

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:
of a Dispute Between	:
	:
BARRON COUNTY	: Case 106
	: No. 48104
	: MA-7510
and	:
	:
BARRON COUNTY COURTHOUSE EMPLOYEES,	:
LOCAL 518-B, AFSCME, AFL-CIO	:
	:

Appearances:

Weld, Riley, Prenn, & Ricci, S.C., by Ms. Kathryn J. Prenn, 715 S. Barstow, Suite 111, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030.

Mr. Guido Cecchini, Staff Representative, Wisconsin Council #40, AFSCME, AFL-CIO, 470 Garfield Avenue, Eau Claire, Wisconsin 54701.

ARBITRATION AWARD

The above-captioned parties, hereinafter, the County and the Union respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to said agreement, the parties jointly requested the undersigned, a member of the staff of the Wisconsin Employment Relations Commission, to hear the instant dispute. Hearing was held on January 7, 1993, in Barron, Wisconsin. No stenographic transcript was made. The parties completed their briefing schedule on April 29, 1993. Based upon the record herein and the arguments of the parties, the undersigned issues the following Award.

ISSUE

The parties could not stipulate to the framing of the issue in the instant dispute.

The Union proposed the following:

Did the County violate the labor agreement by discontinuing vacation benefits of lime quarry employes?
If so, what is the appropriate remedy?

The County proposed the following:

Has the County violated the collective bargaining agreement by not awarding vacation days to the lime quarry employes?
If so, what is the appropriate remedy?

The undersigned frames the issue as follows:

Did the County violate the collective bargaining agreement by not awarding vacation days to lime quarry employes?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

Provisions in both 1990-1991 and 1992-1993 Agreement which are unchanged in pertinent part:

ARTICLE 2 - RECOGNITION

2.01 The Employer recognizes the Union as the exclusive collective bargaining agent for all regular full-time and regular part-time nonprofessional employees in the Barron County Courthouse, Library, and Lime Quarry, excluding the Nutrition Project Director, elected officials, appointed officials, supervisory, confidential and managerial employees, the employees of the Barron County Department of Social Services, and all other employees, in all matters with respect to wages, hours and conditions of employment.

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ARTICLE 4 - GRIEVANCE PROCEDURE

4.01 Definition of a Grievance: A grievance shall mean any dispute concerning the interpretation or application of this contract.

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4.05 Grievance Arbitration:

A. Time Limits: If a satisfactory settlement is not reached in Step 2, the Union must notify the Salary and Personnel Committee in writing within ten (10) working days after receipt of the Salary and Personnel Committee's decision that it intends to process the grievance to arbitration.

B. Arbitrator: The arbitrator shall be a staff member of the Wisconsin Employment Relations Commission. Selection of the arbitrator shall be by mutual agreement of the parties. If the parties are unable to agree, the WERC shall assign the arbitrator.

C. Arbitration Hearing: The arbitrator selected shall meet with the parties at a mutually agreeable date and place to

review the evidence and hear testimony relating to the grievance. Upon completion of this review and hearing, the arbitrator shall render a written decision to both the County and the Union which shall be considered final and binding upon both parties.

- D. Decision of the Arbitrator: The decision of the arbitrator shall be limited to the subject matter of the grievance. The arbitrator shall not modify, add to or delete from the express terms of the Agreement.
- E. Costs: Both parties shall share equally in the cost of the arbitration. Each party, however, shall bear its own costs for witnesses and all other out-of-pocket expenses including possible attorney's fees. The grievant and Union president (or designee) shall suffer no loss of pay for participation in the arbitration hearing. Other employees shall suffer no loss of pay during the period of time their attendance at the hearing is necessary.
- F. Transcript: In the event a transcript is requested by one of the parties, that party shall bear the full cost of such transcript. In the event that a transcript is requested by both parties or if the arbitrator requests or receives a transcript from the court reporter, the cost shall be shared equally by both parties.

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ARTICLE 12 - RETIREMENT

- 12.01 The County agrees to pay the employee's share of the retirement contribution, equal to six and two-tenths percent (6.2%) of an eligible employee's earnings, to the State Retirement Fund, in addition to the County's share of the contribution.

