BEFORE THE ARBITRATOR

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| In the Matter of the Arbitration of a Dispute Between | |
| SHEBOYGAN COUNTY SUPPORTIVE SERVICES, LOCAL 110, AFSCME, AFL-CIO | Case 240 No. 50646 MA-8331 |
| AND | |
| SHEBOYGAN COUNTY (SHERIFF'S DEPARTMENT) | |

Appearances:
Ms. Helen Isferding, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Local 110, AFSCME, AFL-CIO.
Ms. Louella Conway, Personnel Director, on behalf of Sheboygan County.

## ARBITRATION AWARD

Sheboygan County Supportive Services, Local 110, AFSCME, AFL-CIO, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Sheboygan County, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The County subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on June 2, 1994 in Sheboygan, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by August 8, 1994. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

## ISSUES

The parties stipulated there were no procedural issues and to the following statement of the substantive issues:

> Did the Employer violate the Collective Bargaining Agreement when it refused to give Carol Schmidt twenty-one (21) days of vacation upon completion of eight (8) years of service. If so, what is the appropriate remedy?

CONTRACT PROVISIONS

ARTICLE 3

MANAGEMENT RIGHTS RESERVED

Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, transfer, demote or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason, is vested exclusively in the Employer.

By way of further enumeration and not as a limitation because of such enumeration, the Employer shall have the explicit right to determine the specific hours of employment and the length of the work week and to make such changes in the various details of the employment in the various employees as it, from time to time, deems necessary for the effective and efficient operation of County business.

The right to contract for any work it possesses and to direct its employees to perform such work wherever located is specifically reserved to the Employer.

The Union agrees that it will, at all times, promote the proper operation of County government and will make diligent efforts to protect the public interests of Sheboygan County.

Sheboygan County may adopt reasonable rules and amend the same from time to time and the Union agrees to cooperated in the enforcement thereof.

. . .

ARTICLE 19

VACATIONS

1. Employees Who Earn Vacation: All employees shall earn vacation, except temporary employees.

2. Continuous Service: Continuous service shall include all the time the employee has been in continuous employment status in permanent position. The continuous service of an employee eligible for vacation shall not be considered interrupted if he/she:

a. Was absent for less than thirty (30) calendar consecutive days;
b. Was on an approved leave of absence;
c. Was absent on military leave;
d. Was absent due to injury or illness.

3. Computing Years of Service: In

determining the number of full years of service completed, credit shall be given for all time employed by Sheboygan County in a permanent position. Any absence of more than thirty (30) calendar days except for military leave and absence due to injury or illness arising out of county employment and covered by the Worker's Compensation Act shall not be counted. Only the most recent period of continuous service may be counted in determining an employee's length of service.

4. Eligibility: After completion of the first twelve (12) months in a permanent position, employees shall be granted non-cumulative vacation based on accumulated continuous service as follows:

| Years of Service | No. of Vacation Days |
|---|---|
| 1 year | 12 days |
| 2 years | 15 days |
| 8 years | 21 days |

. . .

a. Part-time Employees: Employees who are regularly employed for less than twelve (12) months out of the year in continuous county employment shall be granted pro-rata vacation.

5. Computing Vacation:

a. Vacation credits in any given year shall not be earned for any period of absence without pay except that for administrative purposes any approved leave or leaves of absence totalling thirty (30) calendar days or less in a calendar year may be disregarded.

b. Upon termination of employment vacation shall be pro-rated and paid.

c. Effective January 1, 1981, the vacation year will be on a calendar year basis.

. . .

ARTICLE 22

PROBATIONARY PERIOD

All newly hired employees without previous county experience in the job to which they are hired, shall serve a probationary period of six (6) months. Probationary employees may be terminated without recourse to the grievance procedure, but the requirements for the termination reports shall be followed.

The following definitions shall apply:

a. A regular full-time or regular part-time employee is hereby defined as a person hired to fill a regular position.

b. A temporary employee is one hired for a specified period of time and who will be separated from the payroll at the end of such period.

c. A temporary employee who becomes a regular employee without a break in continuous service shall be deemed to have served their probationary period upon completion of six (6) months of service. His/her seniority shall date from the original time of hiring.

