BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between		
FEDERATION OF NURSES AND HEALTH PROFESSIONALS, LOCAL 5001, AFT, AFL-CIO	Case 331 No. 47449	MA-7270
and		
MILWAUKEE COUNTY		

Appearances:
Ms. Carol Beckerleg, Representative, Federation of Nurses and Health Professionals
Mr. Timothy R. Schoewe, Deputy Corporation Counsel, 901 North 9th Street, Milwaukee, Wisconsin, 53223, for the County.

ARBITRATION AWARD

Federation of Nurses and Health Professionals, Local 5001, AFT, AFL-CIO and Milwaukee County are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Milwaukee, Wisconsin on September 10, 1992. No transcript was taken. The parties filed briefs, the last of which was received October 12, 1992.

ISSUES

The parties stipulated to the following statement of the issues:

> Did the County violate the Collective Bargaining Agreement when it did not allow Grievant to carry over to 1992 10.5 hours of vacation time in addition to the 40 hours it did allow to be carried over? If so, what is the appropriate remedy?

BACKGROUND

The County operates a Mental Health Complex at which Grievant Geraldine Hoffman has been employed as a Registered Nurse for twenty years. During January, 1991 she chose her vacation for the calendar year: two weeks in July and two weeks in December. As it happened, she did not take vacation in July because she was on leave for a work-related injury from April until the end of July. When she returned to work July 31 she worked reduced hours pursuant to doctor's orders and received injury pay for the other hours to make of total of 40 hours pay per week. At first she worked twelve hours a week and by November 11 was released to work 20 hours a week. (The records indicate she worked 16 hours a week for the period beginning November 11.)

Sometime in September, Grievant decided she did not want to take vacation so soon after returning to work and became concerned that she would have more than 40 hours of unused vacation at the end of the calendar year which she would lose pursuant to the contract. Sometime in September, and again in October, she asked her supervisor, Mary Pat Taugher if she could carry over vacation into 1992 in excess of 40 hours. Taugher responded that she did not see any problem but she would have to check with Human Resources Manager James Holzhauer. At the beginning of November, and again on November 18, Grievant

asked Taugher for written confirmation that she could carry over vacation in excess of 40 hours. Later that day or the day afterwards, Taugher returned with the message from Holzhauer that Grievant could not carry over vacation in excess of 40 hours. Grievant then started vacation November 21. From that date until the end of the calendar year, she did not work and her pay was attributed to vacation, personal time, holiday hours or between twelve and sixteen hours injury pay pursuant to doctor's orders for reduced work hours. At the end of the calendar year, her vacation account had 10.5 hours of vacation in addition to the 40 hours of vacation that she was allowed to carry over. The 10.5 hours were lost and are the subject of a grievance and this arbitration award.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISION

2.21 VACATION.

. . .

(2)

. . .

(c) Employees may carry a maximum of 40 hours of accrued vacation from one calendar year to the next, said hours to be liquidated in accordance with existing vacation practices.

POSITIONS OF THE PARTIES

The Federation

The Federation argues that Grievant would have taken her vacation earlier than November 21 if she had understood that she would have to either take the vacation or lose that portion beyond 40 hours, therefore, she should not lose the carryover hours.

The County

The County argues that the contract clearly addresses carryover vacation and has done so for at least six years. It argues that Supervisor Taugher had no authority to bind the County to an agreement regarding Grievant's request and that even if she had such authority, nothing in her conduct could reasonably lead Grievant to believe that she could carry over vacation. It asserts there is no reason not to give effect to the clear and unambiguous language of Section 2.21(2)(c) of the contract.

ADDITIONAL FACTS AND DISCUSSION

The contract provision clearly provides that only a maximum of 40 hours of vacation can be carried over beyond the end of the calendar year. Indeed, the Union is not arguing that the contract is ambiguous or that it contains an implied exception for the circumstances present in this case.

The Union's case for allowing grievant to exceed the 40 hour limitation is based entirely on the conversations between Supervisor Taugher and Grievant. Even though there was no dispute that Taugher offered the informal opinion that there would be no problem if Grievant wanted to carryover vacation in excess of 40 hours, in the same conversation she cautioned Grievant that she would have to check with Human Resources Manager James Holzhauer. Her

reference to confirming her opinion with Holzhauer clearly indicated that Grievant could not rely upon her interpretation of the contract.

Indeed, Grievant indicated that she understood that Taugher could not bind the County when she repeatedly asked Taugher if she had checked with Holzhauer and when she finally asked for "something in writing." Additionally, at the hearing, Grievant testified that she knew that Taugher was not authorized to change the terms of the contract. While it may have been ill-considered for Taugher to hazard an opinion on the question and for Grievant to not pursue the question more forcefully, those actions do not operate to bind the County to a modification of this clear contract provision.

The clear language of the collective bargaining agreement preclude Grievant from carrying over into the next year any more than 40 vacation hours.

In the light of the record and the above reasoning, it is the Arbitrator's

AWARD

1. The County did not violate the Collective Bargaining Agreement when it did not allow Grievant to carry over to 1992 10.5 hours of vacation time in addition to the 40 hours it did allow to be carried over.

2. The grievance is denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 7th day of January, 1993.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator

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