BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

ALGOMA NET COMPANY

and

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL UNION 215T

Case 18
No. 53973
A-5468
Vacations

Appearances:

Mr. Howard Simon, Vice President, Gleason Corporation, 10474 Santa Monica Boulevard, Los Angeles, CA 90025, appearing on behalf of Algoma Net Company.

United Food and Commercial Workers, AFL-CIO, W3620 Rock Road, Appleton, WI 54915, by Mr. Eugene L. Krull, International Representative, appearing on behalf of Local Union 215T.

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, the United Food and Commercial Workers, Local Union No. 215T (hereinafter referred to as the Union) and Algoma Net Company (hereinafter referred to as the Company) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute concerning eligibility for improved vacation benefits included in the 1995-98 contract. The undersigned was so designated. A hearing was held on August 2, 1996 at the Company's offices in Algoma, Wisconsin, at which time the parties were afforded full opportunity to present such stipulations, testimony, exhibits, other evidence and arguments as were relevant. No record was made of the hearing, and the parties waived the submission of post hearing arguments.

Now, having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the undersigned makes and issues the following Award.

I. Issue

The issue in this case is whether the Company violated the collective bargaining agreement by its implementation of the November 1, 1995 increase in vacation benefits.

II. Relevant Contract Language

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ARTICLE VII
VACATIONS

Section 1. Employees may take their vacations in the period from anniversary date to anniversary date the following year. There will be no plant shutdown for vacations. Employees taking their vacation during this period will notify the Company at least six (6) weeks in advance of the time period requested. The Company will reply in writing to the employee at least four (4) weeks prior to the time requested. Vacations will be granted by seniority, if the request is made between January 1 and March 1, in writing. Requests after March 1, for vacation will be granted on a first come, first serve basis, and there will be no bumping by senior employees who make the request after March 1. The Company shall not be unreasonable in denying the request of employees. Employees may, with the approval of the Company, take their vacation for less than one (1) week at a time provided the Company is given three (3) working days notice. Company to answer back in two (2) working days. Not more than ten percent (10%) of the total work force shall be on vacation at any one time.

. . .

Section 2. New employees, for their first vacation only, must have worked 1700 hours by their first anniversary date of hire to qualify for one (1) week of vacation with pay at the Day Workers day rate or their average hourly earnings, whichever is greater.

New employees specified above working less than at least 1700 hours, but who have worked a minimum of 1260 hours in their anniversary year, shall receive vacation pay of two percent (2%) of their gross earnings computed from the employee's anniversary date of hire. New employees who have worked less than 1260 hours in their first anniversary year, shall receive no vacation pay for that year.

. . .

Section 6. Each employee in the employ of the Company for fifteen (15) years and who have worked a total of at least 1260

hours in their anniversary year, shall receive a vacation of four (4) weeks with pay, at the Day Workers day rate or their average hourly earnings, whichever is greater.

Employees specified above who have worked less than 1260 hours, but who have worked a minimum of 800 hours in their anniversary year, shall receive vacation pay of eight percent (8%) of their gross earnings computed from the employee's anniversary date of hire. Employees working less than 800 hours in their anniversary year shall receive no vacation pay for that year.

. . .

Section 9. Vacations shall be taken during the anniversary year in which they are earned and shall be non-cumulative.

. . .

Section 11. Any person who is not an employee of the Company on their anniversary date in the current year by reason of having been discharged, voluntary quit, or any other reason consistent with the provisions of this Agreement, shall receive prorated vacation pay.

. . .

III. Background

The Company makes sports bags, hammocks and other products at its Algoma, Wisconsin plant and the Union is the exclusive bargaining representative for the Company's non-exempt employees. The Company and the Union have been parties to a series of collective bargaining agreements, the most recent of which covers the period from November 1, 1995 through October 31, 1998. During negotiations over this agreement, the parties agreed to decrease the years of service required to earn four weeks of vacation from 20 years to 15 years. Before this agreement was reached, employees between 15 and 20 years received three weeks of vacation annually.

Employees are paid their vacation pay on their anniversary date, based upon their earnings in the preceding twelve months, and are then entitled to take the vacation time during the following twelve months. Employee Luann Wendricks reached 17 years of service on October 19, 1995, and received three weeks of pay based on her average hourly rate for the preceding twelve months. Employee Terry Simon reached 18 years of service in September of 1995. She too was paid three weeks of vacation pay. On December 15th, these two and another employee filed the instant grievance, asserting that they should have been credited with an additional week's vacation

for 1995-96 in light of the increase negotiated in the new contract.
The company denied the grievance, asserting that vacation entitlements are earned in the preceding year, during which none of the grievants would have been eligible for more than three weeks. The Company also argued that any negotiated increase in vacation benefits would be pro-rated, based on when the increase became effective. Thus, since the increase became effective on November 1, 1995, any employee between 15 and 20 years of service whose anniversary date was January 1st would receive credit on January 1, 1996 for 10/12ths of their vacation pay calculated on the basis of three weeks of vacation per year, and 2/12ths at four weeks per year. Notwithstanding this interpretation, the Company did pay four weeks of vacation to one employee with between 15 and 20 years of service whose anniversary date fell in the first half of 1996.