The County also cites the following provisions from its Agreements with Local 2481 and which applied to the bargaining unit from which the Grievant was accreted:

LOCAL 2481 LABOR AGREEMENT FROM 1978

ARTICLE 4, SUB 4

FRINGE BENEFITS FOR PART-TIME EMPLOYEES AND MATRONS

Matrons shall receive no fringe benefits except uniform allowance, pension contributions and county group insurance benefits.

LOCAL 2481 LABOR AGREEMENT FROM 1989

MEMORANDUM OF UNDERSTANDING

. . .

7. All benefits and conditions outlined in the 1987/88 labor agreement, which are applicable to matrons will remain in effect until the position of matron is eliminated.

LOCAL 2481 LABOR AGREEMENT 1989-91

ARTICLE 20

VACATIONS

1. Employees Who Earn Vacation: All employees shall earn vacation except temporary employees.

2. Continuous Service: Continuous service shall include all the time the employee has been in continuous employment status in permanent position. The continuous service of an employee eligible for a vacation shall not be considered interrupted if the employee:

a. Was absent for less than thirty (30) calendar consecutive day.

b. Was on an approved leave of absence;

c. Was absent on military leave;

d. Was absent due to injury or illness;

3. Computing Years of Service: In determining the number of full years of service completed, credit shall be given for all time employed by Sheboygan County in a permanent position. Any absence of more than thirty (30) calendar days except for military leave and absence due to injury or illness arising out of County employment and covered by the Worker's Compensation Act shall not be counted. Only the most recent period of continuous service may be counted in determining an employee's length of service.

4. Eligibility: After completion of the first twelve (12) months in a permanent position, employees shall be granted non-cumulative vacation based on accumulated continuous service as follows:

| Years of Service | Number of Vacation Days |
|---|---|
| 1 | 12 days |
| 2 | 15 days |
| 8 | 21 days |
| 13 | 22 days |
| 14 | 23 days |
| 15 | 24 days |
| 16 | 25 days |
| 17 | 26 days |
| 18 | 27 days |

a. Part-Time Employees: Employees who are regularly employed for less than twelve (12) months out of the year in continuous county employment shall be granted pro-rata vacation.

5. Computing Vacation:

a. Vacation credits in any given year shall not be earned for any period of absence without pay except that for administrative purposes any approved leave or leaves of absence totalling thirty (30) calendar days or less in a calendar year may be disregarded.

BACKGROUND:

The Grievant, Carol Schmidt, has been employed by the County since October 24, 1985. The Grievant began her employment with the County as a regular part-time Matron in the Sheriff's Department. In that position she was in the bargaining unit with the County's sworn law enforcement employes represented by Local 2481, AFSCME. The 1985-86 Collective Bargaining Agreement covering those employes provided that:

**IX**

**DEFINITIONS**

The following definitions shall apply to this contract:

. . .

2. Regular Part-Time Employee: is a person hired to fill a regular part-time position and works on a regularly scheduled shift basis or is employed as a matron.

. . .

4. Fringe Benefits for Part-Time Employees and Matrons Part-time employees shall receive all fringe benefits (holiday, vacation and sick leave benefits shall be prorated). Matrons shall receive no fringe benefits except uniform allowance, pension contributions, County group insurance benefits, and shift differential.

As a Matron, the Grievant received only the following fringe benefits: uniform allowance, pension contribution, health insurance and shift differential. She did not receive paid vacation. The Grievant's duties included cooking breakfast and supervising trustees in the kitchen in addition to the matron duties. The Grievant began working as a regular full-time Cook/Matron in the Sheriff's Department as of January 9, 1987. Under the 1987-88 Agreement covering that bargaining unit, the Grievant was entitled to earn, and began earning, vacation, holidays and sick leave, and upon January 9, 1988 received her vacation based upon completion of one year's service.

In 1988 the County began phasing out Matrons in the Sheriff's Department and employes in the Cook/Matron position were given the option of becoming Assistant Cooks or testing to become Correctional Officers. The Grievant chose the latter option and successfully tested to be a Correctional Officer, which position she assumed on April 9, 1988. The Grievant continued to be in the bargaining unit consisting of sworn and non-sworn employes in the Sheriff's Department. The Grievant continued to be eligible for vacation benefits.