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ARTICLE 15 - HOLIDAYS

- 15.01 Holiday Schedule: All regular full-time employees shall be compensated for the following holidays at their normal base hourly rate of pay:

New Year's Day President's Day

Memorial Day (commencing in 1982)]
Fourth of July Christmas Day
Labor Day Good Friday
Thanksgiving Day Veteran's Day
Columbus Day 1/2 day Christmas Eve Day

- 15.02 Eligibility: In order to receive pay for any of the above-named holidays, the employee must be in a pay status for the two (2) week period during which the holiday falls. "In pay status" shall include employees on sick leave, employees on authorized vacation, and employees who have worked one (1) or more days during the two (2) week pay period. The employee must be in attendance on the work day immediately preceding and following the holiday to be eligible for holiday pay, except when an employee is on a scheduled vacation or an extended sick leave or any other excused absence.
- 15.03 Scheduling: If any of the above-named holidays falls on a weekend, the holiday shall be scheduled on the preceding Friday or the following Monday, at the Employer's discretion.

ARTICLE 16 - VACATIONS

- 16.01 Annual: All regular full-time employees in the bargaining unit shall receive the following vacation with pay:
- After one year of employment, one week of vacation.
After two years of employment, two weeks of vacation.
After four years of employment, two weeks and one day of vacation.
After five years of employment, two weeks and two days of vacation.
After six years of employment, two weeks and three days of vacation.
After seven years of employment, two weeks and four days of vacation.
After eight years of employment, three weeks of vacation.
After nine years of employment, three weeks and one day of vacation.
After ten years of employment, three weeks and two days of vacation.
After eleven years of employment, three weeks and four days of vacation.
After thirteen years of employment, four weeks of vacation.
- Effective January 1, 1991, add the following:
- After fourteen years of employment, four weeks and one day of vacation.
After fifteen years of employment, four weeks and two days of vacation.

After seventeen years of employment, four weeks and three days of vacation.
After nineteen years of employment, four weeks and four days of vacation.
After twenty years of employment, five weeks of vacation.

NOTE: Anniversary dates will continue to be used for vacation accrual purposes as in the past.

16.02 No Accumulation: Vacation shall be taken on a current year basis and shall not accumulate from year to year.

16.03 Whenever possible, employees shall request vacation time off two (2) weeks in advance. Such requests shall be made to their immediate supervisor. Employees may not take vacation time off in increments of less than one-half (1/2) work day. The supervisor shall determine the number of employees who may be on vacation at any given time.

16.04 Anniversary Date: The date of hire shall be the vacation anniversary date for all employees.

16.05 Holidays During Vacation: Holidays occurring during an employee's scheduled vacation period shall not be charged against vacation time.

16.06 Selection: If two (2) or more employees select the same vacation period, seniority shall prevail.

16.07 Severance: In the case of termination, retirement or death of an employee, the employee or the employee's estate or designated beneficiary shall receive his/her vacation pay. Such vacation pay shall be computed on a pro rata basis, in accordance with the number of months worked during the year. Such payment shall be based on the current earnings of said employee.

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ARTICLE 18 - SICK LEAVE

18.01 Accumulation: For absences because of illness of an employee or employee's spouse, or dependent children living in the same household, an employee shall be compensated at his/her regular rate based on the normal work week, up to a maximum of one hundred eighty (180) days. Said sick leave plan shall begin with a thirty (30) day grant and shall be accumulative at the rate of one (1) day per month up to a maximum of one hundred eighty (180) days. Employees hired on or after July 1, 1989 shall not receive this thirty (30) day grant. Probationary employees

hired on or after July 1, 1989 shall accrue, but may not use, sick leave. For all employees hired after January 1, 1991, the maximum sick leave accumulation shall be one hundred twenty (120) days.

