

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 1241, AFSCME, AFL-CIO,  
CHIPPEWA FALLS CITY EMPLOYEES**

and

**CITY OF CHIPPEWA FALLS**

Case 120  
No. 56294  
MA-10229

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Appearances:

**Mr. Steve Day**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 318 Hampton Court, Altoona, Wisconsin 54720, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Stevens L. Riley**, 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the City.

**ARBITRATION AWARD**

Local 1241, AFSCME, AFL-CIO, Chippewa Falls City Employees, hereafter Union, and City of Chippewa Falls, hereafter City or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Union requested, and the City concurred, in the appointment of a Wisconsin Employment Relations Commission staff arbitrator to hear and decide the instant dispute. The undersigned was so appointed. The hearing was conducted in Chippewa Falls, Wisconsin, on June 1, 1998. The hearing was not transcribed and the record was closed on June 22, 1998, upon receipt of post-hearing written argument.

**ISSUE**

The City frames the issue as follows:

Did the Employer violate the collective bargaining agreement by failing to give employees with 22 or more years of service who are not granted 25 days of vacation on their anniversary date in 1997 one day of vacation on January 1, 1998?

The Union frames the issue as follows:

Did the City violate the contract when it refused to grant employees bargained vacation benefits on January 1, 1998?

If so, what is the appropriate remedy?

### **RELEVANT CONTRACT LANGUAGE**

#### **ARTICLE 6 – VACATIONS**

Section 1. Employees shall be eligible for annual paid vacation as follows:

Five (5) days after 1 year of service;  
Ten (10) days after 2 years of service;  
Fifteen (15) days after 6 years of service;  
Sixteen (16) days after 7 years of service;  
Seventeen (17) days after 9 years of service;  
Eighteen (18) days after 11 years of service;  
Nineteen (19) days after 13 years of service;  
Twenty (20) days after 14 years of service;  
Twenty-one (21) days after 15 years of service;  
Twenty-two (22) days after 17 years of service;  
Twenty-three (23) days after 19 years of service;  
Twenty-four (24) days after 22 years of service;  
Twenty-five (25) days after 25 years of service.

Section 2. Employees may take their vacations at any time of the year upon mutual agreement with the superintendent. No more than two (2) employees shall be allowed to take vacation at the same time, except with the approval of the department head. If the department head does not give approval, and more than two (2) employees sign up for the same week, seniority shall prevail. Departments with three (3) or less employees shall only be required to release one (1) employee for vacation, except with the permission of the department head. When taking vacation, employees shall take no less than one-half (1/2) day vacation at a time.

Section 3. All vacation shall be paid at the rate and classification the employee carries at the time vacation is taken.

. . .

## ARTICLE 28 – DURATION

Section 1. This agreement shall be binding and in full force and effect from January 1, 1998 until December 31, 2000, both days inclusive.

. . .

### BACKGROUND

When the parties began negotiations on their 1998-2000 collective bargaining agreement, the Union presented a written proposal that included, inter alia, the following:

1. ARTICLE 6, SECTION 1, VACATIONS, PAGE 3. Add to the schedule:

“Twenty-four days after 22 years of service.”

At the next bargaining session, the City presented a written response to the Union’s proposal that included, inter alia, the following:

#### I. PROPOSALS TO BE INCLUDED IN BOTH CITY AND PARKS AND REC CONTRACTS

1. Amend. Vacation schedule to read as follows (new material highlighted):

Section 1. Employees shall be eligible for annual paid vacation as follows:

Five (5) days after 1 year of service;  
Ten (10) days after 2 years of service;  
Fifteen (15) days after 6 years of service;  
Sixteen (16) days after 7 years of service;  
Seventeen (17) days after 9 years of service;  
Eighteen (18) days after 11 years of service;  
Nineteen (19) days after 13 years of service;  
Twenty (20) days after 14 years of service;  
Twenty-one (21) days after 15 years of service;  
Twenty-two (22) days after 17 years of service;

Twenty-three (23) days after 19 years of service;  
Twenty-four (24) days after 22 years of service;  
Twenty-five (25) days after 25 years of service.

Response: AGREED

Upon receipt of this response of the City, the parties entered into a tentative agreement on this proposal of the Union. At no time during the negotiation of the parties' 1998-2000 collective bargaining agreement did the parties have any discussion regarding the implementation of this proposal.