In December of 1991 the sworn law enforcement employes in the bargaining unit represented by Local 2481 indicated they wanted a unit consisting of only sworn employes. The County, Local 2481 and Local 110 subsequently agreed that the unsworn employes in the unit, including Correctional Officers, would be accreted to the bargaining unit represented by Local 110. The County and Local 110 reached agreement on an addendum covering the accreted employes in May of 1993. The Addendum includes, in relevant part, the following provisions:

**ADDENDUM TO THE SHEBOYGAN COUNTY SUPPORTIVE SERVICES EMPLOYEES LOCAL 110, AFSCME, AFL-CIO**

This addendum shall apply to the employees of the Sheboygan County Sheriff's Department specifically the Correctional Officers, Dispatchers, Secretary I's and Assistant Cooks, who by reference are included with this Local 110 Labor Agreement.

All provisions set forth in the preceding labor agreement shall apply to the above described positions except as amended below:

. . .

F. **Vacation**

The vacation schedule for the above referenced employees is and will continue on a calendar year basis.

> Vacation must be taken not less than one-half (1/2) day at a time.
>
> . . .
>
> Individual Placements:
>
> DISPATCHERS

| Name | FT/PT | Start Date | Present Rate/Step | County Proposed Rate/Step | |
|---|---|---|---|---|---|
| ... | ... | ... | ... | ... | |
| CORRECTIONAL OFFICERS | | | | | |
| Davies, Judith | FT | 9/24/78 | 11.10-18 mo | 11.65 | 18 D |
| . . . | | | | | |
| Schmidt, Carol | FT | 10/24/85 | 11.10-18 mo | 11.65 | 18 D |

In the fall of 1993, the Grievant contacted the individual in charge of keeping vacation records to make sure she would be receiving her third week of vacation (6 additional days) as of October 24, 1993 and was subsequently advised that she would get the additional days. The Grievant subsequently put in to take the vacation time, but was informed in December of 1993 that there had been an error and that she would not be receiving the additional vacation. The Grievant then filed the instant grievance based on the denial of the additional vacation. The County took the position that the starting date used to compute her vacation entitlement was January 9, 1987, i.e., when she took the position in which she was first eligible for vacation benefits. The grievance was processed through the grievance procedure and the parties proceeded to arbitration on the dispute before the undersigned.

POSITIONS OF THE PARTIES

Union

The Union asserts that the real question is whether time in a position which is entitled to some benefits, but does not have vacation benefits, counts towards continuous service credits if one later receives a position that includes vacation benefits. The Union takes the position that such time does count as "continuous service". The Union relies on the wording of Article 19, Subsection 2, Continuous Service, of the Agreement, which provides, in relevant part, that "continuous service shall include all time the employee has been in continuous employment status in permanent position." Subsection 3 of that provision, "Computing Years of Service," provides "in determining the number of full years of service completed, credit shall be given for all time employed by Sheboygan County in a permanent position." Under that language, time spent in a position entitled to some benefits, albeit not vacation benefits, still counts as continuous service. The Grievant was at all times employed in a permanent position since being hired on October 24, 1985. On that date she began employment as a regular part-time employe and she has continued since that time in permanent employe status without a break in service. In support of its assertion that the Grievant has always been a "permanent" employe the Union cites the definition of "permanent" from Black's Law Dictionary (5th Edition) and a prior arbitration award involving interpretation of the term "permanent."

The Union also cites a prior arbitration award involving litigation of nearly the same question, except that in that case the time in question involved the period of time in which that grievant was in a position that was entitled to no benefits whatsoever. Although it was a different bargaining unit the agreement covering those employes contained wording almost identical to that contained here. The arbitrator found that the County violated the agreement by not giving the grievant in that case credit for all time employed

in a permanent position. The contractual language in question in that agreement was identical as to the definition of continuous service, computing years of service, and eligibility contained in this Agreement.

