

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

CARPENTERS' LOCAL #2190, MIDWESTERN
INDUSTRIAL COUNCIL, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA

and

MARSHALL ERDMAN & ASSOCIATES, INC.

Case 8
No. 52234
A-5334

Appearances:

Mr. Michael Kenny, Business Agent, United Brotherhood of Carpenters and Joiners of America, appearing on behalf of the Union.

Melli, Walker, Pease & Ruhly, S.C., by Mr. Thomas R. Crone, appearing on behalf of the Company.

ARBITRATION AWARD

The Company and Union above are parties to a 1994-97 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 the holiday grievance filed by the Union on behalf of all employees.

The undersigned was appointed and held a hearing on May 17, 1995, in Madison, 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 June 6, 1995.

ISSUES

The Union proposes the following:

1. For the contract year December 1, 1995 - December 1, 1996, are Union members receiving the proper amount of holidays for that contract year?
2. If not, what remedy is appropriate?

The Company proposes the following:

1. Did the Company violate the provisions of Article 4, Section 1 of the 1994 - 1997 labor agreement?
2. If so, what remedy, if any, is appropriate?

RELEVANT CONTRACTUAL PROVISIONS:

ARTICLE IV FRINGE BENEFITS

Section 1 Holidays

All members of the Union covered by this agreement shall receive nine (9) paid holidays each year. The following days have been designated.

12/1/94 - 12/1-95

Christmas Day	12/26/94
Christmas Day	12/26/94
New Years Day	01/02/95
Good Friday	04/14/95
Memorial Day	05/25/95
July 4	07/04/95
Fri/Labor Day	09/01/95
Labor Day	09/04/95
Thanksgiving	11/23/95
Friday after Thanksgiving	11/24/95

12/1/95 - 12/1-96

Christmas Day	12/25/95
New Years Day	01/01/96
Good Friday	04/06/96
Memorial Day	05/27/96
July 4	07/04/96
Labor Day	09/02/96
Thanksgiving	11/28/96
Friday after Thanksgiving	11/29/96

12/1/96 - 11/16-97

Christmas Eve	12/24/96
Christmas Day	12/25/96
New Years Day	01/01/97
Good Friday	03/28/97
Memorial Day	05/26/97
July 4	07/04/97

Labor Day 09/01/97

DISCUSSION:

This case essentially concerns whether a "year", in the holiday provision of the parties' collective bargaining agreement should be interpreted to mean a calendar year, or the period between the contract's effective date of December 1 and the same date the following year. The facts are not significantly disputed.

For a number of years, the parties' agreements have been negotiated using a December 1 starting date for the contract, going back at least to 1988. Also since at least 1988, the parties' agreement has provided for nine annual holidays. In the 1988-91 agreement, these were specified in the following terms:

ARTICLE VII (HOLIDAY PAY)

Section 1

All employees covered by this Agreement who have been employed thirty (30) calendar days or more shall receive nine (9) paid holidays, designated as New Year's Day, Good Friday, Memorial Day, July 4th, Friday preceding Labor Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and if any of those days shall fall on Saturday or Sunday or vacation period, then the preceding Friday, or following Monday, shall be designated as the holiday at the option of the Employer.

In the successor agreement from 1991 to 1994, the holidays continued at nine per year, but the method of specifying them changed as follows:

ARTICLE IV FRINGE BENEFITS

Section 1 Holidays

All members of the Union covered by this agreement shall receive nine (9) paid holidays each year. The following days have been designated.

<u>12/1/91 - 12/1/92</u>		<u>12/1/92 - 12/1/93</u>		<u>12/1/93 - 1/1/94</u>	
Christmas Eve	12/24/91	Christmas Eve	12/24/92	Christmas Day	12/24/93
Christmas Day	12/25/91	Christmas Day	12/25/92	New Years Day	12/31/93
New Years Day	1/01/92	New Years Day	1/01/93	Good Friday	4/01/94
Good Friday	4/17/92	Good Friday	4/09/93	Memorial Day	5/30/94

Memorial Day 5/25/92	Memorial Day 5/31/93	July 4	7/94/94
July 4 7/03/92	July 4 7/05/93	Fri/Labor Day	9/02/94
Labor Day 9/07/92	Labor Day 9/06/93	Labor Day	9/05/94
Thanksgiving 11/26/92	Thanksgiving 11/25/93	Thanksgiving	11/24/94
Friday after	Friday after	Friday after	
Thanksgiving 11/27/92	Thanksgiving 11/26/93	Thanksgiving	11/25/94

Jim Schaff, Vice President of Manufacturing for the Company, testified that an adjustment was made between 1991 and 1993 by agreement between the parties, as a result of which there were ten holidays in 1991 and only eight in 1993. The Union did not dispute Schaff's explanation that this was to solve a particular problem that related mostly to employees on the night shift.

Schaff testified that in the negotiations that led up to the present Agreement, on October 17, 1994 he gave the Union team a proposal in writing to respond to the Union's holiday proposal, and that this proposal read as follows:

UNION PROPOSAL #4 1/

ARTICLE IV FRINGE BENEFITS

Section 1 Holidays

All members of the Union covered by this agreement shall receive nine (9) paid holidays each calendar year. The following days have been designated.