- 18.02 Accidents: Accidents occurring on the job must be reported to the employee's immediate supervisor immediately and time lost because of such accidents shall not be charged against sick leave. Accidents occurring on the job and compensated for under Worker's Compensation shall not be charged as sick leave. Accidents occurring outside the County employment shall be charged as sick leave and shall be paid for.
- 18.03 Abuse: The sick leave plan will not be abused by employees. In the event the Employer feels the employee is abusing sick leave, the Employer may request a doctor's certificate of illness. Any employee who abuses the sick leave plan may be subject to disciplinary action.
- 18.04 Termination: Upon termination of employment, one-half (1/2) of the employee's unused sick leave shall be paid the employee based on his/her regular pay for the normal work day and work week. In the event of the death of an employee covered under this Agreement, one-half (1/2) of the employee's sick leave shall be paid promptly to his/her estate. In order for an employee to be eligible for any termination pay through the employee's sick leave plan, the employee must have been employed by Barron County for a minimum of five (5) years (seven (7) years for employees hired after the date of ratification of the 1992-93 contract). Employees terminated for just cause shall not be entitled to any pay for accumulated unused sick leave.
- 18.05 Forfeiture: Any employee who is dismissed for cause shall forfeit all claims he/she may have to any sick leave termination pay.
- 18.06 Doctor's Certificate: In the event the Employer feels that any employee is abusing the sick leave, the Employer may request a doctor's certificate of illness. Any employee who is absent from work on sick leave for six (6) consecutive work days shall be required to provide a physician's certification upon return to work.
- 18.07 In the event an employee is aware in advance that sick leave benefits will be needed or used, it is the duty of the employee to notify the Employer as far in advance as possible in writing regarding the anticipated time and duration of said sick leave and medical

certification that the employee will be unable to perform his/her normal work functions. The County has the right to a second medical opinion at the County's expense.

Family and Medical Leave shall be provided pursuant to Section 103.10, Wis. Stat.

ARTICLE 19 - HEALTH INSURANCE

- 19.01 The Employer agrees to pay the full cost of the single plan, and up to \$400.38 per month towards the family plan for 1992. For 1993, the dollar amount shall be adjusted to a flat dollar amount equal to 85% of the 1993 premium for the family plan, based on the standard health insurance plan.
- 19.02 Employees working more than fourteen (14) hours per week but less than thirty-five (35) hours per week who are allowed to join the group by the carrier/provider shall have their premiums paid on a pro rata basis.
- 19.03 The Employer may from time to time change the insurance carrier and/or self fund its health care program, if it elects to do so, provided the level of benefit is substantially equivalent or superior to that under the present policy.
- 19.04 Probationary employees, if otherwise eligible, may be allowed to participate in the insurance program, but shall pay the full premium until completion of probation.
- 19.05 Existing employees who are presently enrolled shall continue to receive pro rata benefits.
- 19.06 Employees may participate in the State Life Insurance Plan, with the Employer paying up to \$4.25 per month of the individual employee's premium. The Employer shall make available the "Additional" and "Spouse and Dependent Coverage" effective January 1, 1988.

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ARTICLE 23 - PART-TIME EMPLOYEES

- 23.01 Part-time employees working more than fourteen (14) hours per week but less than thirty-five (35) hours are to receive all benefits, holidays, vacation, and sick leave on a prorated basis unless otherwise specified. Health insurance shall be prorated pursuant to Article 19. For the first year, benefits shall be prorated based on the number of hours worked during probation; thereafter, they shall be based on the number of hours worked during the previous year. Wisconsin Retirement and Social

Security shall not be prorated.

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ARTICLE 26 - ENTIRE MEMORANDUM OF AGREEMENT

26.01 This Agreement constitutes the entire agreement between the parties and no oral statements shall supersede any of its provisions. Any amendment supplemental hereto shall not be binding upon either party unless executed, in writing, by the parties hereto. Waiver of any breach of this Agreement by either party shall not constitute a waiver of any future breach of this Agreement.

1990-1991 Agreement

ARTICLE 24 - SEASONAL EMPLOYEES/LIME QUARRY

24.01 Lime Quarry employees shall be subject to the following:

- A. In lieu of a probationary period, seasonal employees shall not receive benefits on the first season of employment.
- B. With the second season of employment, employees shall accumulate paid sick leave at a rate of one (1) day for each month of full-time employment, accumulative to a maximum of one hundred eighty (180) days. However, employees will not be entitled to any termination pay benefits for their accumulated sick leave.
- C. With the second season of employment, an employee shall receive paid holidays that occur during the employee's season of employment.
- D. Employees working for Barron County prior to June 16, 1983 shall have sick leave in accordance with Article 18 of the Agreement and vacation benefits in accordance with Article 16 of the Agreement.

24.02 The County agrees to pay each seasonal employee ten dollars (\$10.00) per pair of safety shoes (hard toes) purchased by the employee upon the submission of the receipt of purchase beginning with the second season of employment.

