Smirnov; Marvin Raehsler; and Gerald Van Schoovenhaven. Unseth testified that Smirnov and Raehsler were Sheriff's Department employes who eventually reached a settlement with the County terminating their employment. Van Schoovenhaven was employed in the County's Highway Department. He was on Worker's Compensation during part or all of the period from 1983-1989, according to Unseth. He left County employment in January of 1990. Unseth testified that he received his vacation, longevity, insurance and retirement

benefits throughout this period.

Unseth testified that she also discovered that the County had paid longevity benefits for Doris Roen, who was on Worker's Compensation from February 16 through March 1 of 1988. She did not know if Roen received her full vacation benefit for that year. She also noted that Ken Witt had experienced an ongoing back problem since being injured in August of 1987. She testified that he went on and off of Worker's Compensation, but did not suffer any loss of benefits for the period he was on Worker's Compensation.

Terry Dickinson worked for the County as a Custodian from roughly 1976 through 1979 or 1980. He was a member of the Courthouse bargaining unit while he worked for the County. He testified that he missed six weeks of work during his first year of County employment, due to a hernia caused by his lifting a large waste bin. He testified that he earned a full vacation benefit for that year, and received no longevity benefit because he did not qualify for it.

Robert Jahnke was employed by the County as a Custodian in September of 1986. He testified that he injured his right hand in the Spring or early summer of 1987. He ultimately had to undergo surgery, and was not able to work from the time of the injury through Labor Day of that year. He testified that he accrued a full vacation benefit for that year.

Dave Sorenson has served as County Clerk since November 17, 1972. Sorenson stated he looked for, but could find no invoice demanding payment for Smirnov's vacation benefit during any portion of Smirnov's absence. He noted Smirnov was paid a longevity benefit in 1986 and 1987, but not in 1988 or 1989. He also stated he looked for, but could find no invoice paying Raehsler for his vacation benefit during Raehsler's absence. Sorenson noted that the County did pay a longevity benefit to Raehsler for 1984 and 1985. He noted that Van Schoovenhaven did receive a payment for his vacation, but Sorenson also noted that the Highway Department prepares its own payroll.

Sorenson noted that the payroll records for the Courthouse bargaining unit were lost when the County moved those records to a different location. There are no personnel records regarding payments in the Courthouse bargaining unit before 1988.

Further facts will be set forth in the DISCUSSION section below.

THE UNION'S POSITION

The Union phrases the issues for decision thus:

> Did the County violate the collective bargaining agreement, as amended by past practice, when it denied the grievant vacation and longevity benefits while on worker's compensation? If so, what is the appropriate remedy?

The Union notes that after the Grievant's injury, she attempted to work full-time, then attempted to work part-time, before her doctor ordered her not to work beyond September 14, 1990. Acknowledging that the Grievant no longer draws on the sick-leave supplement, the Union contends this is solely because "she didn't want to deplete the bank to the disadvantage of her co-workers." That the County continues to pay "her insurance premiums and retirement benefits, even though she is on worker's compensation and cannot work" indicates, the Union asserts, that she is still a County employe.

The Union asserts that the County had no basis to deny the Grievant's vacation and longevity benefits in 1990, based on the County's payment of the

vacation benefit through 1989 and of the longevity benefit through 1990.

Beyond this, the Union asserts that the County had paid these benefits to other employes, including Terry Dickinson, Gerald Van Schoovenhaven, and Bob Jahnke. From this, the Union concludes: "Since the collective bargaining agreement is silent on the issue of vacation and longevity benefits while employees are on worker's compensation, the parties must look to past practice." More specifically, the Union asserts that Winkler's testimony establishes that the County has paid vacation and longevity benefits to County employes on worker's compensation for no less than ten and one-half years. The testimony uniformly indicates, the Union contends, that such benefits are not discontinued until the employe has been terminated by the County. Noting that the County's records before 1988 have been lost, the Union asserts that the testimony of Dickinson and Jahnke becomes crucial in establishing the parties' practices. Their testimony establishes, the Union argues, that an employe on worker's compensation receives the full range of benefits the employe qualifies for, while on worker's compensation. Sorenson's testimony did nothing to rebut these points, according to the Union.

