BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (IAFF), LOCAL 484, AFL-CIO

and

CITY OF STEVENS POINT

Case 121
No. 61964
MA-12117

(Feldkamp Grievance)

Appearances**:**

Mr. Joseph Conway, Jr., 5th District Vice-President, IAFF, appearing on behalf of the Union.

Mr. Louis Molepske, City Attorney, City of Stevens Point, appearing on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, hereinafter referred to as the Union and the City respectively, were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing, which was not transcribed, was held on April 4, 2003, in Stevens Point, Wisconsin. Afterwards, the parties filed briefs. On May 23, 2003, the Union notified the undersigned that it was not going to file a reply brief. On May 27, 2003, the City filed a reply brief, whereupon the record was closed. Based on the entire record, the undersigned issues the following Award.

ISSUE

At the hearing, the parties stipulated to the following issue:

> What is the grievant's date of retirement and what benefits should he receive concurrent with that date of retirement?

When the parties filed their briefs though, both worded the issue slightly differently than what they stipulated to at the hearing. The Union's new wording was this:

> What is the grievant's date of retirement and what are the wages and benefits due to the grievant based on that retirement date?

The City's new wording was this:

> Was Mr. Feldkamp paid the wages and fringe benefits he was entitled to at the time of his retirement from the City of Stevens Point? If not, what wage and or additional benefit was Firefighter/Paramedic Feldkamp entitled to?

The only substantive difference between these two new versions and the stipulated issue is that both new versions reference wages and benefits, while the stipulated issue only referenced benefits. Since both parties modified the stipulated issue to reference wages, the undersigned has done likewise. Thus, that part of the stipulated issue now reads "wages and benefits" instead of just "benefits".

PERTINENT CONTRACT PROVISIONS

The parties' 2001-2002 collective bargaining agreement contained the following pertinent provisions:

ARTICLE I – RECOGNITION

> The City recognizes the Union as the exclusive collective bargaining representative for the employees of the Fire Department, including: Captains, Mechanics, Motor Pump Operators, Lead Paramedics, Ambulance Personnel and Fire Fighters; and in the event new positions should be created within the Fire Department, the inclusion or exclusion of such employees from this collective bargaining agreement shall be determined by stipulation between the parties hereto; and if such agreement is not reached, the matter shall be referred to the Wisconsin Employment Relations Commission for decision.

ARTICLE 2 – MANAGEMENT RIGHTS

It is agreed that the right to operate and manage the Fire Department rests solely and exclusively with the City. The City shall not establish new work rules that are primarily related to wages, hours and/or conditions of employment unless such work rules are negotiated with and agreed to by the Union. The City agrees that it will not use these management rights to interfere with the rights established under this Agreement.

These management rights will not be used to discriminate against any rights of the Union in this Agreement. These management rights shall not displace those rights stated elsewhere in the Agreement, including rights arising under Article 21 or under applicable law. Provided, however, that other than the obligation to negotiate the impact of permissive subjects of bargaining, nothing in this Agreement will be construed as imposing an obligation upon the City to negotiate over new work rules concerning the above areas of discretion and policy which are not mandatory subjects of bargaining.

Inclusion of this section will not abrogate any of the existing authority of the City, Fire Chief or Police and Fire Commission under state or federal law, except as otherwise limited by other terms of the agreement.

. . .

ARTICLE 7 – HOURS OF WORK

The work week for all employees who perform firefighting duties shall be an average of not more than fifty-six (56) hours, computed over a period of one (1) calendar year. Each platoon shall work its fifty-six (56) hour week as follows: work one twenty-four (24) hour period, have one twenty-four (24) hour period off, work one twenty-four (24) hour period, have one twenty-four (24) hour period off, work one twenty-four (24) hour period, have four (4) consecutive twenty-four (24) hour periods off. A working day shall begin at 7:30 o'clock A.M. and shall end at 7:30 o'clock A.M. the following day.

. . .

ARTICLE 10 – HOLIDAYS

. . .

A full year's holiday time shall be credited to the employee on January 1 of each year and need not be earned to be taken in time off or pay, provided that if the employee leaves the Fire Department during the year, any unearned time or pay taken shall be deducted from the employee's final pay, based on one (1) holiday for every 36 calendar days.

. . .

ARTICLE 15 – LONGEVITY

A.	After five (5) years	$15.00 per month
	After ten (10) years	$25.00 per month
	After fifteen (15) years	$35.00 per month
	After twenty (20) years	$45.00 per month
	After twenty-five (25) years	$55.00 per month

Longevity payments shall commence after the anniversary date of hire.