1992-1993 Agreement

ARTICLE 24 - SEASONAL EMPLOYEES/LIME QUARRY

24.01 Lime quarry employees shall be eligible for sick leave and holidays on the same basis and subject to the same criteria and restrictions, as those benefits are provided for other employees in the bargaining unit.

24.02 The County agrees to pay each seasonal employee ten dollars (\$10.00) per pair of safety shoes (hard toe) purchased by the employee upon the submission of the receipt of purchase beginning with the second season of employment.

BACKGROUND

The County employs certain employees during the spring, summer, and fall to work in a lime quarry. These employees have been considered seasonal employees by the parties in the sense that the quarry does not operate during

the winter months. The same employes have returned year after year, however. There is an expectation that they will do so after passing a first-season probationary period. For many years the lime quarry employes have received certain benefits as provided in various collective bargaining agreements between the parties. Certain of the employes were eligible to receive vacation benefits as provided in the 1990-1991 agreement.

The County and the Union negotiated over a successor agreement. These negotiations commenced on August 8, 1991 and were concluded on March 30, 1992 and April 14, 1992 when the respective parties executed the 1992-1993 collective bargaining agreement.

During the negotiations for the successor agreement, both parties were represented by professionals. One party prepared the agreement while the other reviewed and approved the text.

The recognition clause in the 1990-1991 agreement, Article 2.01, provides that the "Employer recognizes the Union as the exclusive collective bargaining agent for all regular full-time and regular part-time nonprofessional employes in the Barron County Courthouse, Library, and Lime Quarry, excluding . . . "

The 1990-1991 agreement also contained Article 24, a section that specifically applied to Seasonal Employes/Lime Quarry. Section 24.01 in subsections A., B., C., and D. provided that seasonal employes not receive benefits in the first season of employment, that upon commencement of the second season, they accumulate sick leave to a maximum of 180 days but that they not be entitled to termination pay benefits for accumulated sick leave, that with the second season they receive paid holidays, and that employes working prior to June 16, 1983 receive sick leave and vacation benefits pursuant to Article 18 and Article 16, which apply to regular full-time employes of the County. This language essentially reflected a County Personnel Policy which had been in effect with respect to the lime quarry employes for many years prior to their inclusion in the bargaining unit.

Notably, Article 24.01 did not define "seasonal" employes as being separate or different from regular full-time and regular part-time employes, nor did it expressly limit any benefits enjoyed by lime quarry employes to those provided in this provision. In fact, it is undisputed that lime quarry employes received retirement, health insurance and life insurance benefits pursuant to Articles 12, 19 and 23.

As part of a comprehensive proposal for the successor agreement, the Union proposed to "delete the final sentence from Section 24.01 B." The County, on the other hand, as a part of its comprehensive proposals with respect to Section 24.01 proposed the following: "Delete the current language in its entirety and substitute the following: Lime quarry employes shall be eligible for sick leave and holidays on the same basis, and subject to the same criteria and restrictions, as these, benefits are provided for other employes in the bargaining unit."

Neither party raised the issue of vacation entitlement of lime quarry employes with the other. There were only sketchy discussions confined to each caucus regarding the sick leave and holiday benefits being proposed by the County. The Union never asked to abolish the grandfather clause with respect to vacations.

The Tentative Settlement of the parties indicates the following with respect to Article 24 - Seasonal employees/Lime Quarry: Section 24.01: Delete the current language in its entirety and substitute the following:

Lime quarry employees shall be eligible for sick leave and holidays on the same basis, and subject to the same criteria and restrictions, as these benefits are provided for other employees in the bargaining units.

Note: Agreement with this item is conditioned on benefits still being available following six (6) months of service.

The 1992-1993 agreement provides as follows: 24.01 "Lime quarry employees shall be eligible for sick leave and holidays on the same basis and subject to the same criteria and restriction, as these benefits are provided for other employees."

Margaret McCloskey, the bargaining representative for the Union at the time of the negotiations for the 1992-1993 agreement, testified that she believed that the effect of the County's proposal was to treat lime quarry employees the same as all other bargaining unit employees. According to McCloskey, the Union thought that the vacation "grandfather" clause was being eliminated so that all lime quarry employees would receive vacation pursuant to Section 16, the general vacation language. She did not, however, confirm this belief with the County's bargaining representative. It is evident from the testimony adduced at hearing that the Union's bargaining team did not understand the County's offer to be that of relinquishing vacation benefits for grandfathered lime quarry workers hired prior to June of 1983 in exchange for improved sick leave benefits. There was no discussion of forfeiting vacation benefits for sick leave payout at the Union ratification meeting.

