BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
THE ASHLAND FEDERATION OF PARAPROFESSIONALS, LOCAL 4232, WFT, AFL-CIO	Case 81 No. 49001 MA-7786
and	
THE ASHLAND SCHOOL DISTRICT	

Appearances:

Mr. William Kalin, Representative, Wisconsin Federation of Teachers, Route 1, P.O. Box 469K, South Range, Wisconsin 54874, appeared on behalf of the Union.

Mr. Ron Hollstadt, Business Manager, School District of Ashland, 120 East Main Street, Ashland, Wisconsin 54806, appeared on behalf of the District.

ARBITRATION AWARD

On March 25, 1993, the Ashland Federation of Paraprofessionals, Local 4232, WFT, AFL-CIO filed a request with the Wisconsin Employment Relations Commission to have the Commission appoint a member of its staff to hear and decide a grievance pending between that Union and the Ashland School District. Following jurisdictional concurrence from the Employer, the Commission on April 26, 1993 appointed William C. Houlihan, a member of its staff, to hear and decide the matter. A hearing was conducted on June 23, 1993 in Ashland, Wisconsin. At the close of the evidentiary hearing the parties made closing arguments, and waived the filing of briefs.

This arbitration involves the vacation entitlement of employe Randi Greene.

BACKGROUND AND FACTS

The Employer and Union are signatories to a collective bargaining agreement which is applicable to various employes of this employer, including secretaries, bookkeepers, aides and other employes. Randi Greene, a secretary, is a member of this bargaining unit, and covered by its provisions. The parties stipulated to the following facts.

Ms. Greene was employed as a school year secretary from June 2, 1989 through June 30, 1991. As such, she worked a full-time schedule during the school year. Since July 1, 1991 Ms. Greene has been employed as a full-year secretary. As such,

she works year-around. Full-year secretaries work 1,950 hours per year. As of June 30, 1992, Ms. Greene had three years of employment with the District. Ms. Greene has worked 5,279 hours for the District as of June 30, 1992, 1,379 hours more than a full-year secretary works for a two-year period.

On or about January 21, 1993, the Union filed the following grievance concerning Ms. Greene's vacation:

> 21 January 1993
>
> Mr. Ron Hollstadt
> Business Manager
> School District of Ashland
> 120 East Main Street
> Ashland, WI 54806
>
> Re: Randi Greene - Vacation
>
> Dear Mr. Hollstadt:
>
> The language of the collective bargaining agreement is clear that Randi is entitled to two weeks vacation as of June 30, 1992. The language states that the employee is entitled to two (2) weeks paid vacation annually after two (2) years of employment.
>
> Randi has been employed by the District since May 25, 1989. She has not only acquired three years of employment with the District as of June 30, 1992, her total hours employed by the District for that three-year period exceeds the number of hours a full-year employee would have accrued for a two-year period.
>
> It is for the above reason that the Union requests that Randi be granted two weeks vacation as of June 30, 1992.
>
> Please consider this a Step 1 grievance and notify me of your position on the request.
>
> Sincerely,
>
> William Kalin /s/
> William Kalin

This grievance was denied by Mr. Hollstadt on or about January 26,

1993 with the following:

> **TO: Bill Kalin**
>
> **FROM: R.N. Hollstadt**
>
> **DATE: January 26, 1993**
>
> **SUBJECT: Randi Greene - Vacation - Grievance**
>
> The language of the collective bargaining agreement, Article 11 A. states: "Full year employees are entitled to. . . .vacation".
>
> Randi Greene started with the district 5-25-89 as a school year secretary and served in that capacity until 6-91. As of 7-91, Randi has been a full year secretary for the district and at that time became entitled to vacations per the terms of the current contract. Credit for service as a school year secretary does not enter into the calculation of vacation time due.
>
> Therefore, after 1 year of service (6-30-92) Randi is entitled to 1 week of vacation, after 2 years of service (6-30-93) 2 weeks of vacation, and after 7 years of service (6-30-98) 3 weeks of vacation.
>
> However, I previously stated as a compromise to your request that the district give credit for years of service as a school year employee in the determination of vacations, the district would give partial credit for service as a school year employee and grant 3 weeks of vacation after 6 years of service (6-30-97). This concession would not be considered a precedent and in the future the terms of the contract shall be followed. In light of the grievance this compromise proposal is hereby withdrawn.
>
> The Union request is denied based on the Article 11 of the collective bargaining agreement.
>
> Please consider this the conclusion to step 1 of the grievance procedure.

The matter was appealed through the grievance procedure, and ultimately denied.

Two witnesses gave testimony during the arbitration hearing. The first of those, Jane Wherritt, the District Bookkeeper, testified that she was originally hired as a school year secretary in 1975. She worked a school-year schedule until 1987. In 1987 Wherritt applied for and received her current position as Bookkeeper. At that time she was given three weeks vacation. It was her understanding that her vacation was predicated on her previous years experience with the District. As Bookkeeper, Wherritt is not a member of the bargaining unit nor governed by the provisions of the collective bargaining agreement. The second employe to give testimony was Mary Ward. Ms. Ward also occupies an administrative position within the District. Her position is not in the bargaining unit and not governed by the terms of the collective bargaining agreement. Ms. Ward has never been in the bargaining unit. It was her testimony that she has been with the District for six years; that when hired she had no vacation, was given one week after one year and currently enjoys two weeks vacation. Ms. Ward testified that it was her understanding that her vacation schedule was established by the terms of the Union contract. Notwithstanding the fact that technically that contract did not apply it is Ward's understanding that the District has "always gone by the Union agreement". Ward testified that it was her understanding that when Wherritt became Bookkeeper she was awarded the vacation schedule she received due to her experience with the District, and that she received "credit" for the school years that she had previously worked.