The Union summarizes the record thus:

> (The Grievant) was earning benefits, such as insurance and retirement, without argument. The Union position is that vacation and longevity are further benefits which are earned while employees are on payroll status. Other employees, in similar circumstances, have received these benefits in full . . . The denial of vacation and longevity benefits to (the Grievant) discriminates against her . . . (U)ntil her employment relationship with the County is terminated, she is entitled to the full benefits to which other employees are entitled, and certainly at least to the benefits enjoyed by bargaining unit and other County employees in like circumstances in the past.

The Union concludes that the Grievant "should be awarded the vacation and longevity benefits denied her by the County, and (should) be made whole for any losses suffered as a result of such denial".

THE COUNTY'S POSITION

The County phrases the issues for decision thus:

> Did the County violate the collective bargaining agreement when it refused to pay the grievant for vacation pay for the years 1989 and 1990 and for partial longevity for the year 1990?

After a review of the evidence, the County notes that "the grievant(')s case relies on an alleged past practice."

With this as background, the County argues that "(b)efore past practice can be used to aid the grievant . . . a determination would have to be made that the present language . . . is either ambiguous, unclear or nonexistent with respect to the issues involved." The County contends that Article 7, Section 3, Article 14, Section 3, and Article 16, Section 1, b, govern this matter, and that each of those provisions is clear and unambiguous.

More specifically, the County argues that the Union's arguments seek "to obtain more (vacation) than that granted to other employees". This follows,

according to the County, since "(t)he whole concept of vacation pay is to allow an individual to be off from work for a period of time and yet receive pay for that work." Since the Grievant did not work during the period she seeks vacation payment for, it follows, the County asserts, that she is seeking a benefit not available to any other employe.

Since Article 7, Section 3, specifically disallows the accrual of fringe benefits on leaves of absence, and since vacation and longevity fall within any definition of "fringe benefits", it must necessarily follow, the County asserts, that Article 7 cannot support the result the Union seeks.

Article 14, Section 3, underscores, according to the County, that an employe must earn a benefit to be paid the benefit. The County argues that the Grievant's prolonged absence defeats any assertion that she has earned the benefits she seeks. Arbitral authority, the County contends, strongly supports this conclusion.

Article 16, Section 1, b, is, according to the County, "subject to no other interpretation than there being an intent by the parties . . . that worker's compensation benefits were to substitute for all other compensation due the employee." It follows, according to the County, that this provision is not subject to arbitral interpretation.

The County argues that arbitral authority establishes that past practice cannot be used to supersede the clearly expressed terms of a collective bargaining agreement. The Union's past practice argument must, according to the County, be rejected for seeking such a result.

Even if past practice could be considered relevant, the County argues that the evidence adduced here cannot meet the definition of a binding past practice. Drawing on arbitral authority, the County contends a binding past practice must be unequivocal, clearly acted upon and accepted by both parties over a reasonable period of time. In this case, the County urges that the confusion over who, if anyone, has been paid this benefit in the past defeats the operation of the first element to this definition. Beyond this, the County urges that since each County department has handled this differently, the second element has not been proven. Beyond this, the County urges that the asserted practice has neither been recurrent nor recognized as a practice by the County.

The County concludes that it was under no obligation to extend the Grievant any vacation or longevity payment at all. The County asserts that this "seems to have been forgotten by the Grievant", but that in any event "(t)he grievance has no merit and should be dismissed."