In February of 1998, the Union filed a grievance alleging that the City violated Article 6, Section 1, of the 1998-2000 collective bargaining agreement by not providing an additional day of vacation to employees who had completed twenty-two years of service, effective January 1, 1998. On February 27, 1998, the Union advised the City that the remedy requested by the Union was to grant one day of vacation to:

Employees who have 22 years of service as of 1/1/98.

Employees who have 23 and 24 years of service as of 1/1/98.

Employees who have 25 years of service as of 1/1/98 who are not yet eligible for twenty-five days of vacation.

On February 16, 1998, City Comptroller Joe Rohrman responded to the grievance with the following letter:

This is in response to the union grievance you filed regarding the method of crediting the extra day of vacation after 22 years of service that was bargained in the 1998-2000 union contract.

Any unused vacation that an employee had as of January 1, 1998 was for the years of service that they worked prior to their last anniversary date and which was credited to them on that anniversary date. Therefore any vacation balance at January 1, 1998 was for vacation earned under the prior contract, and credit was given for the number of days vacation called for in that contract.

The contract that went into effect on January 1, 1998 calls for an extra day of vacation after 22 years of service, from 23 to 24, and credit for that extra day will be given on the first anniversary date in which an employee is credited for vacation that was earned while working under the current contract.

Using your anniversary date of October 13 as an example, the vacation that you are currently using was earned from the period October 13, 1996 through October 13, 1997. Vacation was credited in accordance with the 1995-97 contract. The vacation that you will receive in 1998 is for the period that you worked from October 13, 1997 through October 13, 1998 and will be credited according to the 1998-2000 contract. Assuming you were entitled to an additional day because of a change in the contract you would receive it on your anniversary date in 1998 because that is the first time that you are being credited vacation for time that you worked under the new contract.

### **POSITIONS OF THE PARTIES**

#### **Union**

By its terms, the contract is binding and in full force and effect as of January 1, 1998. The clear and unambiguous language of Article 28, Section 1, demonstrates that bargaining unit employees are entitled to receive 24 days of vacation after 22 years of service. When the parties negotiated this contract language, the City did not bargain, or even propose, language that would have delayed the extra day of vacation until the employee's anniversary date in 1998.

The Arbitrator should sustain the grievance. The City should be ordered to award the extra day of vacation to the ten employees listed on Union Exhibits 4 and 5 as of January 1, 1998.

#### **City**

During the negotiation of the 1998-2000 collective bargaining agreement, the parties did not discuss, or agree, to any change in the City's application of vacation benefits under the contract. Under a longstanding practice, employees are credited with vacation on their anniversary dates. There is no language in the contract to the contrary.

The interpretation proffered by the Union is not the interpretation that was mutually understood by both parties at the time that the parties agreed upon the 1998-2000 collective bargaining agreement. The grievance is without merit and should be denied.

### **DISCUSSION**

As the Union argues, Article 28, Duration, provides that the 1998-2000 agreement is binding and in full force and effect from January 1, 1998. Standing alone, this language

supports the Union's argument that the additional day of vacation benefit is payable on January 1, 1998. This language, however, does not stand alone, but rather, must be construed in a manner that is consistent with the requirements of Article 6, Section 1.

It is undisputed that, during the term of the 1995-97 agreement, and for many years prior to that agreement, the City has credited the vacation benefit provided in Article 6, Section 1, on the employe's anniversary date, and not at the beginning of the calendar year. Under this practice of implementing the Article 6, Section 1, vacation benefit, any vacation improvement resulting from the addition of the phrase "Twenty-four days after 22 years of service" to the 1998-2000 collective bargaining agreement would not be available to the employe until the employe's 1998 anniversary date.

During the negotiations that lead to the parties' 1998-2000 collective bargaining agreement, the parties agreed to modify the language of Article 6, Section 1, by inserting "Twenty-four days after 22 years of service." The Union proposed this modification, and the City agreed to this modification, without any discussion concerning the implementation of this vacation benefit.

Given the absence of any negotiation discussions regarding the implementation of the "Twenty-four (24) days after 22 years of service" vacation improvement, the most persuasive evidence of the parties' "mutual agreement" concerning the implementation of the Article 6, Section 1, vacation benefit is that established by the past practice. Contrary to the argument of the Union, the City has not refused to grant employes the vacation benefits that were bargained by the parties.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following

#### AWARD

1. The Employer did not violate the collective bargaining agreement by failing to give employes with 22 or more years of service who were not granted 25 days of vacation on their anniversary date in 1997 one day of vacation on January 1, 1998.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 27<sup>th</sup> day of November, 1998.

Coleen A. Burns /s/

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Coleen A. Burns, Arbitrator

CAB/mb  
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