ISSUE

I believe the issue to be:

> Did the Employer violate the collective bargaining agreement when it failed to give Randi Greene credit for her school year employment in the calculation of Ms. Greene's vacation? If so, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 5 - SENIORITY

> A. Seniority shall be based on continuous service in the bargaining unit. The seniority of all employees shall begin with the employee's starting date of regular employment in the District. The employee's seniority shall not be diminished in layoff or approved leaves of absence.

. . .

ARTICLE 11 - VACATIONS

A. VACATIONS: FULL YEAR EMPLOYEES ARE ENTITLED TO ONE (1) WEEK'S (40 HOURS) PAID VACATION ANNUALLY AFTER ONE (1) YEAR OF EMPLOYMENT; TWO (2) WEEK'S (80 HOURS) PAID VACATION ANNUALLY AFTER TWO (2) YEARS OF EMPLOYMENT; THREE (3) WEEK'S (120 HOURS) PAID VACATION ANNUALLY AFTER SEVEN (7) YEARS OF EMPLOYMENT; FOUR (4) WEEK'S (160 HOURS) PAID VACATION ANNUALLY AFTER TWELVE (12) YEARS OF EMPLOYMENT. VACATION CANNOT BE CARRIED OVER.

B. ALL VACATION DAYS EARNED IN AN EMPLOYEE'S ANNIVERSARY YEAR MUST BE USED BY THE ANNIVERSARY DATE (I.E. DATE OF HIRE) OR THEY WILL BE LOST. THE SCHOOL DISTRICT RECOGNIZES THAT JOB RESPONSIBILITIES MAY RESTRICT THE USE OF VACATION IN A TIMELY MANNER SO THERE IS A THREE MONTH GRACE PERIOD. IF, HOWEVER, AT THE END OF THE GRACE PERIOD THERE IS STILL UNUSED CARRIED OVER VACATION DAYS, THEY WILL NO LONGER BE AVAILABLE FOR USE BY THE EMPLOYEE.

POSITIONS OF THE PARTIES

The parties' positions are fairly well summarized in the grievance and answer set forth above. The Union contends that the contract grants benefits by virtue of seniority with narrow, delineated exceptions. There is no exception here. While other than full-time employes are not entitled to take vacation under Article 11, there is nothing that suggests that school years do not count as time worked for purposes of computing vacation if and when an employe ultimately becomes eligible for such vacation. The experiences of the two administrative employes who gave testimony supports this claim.

The Employer objects to the admission of the testimony with respect to its practice, if any, applicable to non-bargaining unit positions. The Employer contends that it has and exercises administrative discretion in the granting of vacation to non-bargaining unit, non-contractual employes. Any reference to the terms and conditions under which they work is inappropriate in the eyes of the Employer. The Employer argues that only full-year employes are entitled to any vacation. In the Employer's view, only a full-year of work is applicable to the computation of vacation entitlement.

DISCUSSION

I believe that Article 11 is ambiguous with respect to the issue presented in this proceeding. On its face, Article 11 appears to provide vacation to full-year employes only. On its face, Article 11 also appears to establish a schedule of vacation conditioned on years' employment.

Article 11 confers a certain vacation entitlement upon employes predicated upon the number of years of "employment" enjoyed by those respective employes. At the moment, Greene is a full-year employe entitled to some vacation. There is no dispute as to that. The real question raised in this proceeding is how many years of employment Greene has. In essence, the District argues that Ms. Greene's employment extends back only to July 1, 1991, coinciding with her full-year employment. The view of the Union is that her employment extends back to her original date of hire, June 2, 1989, or, in the alternative, should be viewed cumulatively totalling in excess of the number of hours a full-time employe would work over the course of two full years.

The Employer relies upon the first sentence of Article 11, Paragraph A in support of its view. The sentence does not specifically say that which the Employer contends. Similarly, nothing in the contract specifically supports the Union's "accumulation" theory. Article 5, Paragraph A's definition of seniority which is "based on continuous service in the bargaining unit" and is measured by the "employe's starting day of regular employment" does support the Union's view. This definition is at least consistent with the Union's contention that Greene's employment ought to be marked by her starting date.

What I find most persuasive is the testimony of the two administrative employes, Wherritt and Ward. Taken together, I believe these two employes establish that the District treats school-year employment as employment for purposes of the vacation schedule. The Employer is certainly correct in its contention that it is free to do that which it chooses with respect to non-contractual employes' benefit levels. The Employer contends that it has administrative freedom, which it exercises, to set the vacation levels of non-bargaining unit employes. That claim was contradicted by the testimony of both Wherritt and Ward. What both Wherritt and Ward testified to was a practice of applying the terms of the collective bargaining agreement in the non-represented administrative sector of the Employer's operation. Both women testified that that was their understanding of how the vacation schedule worked. Ward went even further and claimed that the basis of that understanding and/or practice was the Union's contract. I believe their testimony to be relevant, not because it somehow is determinative of benefit levels for non-represented employes, but rather because it sheds light on the

administration's interpretation of the words of the collective bargaining agreement. Both Wherritt and Ward believe that Wherritt was given credit for her school year employment because the Employer followed the provisions of the collective bargaining agreement. In my mind, that sheds more light on what the parties believe the terms of their contract to say than does anything else in this record.

Based upon the foregoing, I believe that Ms. Greene is entitled to have her school year employment counted, in full, in the calculation of her vacation.

AWARD

The grievance is sustained.

REMEDY

The District is directed to credit Ms. Greene with one extra week vacation, giving her two weeks' vacation as of June 30, 1992.

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

By William C. Houlihan /s/
William C. Houlihan, Arbitrator