DISCUSSION

The parties' conflicting statements of the issues highlight that this grievance poses an alleged practice against allegedly clear contract language. The issues for decision adopted above reflect this dilemma, but specify that the point at issue here involves the termination of a benefit. There is no dispute that the County paid the vacation and longevity claims submitted by the Grievant in 1988 and in 1989. Thus, the issue posed here must focus less on the original propriety of paying the benefit than on the propriety of the termination of the benefit.

The parties dispute whether a practice exists and, if so, what the significance of the practice is. The record establishes a consistent and mutually recognized practice of paying the Grievant the disputed benefits. The original handwritten invoice for the vacation payment submitted by the Grievant

is dated November 15, 1988, and reads thus:

> 1988 vacation (15 days) union contract permits payment if requested when vacation cannot be taken. (see Nov 8th Committee meeting minutes) Motion by Lawrence Weber, seconded by Ellen Smith to permit vacation time to be paid. Motion carried. 15 days @ 7hr per day = 105 hrs

. . .

The County paid this invoice, and paid the Grievant her full longevity benefit. Payment of this invoice cannot be considered inadvertent. The invoice openly stated the benefit desired and asserted the benefit was permitted by the labor agreement.

The County again paid the vacation and longevity benefit, after the Grievant submitted a handwritten invoice dated November 27, 1989. The labor agreement governing this grievance took effect January 1, 1989. The vacation and longevity benefit afforded the Grievant thus survived the negotiation of a successor agreement to that in effect when the benefit was first paid.

The County's assertion that the benefit afforded the Grievant cannot be considered a past practice is unpersuasive. The County bases its attack on the practice on the following definition of a binding practice offered by Arbitrator Jules J. Justin:

> (Past practice), to be binding on both Parties, must be (1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both Parties. 1/

Even granting that the payment of the invoice is not a written agreement, the payment at issue here meets each of the three criteria noted above. The payment was openly sought by the Grievant, and the basis for the payment was openly stated. It cannot be considered equivocal in any respect. Similarly, the invoices clearly stated the Grievant's desire and posed the matter for formal County action. The County's payment clearly acted upon the invoice. Finally, to conclude that the practice was not ascertainable over a reasonable period of time requires the untenable assumption that the Grievant should have submitted invoices for a period of time she was not injured.

The application of the three criteria is strained here not as applied to the Grievant specifically, but as applied on a unit-wide basis. The Union asserts the practice modifies the parties' agreement, and the County asserts the practice can have no such impact.

This dispute poses the precise definition of the practice and the effect of the practice thus defined. It affords no basis to deny the existence of a clear understanding regarding the payments made to the Grievant. As Justin himself noted in Celanese Corp. of America, the purpose of past practice is "to determine what the Parties intended". 2/ It is, then, the agreement manifested by the parties' conduct which defines the binding force of past practice.

1/ Celanese Corp. of America, 24 LA 168, 172 (Justin, 1954).

2/ Ibid.

Whatever the parties' dispute on the precise definition of the practice and the effect of the practice thus defined may be, the record will not support any conclusion other than the County knowingly agreed to pay the Grievant two separate annual vacation and longevity payments before denying the third.

Resolution of the parties' dispute regarding the definition of the practice at issue must, then, start with the fact that the County knowingly afforded the Grievant the longevity and vacation payment in 1988 and in 1989.

The evidence will not, however, support granting the vacation and longevity payments made to the Grievant a Courthouse-unit wide or County wide scope. The record establishes that no widespread practice exists regarding the payment of vacation or longevity to employes on long-term disability leave of absence. Each example set forth in the BACKGROUND section above manifests a separate County response to each case. The extent of the variation is underscored by the fact that Smirnov received a longevity benefit in two years, only to have the same benefit denied in two other years. In the Courthouse unit, the length of the Grievant's absence was unprecedented. Thus, it cannot be said that the practice asserted here has Courthouse-unit wide or County wide impact, as the Union asserts.