Record evidence also establishes that the County believed that it was offering improved sick leave benefits to lime quarry employees in exchange for surrender of limited "grandfathered" vacation benefits. The County, however, never explicitly told the Union this during negotiations, relying exclusively on a paper exchange.

During the summer of 1992, the grievant, a lime quarry employee, requested vacation. His immediate supervisor approved said vacation. Following consultation with the County's Personnel Coordinator, the supervisor advised the grievant that he was entitled to use any accrued vacation, however, he was no longer earning vacation under the provisions of the 1992-1993 collective bargaining agreement. This action on the County's part resulted in the instant grievance.

POSITIONS OF THE PARTIES

Union

The Union argues that the County never informed the Union that it intended to discontinue vacation by its 1992-1993 proposal. According to the Union, a "meeting of the minds" on such a discontinuation did not and does not exist. It asserts that the 1992-1993 labor agreement must be applied as expressed. There is nothing in the agreement, bargaining history, or parol evidence which illuminates the parties' intent. Therefore, the Union submits, the express language is clear and governing.

To support its position, the Union makes a number of arguments. It stresses that there is no question the grievant is a bargaining unit member and that the lime quarry employees are covered by the agreement. Any limitations intended to apply to the lime quarry employees exclusively as seasonals should be clearly articulated. Because there is nothing in the agreement expressly

excluding the seasonals from the vacation benefit provided for in Article 16 of the agreement, the Arbitrator should conclude that they are covered by Article 16. This is especially true, according to the Union, because there are no ambiguities or conflicting interpretations of Article 16. There is no evidence to even suggest that an agreement was reached to discontinue such an important benefit. The Union points to the fact that skilled representatives were used by both parties to reflect the last meeting of the minds.

The Union believes that the discontinuation of vacation resulted from laymen untrained in the precise use of words attempting to retrospectively give interpretive meaning for self-serving economic reasons. While some players may be tempted to sneak one by, the success of doing so in the short term results in distrust, antagonism, and poor morale in the long term.

The Union notes that while the County posited that Section 24.01 only allows eligibility for sick leave and holiday benefits, lime quarry employes received retirement benefits provided under Article 12 and health insurance under Article 19. Thus, any reliance upon the principle that "to express one thing is to exclude another" is misplaced.

The Union also stresses that the County's negotiator was thorough and precise in her summation of tentative agreements. The detail of changes is well-articulated and fails to reflect in any mode or manifestation a quid pro quo agreement to discontinue vacation benefits. No implicit or explicit proposal was proffered by the employer to terminate vacation benefits. Noting that forfeiture of vacation benefits was never communicated or considered by the union membership because the Union had no idea that this was a part of the proposal proffered by the County, the Union stresses that the Union never would have agreed to relinquish such a valuable benefit.

In conclusion the Union asserts that it simply is not believable that workers would agree to give up the vacation benefit. Nothing in the 1992-1993 agreement even remotely implies such a forfeiture. No inference of forfeiture can be made by comparing the terms of the 1992-1993 and 1990-1991 agreements. Because in the Union's view there is no record of any sort to support a contention of intent beyond the terms clearly expressed in the agreement, the County has not met its burden of proof required to support unexpressed intent. Any interpretation by the arbitrator based on the intent of the County, whether in good or bad faith, would do violence to the agreement and the collective bargaining process. To ask the arbitrator to interpret out of existence a clearly expressed benefit constitutes a request for contract making rather than contract interpreting. The grievance should be sustained.

County

The County argues that the clear and unambiguous language supports its position and precludes reference to parol evidence. It cites numerous arbitral decisions which stand for the proposition that evidence of parol agreement cannot be allowed to modify the provisions of a written contract which explicitly governs the point in contention. Thus, according to the County, there is ample arbitral authority to preclude the use of parol evidence when the pertinent contract language is clear and unambiguous.

The County believes the language in Section 24.01 is clear and unambiguous. Historically, Section 24.01 has regulated the eligibility of lime quarry employes for sick leave, holiday, and vacation benefits. The express deletion of vacation benefits from this provision, it submits, can only mean that those grandfathered seasonal employes are no longer eligible for vacation benefits.

