BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
NORTHWEST UNITED EDUCATORS	Case 33 No. 47300 MA-7225
and	
SCHOOL DISTRICT OF ST. CROIX FALLS	

Appearances:
Mr. Alan D. Manson, Executive Director, on behalf of the Association.
Weld, Riley, Prenn & Ricci, S.C., by Mr. Stephen L. Weld, on behalf of the District.

ARBITRATION AWARD

The above-entitled parties, herein the Association and District, are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in St. Croix Falls, Wisconsin on August 28, 1992. The hearing was not transcribed and the parties thereafter filed briefs which were received by September 30, 1992.

Based upon the entire record, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

> Did the District violate the contract by refusing to credit certain employes with their original date of hire for vacation purposes and, if so, what is the appropriate remedy?

DISCUSSION

This dispute centers upon the negotiations and subsequent interest-arbitration proceeding conducted before Arbitrator John J. Flagler leading to the parties' 1989-1991 initial contract and whether the District is to credit employes moving from nine to twelve month status with their initial date of hire for vacation purposes, as urged by the Association, or upon the date of their conversion to twelve month status, as contended by the District.

In this connection, the parties have stipulated that:

1. This precise issue was never discussed at the bargaining table in the negotiations leading up to the initial contract;

2. The only written reference to this issue during negotiations was the Association's tentative final offer (Joint Exhibit 13).

3. All calendar year bargaining unit employes - i.e. those working 12 months before the Association's certification in 1989 - were covered by the District's vacation policy which provided that vacation was to be determined by the date of an employe's conversion from annual to regular status, rather than their initial

hire dates.

4. The individual employment contracts tendered to said employes reflected this policy.

5. School year employes - i.e. those working nine months - did not receive any vacation benefits.

6. Arbitrator Flagler's November, 1991 Arbitration Award, which found for the Association, did not address the specific issue found here.

The primary factual dispute herein turns upon what was presented to Arbitrator Flagler in the proceeding before him.

Association Executive Director Alan D. Manson testified in substance that the Association's goal in negotiations was "to keep the status quo"; that the Association's bargaining team, instead, insisted that vacation for employees converting to twelve month status be based upon an employe's initial hire date, which would be a new benefit; that he told Arbitrator Flagler that no employes during the life of the contract would get a fourth week of vacation under the Association's proposal; that he subsequently learned from a member of the Association's bargaining team at said hearing that this was not true; and that he brought out this fact in the Association's post-hearing brief to Arbitrator Flagler when he asserted that under its proposal, "there are only a few employees who are, or soon will be eligible for a fourth week of vacation. . ." 1/.

Assistant Bookkeeper Penny Hall, a member of the Association's bargaining team, corroborated Manson's testimony. She also stated that she prepared Exhibit 19 for the proceeding before Arbitrator Flagler which lists only two employes as receiving the four weeks vacation benefit after the expiration of the contract, hence showing that vacation was not based upon an employe's hire date. Hall explained that she made this conclusion because she was unaware that the Association's proposal called for pegging vacation to an employe's hire date.

Association President Robert Lumsden testified, "We added it [the Association's proposal regarding hire dates] against your [i.e. Manson's] recommendation."

Bargaining team member Judy Westlund corroborated Lumsden's testimony and added that she heard Attorney Stephen L. Weld at the arbitration hearing tell Arbitrator Flagler that under the Association's proposal, no bargaining unit members could receive four weeks of vacation during the term of the contract - something which would not be true if vacation were tied to an employe's hire date. She added that she related this fact to Manson, who replied, "Oh!"

Barbara McGauley, a former research associate to Attorney Weld, testified that she attended the arbitration hearing and heard Manson tell Arbitrator Flagler that vacations were tied to the anniversary date of an employe's conversion to full-time status. Based upon that representation, she did not cost out this proposal when she helped draft the District's post-hearing brief to Arbitrator Flagler. McGauley added that after Arbitrator Flagler's award issued, she met with Hall and Bookkeeper Caroline Gubasta and there told them

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1/ Contrary to the Association's claim, I find that this quotation from the brief is ambiguous and that it, in fact, did not clear up this point.

that vacation was to be based upon the date that an employe converted to twelve month status - a point which Hall did not dispute.

Gubasta corroborated McGauley's account of their meeting with Hall. She also disputed Westlund's claim that she, Westlund, had received vacation when she was a part-time employe.

In support of the grievance, the Association primarily argues that Article XVII, Section A, of the contract "is clear and unambiguous" and that pursuant thereto, "it is necessary to start with an employe's initial date of hire in determining how much vacation they are to receive when they move from school year to twelve month status." It thus points out that seniority is determined on that same basis for layoff purposes and that, moreover, bargaining history supports its position because, "the two parties used the same date-of-hire information throughout negotiations." As to the subsequent hearing before Arbitrator Flagler, the Association concedes that Mr. Manson was "confused for the moment as a witness", but that that did not affect the validity of Arbitrator Flagler's Award which adopted the Association's final offer. As a remedy, the Association requests that all affected employes be made whole for their vacation losses and that the District in the future be required to apply "the vacation schedule based on each employe's date of hire."

The District, in turn, primarily contends that the grievance should be denied because the bargaining history "clearly reveals that the Union's interpretation of the vacation language is not consistent with its position during negotiations and, therefore, the understanding of the Employer." Hence, the District maintains that the Association's exhibits and testimony at the interest arbitration hearing do not support its interpretation of Article XVII, Section A; that past practice does not support the Association's position; and that the "treatment of sick leave and insurance for school year employes are irrelevant to this dispute."

The District is correct on all counts.

True, Article XVII, Section A, supports the Association's position because it provides:

> Twelve (12) month employees will be eligible for annual (based on the anniversary of the employees [sic] date of hire) paid vacation on the basis of the following schedule:
>
> 1. Less than one full year, no vacation benefits
> 2. After one year, 5 days of vacation
> 3. After two years, 10 days of vacation
> 4. After ten years, 15 days of vacation
> 5. After fifteen years, 20 days of vacation

Under ordinary circumstances, this language would have to be applied just as it is written - i.e., to grant vacation benefits "based on the anniversary of the employees [sic] date of hire" - something that was not done here.

But these are not ordinary circumstances, given Manson's admission that he became "confused" when he told Arbitrator Flagler that the Association's proposed language on this issue would not impact upon any bargaining unit members during the duration of this contract - which is not correct.

The District clearly relied upon this representation when it filed its post-hearing brief to Arbitrator Flagler because it stated on page 45 therein that:

"There are no employees in the unit that would currently receive this additional benefit."

If Manson did not err as he did, and if the Association's proposal were accurately described to reflect the Association's position here, there is no question but that the District would have costed it out and told Arbitrator Flagler that it was too expensive of a benefit.

That of course may not have tilted the subsequent Award in its favor. But the District had an absolute right to make that argument since parties under Wisconsin's interest arbitration law often live or die upon the costs of their contract proposals. Hence, it is absolutely essential that the integrity of that process be maintained through the submission of fully accurate data.

That, inadvertently, 2/ was not done here. The only way to rectify that error is to construe Article XVII, Section A, in the same fashion that the Association described it in the interest arbitration proceeding and to find that the District acted properly in not basing vacation benefits upon an employe's initial hire date when said employes move on to twelve month status.

In light of the above, it is my

AWARD

That the District did not violate the contract by refusing to credit certain employes moving to twelve month status with their original date of hire for vacation purposes; the grievance is therefore denied.

Dated at Madison, Wisconsin this 7th day of December, 1992.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

2/ There is no evidence that the Association's representatives deliberately tried to deceive either Arbitrator Flagler or the District.