BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
BARRON COUNTY HIGHWAY DEPARTMENT EMPLOYEES, LOCAL 518, AFSCME, AFL-CIO	Case 102 No. 47871 MA-7411
and	
BARRON COUNTY (HIGHWAY DEPARTMENT)	

Appearances:
Mr. Michael J. Wilson, Representative at large, Wisconsin Council 40, AFSCME
Weld, Riley, Prenn & Ricci, Attorneys, by Ms. Kathryn J. Prenn, appearing on behalf of the Employer.

ARBITRATION AWARD

The Employer and Union above are parties to a 1992-93 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve a grievance filed by five (5) employes, concerning denial of five days' vacation.

The undersigned was appointed and held a hearing on November 10, 1992 in Barron, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on January 11, 1993.

STIPULATED ISSUES:

1. With respect to the grievants, has the County complied with Article 15 of the collective bargaining agreement?

2. If not, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS:

. . .

1992-1993 Agreement:

ARTICLE 15 - VACATIONS

Section 15.01:

A) All regular full-time employees covered by the terms of this Agreement shall receive vacation with pay at their regular rate of pay according to the following schedule:

After one year of employment	5 days
After two years of employment	10 days
After eight years of employment	15 days
After thirteen years of employment	20 days
After twenty years of employment	25 days

B) Seasonal employees shall earn ten (10) days of vacation after four (4) seasons.

. . .

Article 28 - Duration

Section 28.01: This Agreement shall become effective as of January 1, 1992, and shall remain in full force and effect through December 31, 1993, and shall renew itself for additional one (1) year periods thereafter, unless either party pursuant to this article has notified the other party in writing that it desires to alter or terminate this Agreement at the end of the contract period.

. . .

1990-91 Agreement:

Article 15 - Vacations

Section 15.01: Employees covered by the terms of this Agreement shall receive vacation with pay at their regular rate according to the following:

A) Employees with twelve (12) months of service shall receive five (5) normal work days vacation with pay;

B) Employees with twenty-four (24) months of service shall receive ten (10) normal work days vacation with pay;

C) Employees with three (3) seasons of service shall receive ten (10) normal work days of vacation with pay for each twelve (12) months of work time;

D) Employees with ten (10) seasons of service shall receive fifteen (15) normal work days of vacation with pay;

E) After fifteen (15) years of service,

> employees shall accumulate one (1) additional day of vacation for each year of service, accumulative through the twenty-fifth (25th) year of service.
>
> . . .

DISCUSSION:

The basic facts are stipulated, as follows:

1) The issue of whether the improved vacation as it applied to individual employes would go into effect on January 1, 1992 or on the employe's anniversary date was never discussed in the negotiations over the 1992-1993 contract.

2) The five employes affected by the grievance all started work on various dates in 1983, and are listed on the grievance.

3) If issue No. 1 is resolved in favor of the Union, the remedy is valued at one week per grievant. The question of whether it be in the form of time [the Union's request] or backpay (the Employer's preference] is to be resolved by the Arbitrator.

4) In the wake of a grievance concerning the application of the vacation system, the parties agreed on December 12, 1990 that it was on an anniversary basis by employe.

In the 1992-93 collective bargaining agreement vacation was improved in such a way that the grievants, who would have had to wait ten years to receive 15 days' vacation, were now entitled to vacation after eight years. The dispute concerns when this entitlement begins to operate.

The collective bargaining agreement making the change was signed on March 23, 1992, but specifies that it is effective as of January 1, 1992. The only hiring dates listed for the five employes on the face of the grievance are April 27, 1983 and May 3, 1983; the record contains no further details as to which employe started on what date. The grievance was filed on April 20, 1992, citing a date of alleged infraction of April 9, 1992.

The Union contends that the express terms of the contract are clear and unequivocal, including the effective date of January 1, 1992. The Union argues that all provisions of the contract, including the vacation schedule, are therefore effective as of that date, without exception. The Union argues that the County's position has the effect of requiring each of the grievants to work nine years, not eight as negotiated, before becoming eligible for three weeks of vacation. The Union contends that the County had the burden to propose specific language to defer the vacation improvements beyond January 1, 1992, but did not propose or obtain any such deferral. With respect to remedy, the Union argues that there is no authority under the terms of the Agreement to convert paid vacation time off into cash payments.