Nor will the record support any assertion that the County's past conduct establishes the County extended the Grievant a gratuity in 1988 and in 1989. Of the examples discussed at hearing, not one involves the narrow and restrictive reading of the agreement advanced by the County here. Rather, in each case, the County examined the specific circumstances of the affected employe, and responded to those circumstances on a case by case basis. Thus, the narrow and restrictive reading of the agreement advanced by the County is unprecedented.

Thus, the practice posed in this case is two-fold. The first is the County's conscious decision to pay vacation and longevity benefits to the Grievant while she was on long-term disability leave of absence due to a work related injury. The second is the County's pattern of responding to benefit requests from employes on such disability leave on a case by case basis.

The remaining aspect of the parties' dispute poses the effect of the practice thus isolated. To address the binding force of a practice, it is first necessary to isolate the purpose for which the practice is asserted. The major purposes of evidence of past practice have been summarized thus:

> (1) to provide the basis of rules governing matters not included in the written contract; (2) to indicate the proper interpretation of ambiguous contract language; or (3) to support allegations that clear language of the written contract has been amended by mutual action or agreement. 3/

The parties' dispute falls under items (2) or (3).

To address the parties' dispute on the effect of the practice here, it is first necessary to determine if the language at issue is clear and unambiguous.

While ambiguity can be read into virtually any contract provision, the County's assertion that the provisions posed here are not sufficiently

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3/ Elkouri & Elkouri, How Arbitration Works, Fourth Edition (BNA, 1985) at 437.

ambiguous to require arbitral interpretation is persuasive. The first sentence of Article 7, Section 3, establishes that the Grievant continued to accrue seniority during her leave, and thus continued to be an employe of the County. The second sentence, however, clearly denies the accrual of any "additional fringe benefits". The Union cites, and I can perceive, no persuasive basis on which to conclude that longevity or vacation is not a "fringe benefit" within the meaning of Article 7, Section 3. The grievance cites Article 11, Section 3; Article 14, Section 3; and Article 23. The Union offers no basis to exclude these provisions from the scope of Article 7, Section 3, and I cannot perceive any basis to do so.

The County's citation of Article 16, Section 1, b), is irrelevant here. The County contends that "(t)his language is subject to no other interpretation than there being an intent by the parties . . . that worker's compensation benefits were to substitute for all other compensation due the employee." This is a broader assertion than is posed by the facts of this case. There is no dispute the County has uniformly permitted employes to supplement Worker's Compensation payments with sick leave. How, if at all, this practice relates to the County's position is not posed here. The reference in Section 1, b), to "entirely" would seem to be related to the provision in Section 1, a), of "three (3) days pay from the County" for occupational injuries of "less than ten (10) consecutive days". If this is the case, Section 1, b), does no more than clarify that the County owes an injured worker no "out-of-pocket" payment other than that provided in Section 1, a). In any event, there is no persuasive reason to conclude Article 16, Section 1, b), directly impacts the facts posed here.

Thus, the record poses the clear language of Article 7, Section 3, against the two-fold practice defined above. This poses the question whether the asserted practice has, as the Union contends, modified the parties' agreement. This type of situation has been long-discussed in arbitral precedent. Elkouri & Elkouri, in their Third Edition to How Arbitration Works, (BNA, 1976) put the point thus:

> A related rule is that a party's failure to file grievances or to protest past violations of a clear contract rule does not bar that party, after notice to the violator, from insisting upon compliance with the clear contract requirement in future cases. 4/

The same statement is contained in the Fourth Edition. 5/ Arbitrator Thomas J. McDermott offers a more detailed view of this rule:

> (T)here is the situation where the language contained in the contract is clear and explicit, but a practice has been established, which runs contrary to the meaning of the contractual language. In that case, to uphold the practice would constitute a rewriting of the contract by making the written provision agreed to by the parties null and void. That is not within the authority of the arbitrator. However, the party seeking to regain what is a clear contractual right has the obligation to notify the other side of his

4/ How Arbitration Works, Third Edition at 409.