The Union concludes that the language of the Agreement is clear and unambiguous and provides that a continuous period of time in a permanent position is counted. Further, testimony showed that the County even considers time spent in other bargaining units to count for continuous service for computing vacation benefits when an employe transfers from one unit to another.

In its reply brief, the Union repeats its argument that the real question is whether the Grievant has been continuously employed in a permanent position and asserts that the County has never claimed that she was not. Thus, as in the prior arbitration award, the Grievant should be given credit for all time spent in a permanent position, the grievance sustained and the Grievant made whole.

County

The County takes the position that the language of the Agreement is clear and unambiguous that the Grievant was not eligible to receive credit towards vacation while in the position of Matron. The evidence establishes that the Grievant was hired as a Matron on October 24, 1985. The language in Article 4, Section 4 of the Agreement with Local 2481, which covered the Grievant's position at the time, was clear and unambiguous that "Matrons shall receive no fringe benefits except uniform allowance, pension contributions and County group insurance benefits." The Grievant testified that she was aware she was not eligible for any benefits other than those specifically listed when she was hired into the Matron position. In January of 1987 the Grievant took the Cook/Matron position which under the Agreement at the time entitled her to vacation benefits as follows

> Such positions shall receive all fringe benefits, (holidays, vacation and sick leave shall be pro-rated).

One year later the Grievant received her twelve days' vacation pursuant to the Agreement.

The contract language in the Agreement with Local 2481 at the time the Grievant was hired in the Matron position in 1985 had been unchanged for approximately ten years. That language remained unchanged and was clear and unambiguous that Matrons did not receive vacation accrual and the Grievant testified that she was aware of that and that she did not receive any vacation until one year after she had been in the Cook/Matron position. The language in Article 9, Subsection 4, of the Local 2481 Agreement, provided that part-time employes shall receive all fringe benefits which shall be pro-rated. The language is clear and unambiguous and cannot be misconstrued or interpreted any other way. Had the parties intended anything different, that would have been noted in the language. When the Grievant took the Cook/Matron position she became eligible for those fringe benefits the Agreement provided for part-time employes. That language was again clear and unambiguous.

The County also asserts that the Agreement with Local 110 does not address the position of Matron and never has because the position was never included in that bargaining unit covered by the contract. The County's witness, Inspector Grasse, who participated in the negotiations for the Addendum covering the accreted employes, testified that there was no discussion regarding any change in the process for accumulating vacation for those employes. The only reference in the Addendum to vacation is in subsection F. Beyond that there were no other discussions regarding vacation schedules, accrual or accumulation. Thus, the past history remained intact and continues

based on the provisions of the previous labor agreement.

Regarding the prior arbitration award cited by the Union, the County asserts that in that case the grievant was not defined as a student, seasonal, temporary or casual employe, i.e., positions specifically addressed in the labor agreement as not eligible for benefits. Thus, the arbitrator determined the grievant in that case was eligible for vacation benefits. However, in this case the position and vacation accrual benefits is specifically addressed in the Agreement and there is no question as to the intent of the parties.

The County notes that the vacation language in the Local 110 Agreement and the Local 2481 Agreement is nearly identical. The County cites Elkouri and Elkouri, How Arbitration Works (4th Edition) for the proposition that in construing the agreement, it must be read as a whole in order to determine the true intent of the parties. (At pp 352-353).

The County concedes that the seniority list for this bargaining unit specifies October 25, 1985 as the benefit date for the Grievant, but asserts that while she was eligible as of that date, it was only for those benefits specified in the Agreement.

In its reply brief, the County reiterates its assertion that the prior arbitration award concerning accrual of vacation benefits is distinguishable from the instant case. In that case the award was based upon a lack of language regarding the part-time position in question, while in this case the Agreement specifically addressed the Matron position the Grievant was in at the time. Since the Grievant was in a position specifically addressed by the Agreement, there is no alternative but to deny benefits until the employe assumes a position in which she is eligible for benefits under the agreement and then to calculate that benefit from that time forward. The County concludes that therefore it did not violate the labor agreement and the grievance must be denied.

DISCUSSION

As the parties note, the question to be answered is whether the time the Grievant spent in the Matron position -- a permanent position eligible for some benefits, but not vacation, is to be counted in computing her years of service with regard to vacation.