The County contends that employes, under both the current collective bargaining agreement and its predecessor, are awarded vacation on the anniversary date of that particular employe's employment. The County contends that, therefore, the employes were properly awarded two weeks' vacation on the

date in 1991 that each became eligible for it, because the improvement was not negotiated until later. In 1992 each employe was then in turn awarded three weeks on his anniversary date. The Employer contends that it is the Union which is seeking to modify the express meaning of Article 15, by representing that a different date than the anniversary date referred to there should now control. The Employer contends that since the parties stipulated that this was never discussed in the negotiations, the Union could not have obtained an agreement to that effect, and therefore the previous application of Article 15 should continue. The County also argues that the effect of the Union's argument would be to create a special "bump" in vacation for those employes who had eight years of service as of their 1991 anniversary dates. The County further argues that in 1989 it received an arbitration award in its favor with another union when the issue was essentially the same as herein.

I find the collective bargaining agreement on its face to be ambiguous with respect to this dispute. There is no specific reference to the problem, and the Union's argument of a January 1, 1992 retroactive date for the entire contract has some persuasive force. On the other hand, Article 15 does specifically refer to employes earning vacation as of a certain number of years of employment, which implies that the anniversary date is the date for calculation. That in turn implies that a subsequent improvement in vacation would not trigger retroactive application unless the retroactivity clause specifically referred to the benefit being retroactive to the last date of vacation eligibility, or unless some pro rata arrangement was devised. The crux of this case is whether the Agreement should be read as providing for a single annual moment of calculation of vacation entitlement, or something else, absent specific language providing for the something else. The contract fails to enlighten on its own terms.

Turning to other evidence available, it is clear that the 1990 grievance settlement which established that an anniversary basis was to be used was not a "no precedent" settlement, for there is no such language in the consent award involved nor any evidence to that effect elsewhere offered. The "anniversary basis" therefore stands as a mutual interpretation of the contract, not a one-time settlement with no other meaning. This implicitly supports the Employer's view that the calculation of vacation entitlement is a one-time-per-year matter. Yet there is some logic in the Union's position, since this would mean that an employe slightly junior to one whose anniversary date was on December 23 (for example) would effectively get more vacation [one time] if his or her anniversary date was, say, January 5. Both would be earning vacation for much the same span of time, but the slightly junior employe would be having his calculated just after the effective date of the contract. This seems unfair.

But to conclude that the January 1 retroactive date is controlling does not necessarily lead to a logical or conspicuously fair result either. To draw a contrasting example, if the Agreement is retroactive to January 1 as to wages, a retroactive payment can obviously be made that is tailored to that length of time, and no further. But to follow the Union's logic, a retroactive date of "January 1" would have the effect of making the contract retroactive for vacation purposes to a series of dates, each different by employe, back before January 1. This seems an improbable interpretation of the Agreement as well as an expense to the County unjustified by any evidence that retroactivity prior to January 1 was intended by either party.

I am persuaded by this inconsistency at the heart of the Union's position that the award issued by Arbitrator Sharon Gallagher Dobish on August 28, 1989 should be given controlling weight here, even though that award involved a different bargaining unit of the Employer and a different union. The issue presented was essentially the same. The parties to that agreement had improved vacation in their negotiations, the record showed that the County had credited

employes "with their annual vacation only on the celebration of the anniversary date of their employment" and that there had been a consistent policy of not prorating vacation. The arbitrator in that case acknowledged that the Union's equity arguments were "compelling in part", but concluded that the collective bargaining agreement overall, in view of the County's past practice, could most reasonably be interpreted to say that there was no such thing as pro rata payment of vacation contemplated under that agreement and that the "upon the passage of each employe's anniversary date" moment of calculation was intact. Although the bargaining unit is not the same, the language of the collective bargaining agreement is similar, the practices appear consistent, and there is value in consistency with a prior arbitration award involving the same employer when that award is not clearly wrong. I therefore find that the Gallagher Dobish award has persuasive effect in this case.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the County complied with Article 15 of the parties' collective bargaining agreement with respect to the grievants in this case.

2. That the grievance is denied.

Dated at Madison, Wisconsin this 11th day of March, 1993.

By _____
Christopher Honeyman, Arbitrator