5/ How Arbitration Works, Fourth Edition, at 454.

intention to regain that right. 6/

It is necessary to tie these general considerations to the facts posed here.

The Union's assertion that the practice modified the parties' agreement may overstate arbitral authority as a general principle. In any event, it overstates the scope of the practice proven here. As noted above, the proven practice, beyond the specific payment to the Grievant, establishes no more than the County's willingness to review the benefits to be afforded employes on long-term occupational injury leaves on a case by case basis. The Union's argument seeks to boot strap the conclusion reached regarding the Grievant's specific circumstances in 1988 and 1989 into a unit-wide entitlement. Such a major enhancement of the contract's provisions must be gained, if at all, in collective bargaining.

It does not, however, follow from this that the County's belated desire to strictly enforce provisions never before strictly enforced can be used to retroactively eliminate the mutual understandings embodied in the two-fold practice. As noted in Master Builders' Association, the use of clear contract language to obviate a contrary past practice requires notice to the other party. Arbitrator McDermott put the point bluntly, noting the party seeking to assert a clear contractual right contradicted by an established practice "cannot regain that right retroactively." 7/ This is precisely what the County seeks to do here.

The record establishes that the County did not afford the Union or the Grievant any effective notice of its intent to deny the two-fold practice. The Grievant submitted an invoice on October 29, 1990, which was essentially the same as those submitted in 1988 and in 1989. It was approved by the Sheriff, but denied at the County Board level. This after-the-fact denial cannot be considered effective notice.

To permit the retroactive abrogation of the practice would denigrate the bargaining process. The benefit afforded the Grievant survived the negotiation of the 1989-90 labor agreement. 8/ Both the individual payment to the Grievant, and the County's case-by-case review of individual requests for similar benefits predated the 1989-90 agreement. The County's after-the-fact assertion of strict compliance with Article 7, Section 3, thus overturned a mutually accepted course of conduct, and did so after the point could have been addressed in bargaining. The disruptive effect on the work environment and the

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6/ Master Builders' Association, 74 LA 1072, 1075-1076 (McDermott, 1980).

7/ Ibid., at 1076.

8/ No argument has been entered, and no conclusions may be reached here regarding Article 3, Section 2. At a minimum, this provision underscores the significance attached by the parties to the in-term abrogation of benefits previously granted.

parties' relationship is apparent. To permit such a change in the absence of effective notice offers a disincentive to the parties to discuss their differences. Imposing a notice requirement promotes informal bargaining processes over the more protracted form of dispute resolution represented by grievance arbitration, and affords a potentially less divisive means to wind-down a mutually understood pattern of conduct.

The AWARD entered below does not require extensive discussion. The AWARD recognizes that the County has effectively put the Union on notice that it intends in the future to strictly enforce Article 7, Section 3. The remedy addresses the County's failure to notify the Union of this change in an established way of compensating the Grievant by denying the County's authority to retroactively overturn its prior conclusion that the agreement permitted the payments sought here.

AWARD

The County's refusal, without prior notice to the Grievant or the Union, to pay the Grievant the vacation and longevity benefit it originally approved in 1988 violated the parties' 1989-90 collective bargaining agreement in light of past practice.

The County's 1990 denial of the Grievant's vacation and longevity benefit serves as effective notice that the County intends to strictly enforce the provisions of Article 7, Section 3. Because that notice was not given until after the Grievant had submitted the same claim which had been approved on two prior occasions, the County may not deny the Grievant's 1990 claim. As the remedy for the County's failure to afford the Union or the Grievant effective notice of its intent to strictly enforce Article 7, Section 3, the County shall pay the Grievant the vacation and longevity benefit it would have paid had her request been processed as it was in 1988 and in 1989.

Dated at Madison, Wisconsin, this 26th day of February, 1992.

By _____
Richard B. McLaughlin, Arbitrator