Stressing that an arbitrator may not ignore clear-cut contractual language and may not legislate new language, the County asserts that the parties to a contract are charged with full knowledge of its provisions and of the significance of the language. Citing the extensive paper trail of proposals and counterproposals culminating in the written summary of the tentative settlement, the County asserts that the Union had ample opportunity to review and question the provisions of the settlement prior to the execution of the 1992-93 contract.

As the County sees it, the Union would have the arbitrator rule that, since Section 24.01 no longer provides vacation benefits for the seasonal lime quarry employes hired before June 16, 1983, the contract now provides vacation for all the seasonal lime quarry employes. The County stresses that this argument ignores the fact that Article 16 expressly limits vacation benefits to all full-time employes which the lime quarry employes are not.

The County avers that if the Union really believed that, by silence, the contract treated the seasonal lime quarry employes as full-time employes for vacation benefit purposes, there would have been no need to have expressly provided the benefit for the grandfathered employes in Section 24.01(D) of the 1990-91 agreement. Under the Union's theory, it alleges, all of the lime quarry employes should have had the vacation benefit from day one, yet it is clear that only grandfathered employes received vacation under the prior contracts.

The County claims that if the language is found to be ambiguous, the bargaining history and the parties' past practice supports its position. Where there is ambiguity, the County insists that it is not enough to show that one side believed an agreement had been reached, for mutual acceptance means that it must be proven by supporting evidence that the other side knew it was entering into the same agreement. Furthermore, the burden of proof rests with the party claiming the existence of the agreement. There is, it contends, a heavy burden of proof which the Union cannot meet. The County points out that without any change in the reference to full-time employes in Article 16 and with the deletion of Section 24.01(D) regarding grandfathered employes, the Union seeks vacation benefits for all of the seasonal lime quarry employes. According to the County, since the Union is the party seeking to modify the applicability of Article 16, the burden is on the Union to clearly establish the existence of a mutually accepted agreement by the parties providing seasonal employes vacation benefits. There is no support for the Union's position in either the past practice or the bargaining history.

Of special interest is the bargaining history wherein the Union did offer a proposal to delete the prohibition against the lime quarry employes being eligible for sick leave payout benefits but did not offer such a proposal of vacation benefits for non-grandfathered lime quarry employes. Even if the County had agreed to the Union's proposal, all of the quarry employes would still not have been eligible for vacation benefits.

Noting that the Union does not dispute the accuracy of the 1992-93 agreement and there is no evidence of error in the written agreement, the Union cannot argue that there is a term missing from the agreement. Because there was no mutual mistake, but rather a misunderstanding, the Union's acceptance of the agreement as written leaves the parties with an executed agreement which is binding.

The County's final argument is that the arbitrator lacks the authority to order the County to provide vacation benefits for the seasonal lime quarry employes. Because the arbitrator's authority is limited to the interpretation and application of the specific provisions of the agreement, the arbitrator has

no authority to render a decision which would modify, add to or delete from the express terms of the agreement. Citing the Entire Memorandum of Agreement clause, Article 26, it submits that the Union is seeking to change the interpretation and application of Article 16 even though Article 16 remained unchanged during the negotiations between the parties.

For all of these reasons, the County believes that the grievance should be denied and dismissed.

DISCUSSION

The starting point for any analysis of benefit entitlement for lime quarry employes must begin with an examination of their employment status under the collective bargaining agreement. Two clauses are instructive in ascertaining how the parties view lime quarry employes, Article 2.01, the Recognition Clause and Article 24, entitled Seasonal Employees/Lime Quarry.

Article 2.01, which exists unchanged in the 1990-1991 and 1992-1993 agreements defines the unit as "all regular full-time and regular part-time nonprofessional employes in the Barron County Courthouse, Library, and Lime Quarry, excluding. . ." (emphasis added)

Article 24 does not define seasonal employes as being different from regular full-time and/or regular part-time employes. All sections of Article 24 as it existed in the 1990-1991 agreement make it clear that there is a reasonable expectation of employment for lime quarry employes from year to year upon completion of the probationary period, the first season of employment. Section "A" refers to the first season of employment. Section "B" grants paid sick leave with the second season of employment while Section "C" grants holidays with the second season of employment. There is a clear contractual assumption on the part of the parties that the same employes will return year after year and that they have a reasonable expectation of continuing employment. Thus, the lime quarry employes are not "seasonal" in the sense that they are employed for only one or two seasons.