As a Correctional Officer, the Grievant was a part of the group of non-sworn employes accreted to the bargaining unit represented by Local 110. The parties negotiated an Addendum to their 1992-94 Agreement setting forth the wages, hours and conditions of employment for the accreted employes. That Addendum provides, in relevant part:

> **ADDENDUM TO THE SHEBOYGAN COUNTY SUPPORTIVE SERVICES EMPLOYEES LOCAL 110, AFSCME, AFL-CIO**
>
> This addendum shall apply to the employees of the Sheboygan County Sheriff's Department, specifically the Correctional Officers, Dispatchers, Secretary I's and Assistant Cooks, who by reference are included with this Local 110 Labor Agreement.
>
> All provisions set forth in the preceding labor agreement shall apply to the above described positions except as amended below:

(Emphasis added)

The wording of the Addendum emphasized above makes clear that is the Local 110 Agreement that applies to the accreted employes, except as set forth in the Addendum. The only provision in the Addendum with regard to vacation is Section F, and that provision is not relevant to the issue in dispute. Therefore, Article 19, Vacations, of the Local 110 Agreement applies to the Grievant. Sections 1, 2 and 3 of Article 19 provide as follows:

> 1. Employees Who Earn Vacation: All employees shall earn vacation, except temporary employees.
>
> 2. Continuous Service: Continuous service shall include all the time the employee has been in continuous employment status in permanent position. The continuous service of an employee eligible for vacation shall not be considered interrupted if he/she:
>
> a. Was absent for less than thirty (30) calendar consecutive days;
> b. Was on an approved leave of absence;
> c. Was absent on military leave;
> d. Was absent due to injury or illness.
>
> 3. Computing Years of Service: In determining the number of full years of service completed, credit shall be given for all time employed by Sheboygan County in a permanent position. Any absence of more than thirty (30) calendar days except for military leave and absence due to injury or illness arising out of county employment and covered by the Worker's Compensation Act shall not be counted. Only the most recent period of continuous service may be counted in determining an employee's length of service.

The language of those provisions is clear that both "continuous service" and "years of service" include "all the time the employee has been in continuous employment status in permanent position" and "all time employed by Sheboygan County in a permanent position." The wording does not exclude time spent in a permanent position not eligible for vacation when an employe subsequently moves into a position in which vacation can be earned, and such an exclusion cannot be inferred given the clear wording of the Agreement. As the Union notes, there is no claim that the Grievant has not been continuously employed in a permanent position. The wording is clear and unambiguous, and even if the practice under the Local 2481 Agreement could be considered otherwise relevant, it would be inappropriate to look beyond the clear wording of the Agreement.

Therefore, it is concluded that the time the Grievant spent in the Matron position is to be counted in computing the length of "continuous service" and "years of service" with regard to determining her vacation benefit. Thus, the County violated Article 19 when it denied the Grievant the additional days of vacation upon reaching October 24, 1993.

With regard to remedy, the County is directed to credit the Grievant's vacation bank consistent with the finding that her years of service for the purpose of computing her vacation benefit shall be computed from October 24, 1985. Due to the passage of time and the proximity to the end of this calendar year, pursuant to Article 19, Section 6, of the Local 110 Agreement, 1/ the Grievant is to be permitted, at her option, to carry the additional vacation time that results over into the first six months of calendar year 1995.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is sustained. The County is directed to immediately credit the Grievant's vacation bank with the additional vacation days earned based upon computing her years of continuous service from the date of October 24, 1985, and to permit her to use or carryover the additional vacation time consistent with the foregoing discussion.

Dated at Madison, Wisconsin this 3rd day of November, 1994.

By _____
David E. Shaw, Arbitrator

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1/ That provision states:

> 6. When Vacation May Be Taken: In determining vacation schedules the head of the department shall respect the wishes of the eligible employees as to the time of taking their vacation insofar as the needs of the county will permit. Vacation allowances shall be taken during the vacation year except that employees who are required by their department head to defer all or a part of their vacation for a given vacation period may be permitted to take it within the first six (6) months of the ensuing vacation year, after which it will be lost.