The grievance was not resolved in the lower steps of the grievance procedure and was referred to arbitration.

IV. Discussion

The Union's theory of this case is that any employee taking vacation time after November 1st should receive the benefit of the negotiated increase, no matter when the vacation pay was received. The Company's theory is that the increase is pro-rated based on the percentage of the anniversary year occurring after November 1st. The issue of how to implement the increase in vacation benefits was not directly discussed in negotiations. Neither party's interpretation is consistent with the contract language.

According to Section 6 of Article VII, in order to receive 4 weeks of vacation, an employee must have 15 years of service, and must have worked at least 1260 hours in their anniversary year, i.e. the 12 preceding months:

> Section 6. Each employee in the employ of the Company for fifteen (15) years and who have worked a total of at least 1260 hours in their anniversary year, shall receive a vacation of four (4) weeks with pay, at the Day Workers day rate or their average hourly earnings, whichever is greater.

On its face, this does not allow for the proration suggested by the Company. There are only two prerequisites to receiving the 4th week of vacation -- enough service to qualify and enough hours to qualify. The contract says nothing about employees having a right to something more than 3 weeks and less than 4 weeks of vacation. Likewise the second paragraph of Section 6, which defines vacation benefits for those who work less than the qualifying numbers, does not allow for a proration:

> Employees specified above who have worked less than 1260 hours, but who have worked a minimum of 800 hours in their anniversary

> year, shall receive vacation pay of eight percent (8%) of their gross earnings computed from the employee's anniversary date of hire. Employees working less than 800 hours in their anniversary year shall receive no vacation pay for that year.

The calculation of 8% of the earnings in the anniversary year is a straightforward mathematical computation. The language does not leave room for something other than 8%, yet if the Company is right, I must infer a different category of vacation benefits using some blended number calculated on an individual basis. The contract language simply does not allow for such an inference. While the Company argues that vacation is earned in the preceding year, it is earned by working a qualifying number of hours. The employees at issue here have worked those qualifying hours. The benefit to which they are entitled once they have worked the qualifying hours is determined by reference to the contract as it exists on the anniversary date.

The usual rule in arbitration is that clear language is to be applied, while ambiguous language must be interpreted. There is no ambiguity in the vacation language on the subject of what the level of benefits are, nor how the employee qualifies for a given level. While the Company's approach to prorating vacation benefits is not irrational, it cannot be reconciled with the contract language as it is written, and the arbitrator has no authority to modify the contract.

The Company's proration theory is inconsistent with the contract language. However, at least with respect to the grievances of Wendricks and Simon, the Union's claim of a contract violation is also inconsistent with the contract. Vacation pay is due to be paid on an employee's anniversary date. The new contract lowering the threshold for receiving the 4th week of vacation became effective on November 1, 1995. Simon's anniversary date was in September of 1995 and Wendricks' was in October. They both received three weeks' vacation pay on their anniversary, which was the appropriate amount under the contract as it then stood. The right to a 4th week did not come into existence until after these two grievants had already received the full measure of contract benefits owed to them. There was no contract violation at the time of the payment, and there is nothing in the language of the new contract to suggest that the parties meant to reach back and retroactively increase benefits paid before the contract term. Thus, for those persons whose anniversary date fell before November 1, 1995, the vacation benefit would have been defined by the contract then in existence. The new contract controls for those whose anniversary date fell on or after November 1st. Employees between 15 and 20 years of service in the first category were contractually entitled to receive three weeks of vacation. Employees between 15 and 20 years of service in the second category were contractually entitled to receive four weeks of vacation. Wendricks and Simon fall into the first category. They received the vacation benefit provided in the contract, and their grievances are therefore denied. 1/

1/ No evidence was offered at the hearing concerning the anniversary date of the third named

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

AWARD

The Company violated Article VII, Section 6 of the collective bargaining agreement by its implementation of the November 1, 1995 increase in vacation benefits, insofar as it sought to pro-rate the right to a 4th week of vacation for employees between 15 and 20 years of service whose anniversary date fell on or after November 1st. The Company did not violate the collective bargaining agreement insofar as it refused to increase the vacation benefits paid to those employees between 15 and 20 years of service whose anniversary date fell before November 1, 1995.

The appropriate remedy is to pay the full contractual vacation benefits under Article VII, Section 6 to those employees who are otherwise qualified by years of service and hours worked in the preceding 12 months and whose anniversary dates fall on or after November 1, 1995.

Dated at Racine, Wisconsin this 5th day of September, 1996.

By Daniel Nielsen /s/
Daniel Nielsen, Arbitrator

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grievant.