12/1/94 - 12/1/95

12/1/95 - 12/1/96

12/1/96 - 11/16/97

Christmas Day 12/26/94	Christmas Day 12/25/95	Christmas Eve 12/24/96
New Years Day 1/02/95	New Years Day 1/01/96	Christmas Day 12/25/96
Good Friday 4/14/95	Good Friday 4/06/96	New Years Day 1/01/97
Memorial Day 5/25/95	Memorial Day 5/27/96	Good Friday 3/28/97
July 4 7/04/95	July 4 7/04/96	Memorial Day 5/26/97
Fri/Labor Day 9/01/95	Labor Day 9/02/96	Labor Day 9/01/97
Labor Day 9/04/95	Thanksgiving 11/28/96	July 4th
Thanksgiving 11/23/95	Friday after	
Friday after	Thanksgiving 11/29/96	
Thanksgiving 11/29/95		

Company proposal

1/ Company Exhibit 2. Not reproduced are fax marks shown on the exhibit and two hand-written notations, representing that the document was submitted on October 17 to the Union and that the Union agreed on the same date.

Of the two Union witnesses who testified, one, Carolee Holman, was on the Union's bargaining committee in the 1991-94 and 94-97 contract rounds. Holman testified that she could not recall whether Company Exhibit 2 was exchanged in the negotiations, but was not certain it had not been. Holman testified that the Company made the proposal to shorten the third year of the contract so that the contract would not go through the end of the year, when there were holidays which might conflict with negotiations or ratification. Holman testified that the Union believes that the holidays provision violates the parties' agreement in the second year, but because the third "year" is actually less than a year, the third period of the contract is not violated. Holman testified that when the parties negotiated the 1994-97 contract, the pages were not initialled when agreed to. She stated that the Union had the contract printed, but that she did not review the source document page by page and, because the contract had been voted down once, did not have a copy to review on time. Holman testified that she became aware that there was a problem with the holidays provision when Dan Oradei told her about it.

Oradei testified that he was not involved in the contract negotiations, and that at the ratification vote there was no discussion of the holiday benefit. Oradei stated that he concluded that there was a problem with the holiday provision as printed in the contract within five minutes of looking at that contract, after he received a printed copy.

The Union contends that the parties have made a mutual mistake in preparing the written agreement, and that the principle of the parties' agreement is that there are to be nine holidays in each contract year. The Union points to the language in Article IV, Section 1, listing holidays explicitly under a series of dates beginning in each case on December 1 rather than the beginning of a calendar year, and argues that it was the intent of the negotiators that there be nine paid holidays for each contract year. The Union argues that the missing holiday is a "floating holiday", and that the Company should be required to allow for the holiday not printed in the contract.

The Company contends that holidays are calculated based on a calendar year, and that with the exception of the swap between 1991 and 1993, each calendar year has featured nine holidays, including the year disputed here. The Company contends that the third year of the contract was shortened at the Union's request because of difficulties in scheduling ratification votes at the end of November, and that the Company gave the Union a written proposal listing each of the holidays, which was accepted. The Company also argues that prior to both ratification votes, the Company submitted to the Union drafts of the tentative agreement which contained the same holiday provision as appears in the printed contract, and that the Union raised no objection. The Company contends that this demonstrates that there was not even a unilateral mistake, let alone a mutual mistake. The Company further contends that the Union should not be permitted to make a claim of surprise under these circumstances, and that the unusual remedy of contract reformation is entirely inappropriate under these circumstances. The Company requests that the grievance be denied.

I conclude that either the Company's or the Union's version of the issues would have the same effect here, but will reformulate the issues for clarity, as follows:

1. Does Article IV, Section 1 of the collective bargaining agreement require that holidays be calculated according to a calendar year or a year calculated from the original date of the agreement?
2. Did the Company violate the collective bargaining agreement by insisting upon the holiday dates printed in Article IV, Section 1 of the agreement?
3. If so, what remedy is appropriate?

There is some support for the Union's view of this matter in the form the parties have adopted for printing holidays during the last two rounds of collective bargaining (1991-94 and 1994-97.) In that each series of holidays is identified with the beginning date of December 1 for a period of six years, it is easy to see how this clause might be interpreted to specify that there is a "contract" year involved, and that this differs from the calendar year. I note, however, that the Union did not offer evidence to the effect that the change in method of listing holidays represented a 1991 decision by the parties to use a contract year for any substantive purpose. It is therefore at least possible, on this language, that the listing of dates under a heading that starts in December rather than January for each year was a matter of convenience, with no larger meaning.

Strongly supporting that interpretation is Company Exhibit 2, which explicitly states that "all members of the Union covered by this agreement shall receive nine paid holidays each calendar year." 2/ Schaff's testimony that this document was handed to the Union negotiating team on October 17, 1994, and served as the basis for the agreement on this section of the contract, was not explicitly denied by any Union witness, and must be accepted as true. This document clearly shows at least the Company's intent that holidays be calculated based on a calendar year. It is notable that in each calendar year since the beginning of the series placed in evidence by the parties (with the exception of the 1991-to-1993 swap testified to by Schaff and not denied by the Union) there are nine days specified. The sole exception is 1997, in which according to either party's theory the year is uncompleted and no violation could be found.

I conclude, based primarily on Company Exhibit 2, that the primary issue here -- whether holidays should be interpreted as falling on a contract year or calendar year basis -- should be interpreted in the calendar year sense explicitly referred to in that document. It follows that the Union cannot prevail on the remaining issues, and the grievance must be denied.

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

AWARD

1. That the parties' agreement provides for holidays at the rate of nine per calendar year.

2/ Emphasis added.

2. That the Company did not violate the collective bargaining agreement by insisting on application of Article IV, Section 1 as printed in the collective bargaining agreement.
3. That the grievance is denied.

Dated at Madison, Wisconsin this 18th day of July, 1995.

By Christopher Honeyman /s/
Christopher Honeyman, Arbitrator