Given their specific inclusion in Article 2.01 as being regular employes, either full-time or part-time and no contrary definition, it is reasonable to conclude that lime quarry employes are regular full-time and regular part-time nonprofessional employes pursuant to Article 2.01. The issue then revolves around a determination as to whether Article 24 as amended in the 1992-1993 agreement exclusively defines the benefits to which the lime quarry employes are entitled.

At first blush, it is tempting for the arbitrator to conclude that there really has been no meeting of the minds on this issue. However, the fact remains that the parties did agree to a substantial language deviation from the previous contract language with respect to Article 24.

Protestations aside, this is a case of one party playing "gotcha" and the other responding with "gotcha back". It was incumbent upon the County to make it clear to the Union that it was sacrificing "grandfathered" vacation benefits for improved sick leave payout. It was also incumbent upon the Union to confirm with the County, McCloskey's belief that the elimination of Section "D" of Article 24.01 would result in the extension of vacation benefits to all quarry employes pursuant to Article 16. Neither party communicated with the other.

It is not uncommon for parties to agree to specific language, each having a different opinion of what such language means. Because this appears to be the case presented by the instant dispute, interpretation of the express

language agreed to by the parties will dictate the end result herein.

Two constructions can be made of the parties' amendment to Article 24 in light of the other provisions in the agreement, specifically the recognition, retirement, and health insurance provisions. One construction, that urged by the County, is that Article 24 and only Article 24 controls benefits available to lime quarry employes because of the seasonal nature of their work. This construction is the appropriate one in the view of the County because Article 24 is the embodiment of the County's unilateral treatment of lime quarry employes prior to their accretion into the unit.

The other construction, that advanced by the Union, is that Article 24 only denotes the benefits for lime quarry employes which are different from those enjoyed by other regular full-time and regular part-time employes, but does not denote all of the benefits to which they are entitled. In evaluating the 1990-1991 collective bargaining agreement, both constructions are plausible. However, the fact that lime quarry employes received health/life insurance and retirement benefits not set forth in Article 24, but rather in other more general provisions of the agreement, favors the Union's interpretation.

The deletion of Paragraph "D" of Article 24 in the 1992-1993 agreement takes on a different significance, depending upon which construction is adopted. The new silence with respect to vacation benefits under the County's interpretation can only mean that, by implication, those benefits no longer exist. However, the deletion, under the Union's theory, merely results in the abolition of the grandfather clause, now making vacation benefits for lime quarry employes the same as for all other regular full-time and regular part-time employes pursuant to Article 16 and/or Article 23.

The undersigned, in deciding between the two interpretations, is not comfortable with either, because under either interpretation one party is receiving a result which it did not contemplate. She does, however, conclude that the Union's interpretation should prevail under the circumstances. This is the case because it was the County which drafted the new language. "It is incumbent upon the proponent of a contract provision either to explain what is contemplated or to use language which does not leave the matter in doubt." 1/ Moreover, generally speaking, where doubt exists, any ambiguity not removed by any other rule of interpretation may be removed by construing ambiguous language against the party who proposed it. 2/

There is also a general arbitral mandate to avoid a construction which results in a forfeiture, in this case, vacation for "grandfathered" lime quarry workers.

There are other provisions in the 1992-1993 agreement, besides Article 24 which clearly apply to lime quarry employes. Moreover, the recognition clause is broad enough to encompass them as regular full-time or regular part-time employes given their reasonable expectation of return year after year and the absence of a definition of "seasonal" employes, excluding lime quarry workers from regular full-time or regular part-time status. Determinations as to

1/ How Arbitration Works, Fourth Edition, Elkouri and Elkouri, page 362.

2/ Ibid.

vacation eligibility are clearly set forth in Article 16 and Article 23.

Accordingly, it is my decision and

AWARD

That the County did violate the collective bargaining agreement by not awarding vacation days to lime quarry employes.

That the County is directed to make them whole for any monetary losses suffered retroactively and to permit them to exercise their vacation benefits prospectively.

Dated at Madison, Wisconsin this 10th day of May, 1993.

By Mary Jo Schiavoni /s/
Mary Jo Schiavoni, Arbitrator