. . .

ARTICLE 19 – SALARIES

A. Wages. The following shall be the schedule of monthly wages to the members of the Stevens Point Fire Department covered by this contract for 2001-2002. The members shall be paid bi-weekly. . .

. . .

	January 1, 2001	January 1, 2002
Lead 3 – NRP	$3,981.86	$4,117.24

. . .

ARTICLE 21 – EXISTING RIGHTS

The rights of all members of the Union and the City existing at the time of the execution of this contract shall in no way be modified or abrogated and all privileges, benefits and rights enjoyed by the Union and the City which are not specifically mentioned or abridged in this agreement, are automatically a part of this agreement.

. . .

The City has adopted an Administrative Policy Manual. The first paragraph of the section entitled "Purpose" provides thus:

1. Purpose

    A. The general purpose of this manual is to provide written documentation of City administrative policies in an effort to ensure consistency in their understanding and application.

The first paragraph of the section entitled "Scope" provides thus:

2. Scope

    A. Administrative policies are designed to address basic operational matters facing the City which are not specifically governed by labor agreement, ordinance, departmental rules, or statute. These policies shall be applicable to all City positions. Administrative Policies apply to all regular and limited term employees of the City of Stevens Point except as otherwise provided by law.

Policy No. 2.12 in the Administrative Policy Manual is entitled "Employment Terminations." Its original date of issuance was December 18, 1989. It was subsequently revised on February 19, 1990 and February 18, 2002.

Section 1, D in that policy provides thus:

D. When selecting the effective date of resignation/retirement, the employee must choose a regularly scheduled work day as their final date of employment. For example, if the employee is regularly scheduled to work Monday through Friday, the employee must select a day that falls

between Monday through Friday as their final day (i.e. an employee may NOT elect to resign or retire on a weekend or holiday). If the employee is a shift worker, they must select a resignation/retirement date that coincides with one of their regularly scheduled duty days of their shift.

BACKGROUND

Among its many governmental functions, the City operates a fire department. The Union is the collective bargaining representative for most of the department's employees. Until his retirement from the fire department, Lennard Feldkamp was a lead paramedic/firefighter in the bargaining unit represented by the Union. He was also a former president of the Union.

Firefighters in the department work 24 hour shifts which run from 7:30 a.m. to 7:30 a.m. the following day. Since a shift covers two calendar days, the question arose long ago in the department how a workday was going to be referenced. Specifically, was it going to be identified as the day the shift started or the day the shift ended? Management decided long ago to identify a workday as the day the shift started. This is considered common knowledge in the department. The monthly work schedule is set up using this principle. So is the daily log book. So is the vacation schedule.

Firefighters are assigned to one of three rotating crews. These crews have been assigned various colors. Feldkamp was on the green color crew. The record indicates that the green color crew was scheduled to work the 24 hour shift from 7:30 a.m. Friday, June 28 to 7:30 a.m. Saturday, June 29, 2002. Since Feldkamp was on that crew, he was scheduled to work that 24 hour shift.

While it will be addressed in more detail in the **FACTS** section, it is noted here that this case involves the retirement date which Feldkamp selected. Feldkamp picked the date of June 29 and the Fire Chief changed it and moved it up one day to June 28. Insofar as the record shows, this was the first time an employee's retirement date was not honored (i.e. was changed) by the Chief. Prior to this instance, the date selected by the employee had been honored. The record indicates that in all those instances though, the employee selected a work day for their retirement date as opposed to a non-work day. Also, in all those instances but one, their retirement date was the day their 24-hour shift started – not the day their 24-hour shift ended. Deputy Chief Steve Koback testified that retirement dates have been handled this way dozens of times in the department, and he was unaware of any instance in his 31 years with the department where it was done differently. In his view, this was common knowledge in the department.

The following facts pertain to the retirement of Captain Dorn, a bargaining unit employee. Captain Dorn selected June 29, 2002, as his retirement date (i.e. the same date as Feldkamp selected). Captain Dorn was on the red color crew. June 29, 2002 was the start of a regularly-scheduled shift for the red color crew. That shift started at 7:30 a.m. Saturday, June 29 and finished at 7:30 a.m. Sunday, June 30, 2002. The date which Dorn selected for his retirement (i.e. June 29, 2002) was not changed by management. Thus, his official retirement date was June 29, 2002. Captain Dorn was paid for holiday #5.

The following facts relate to the retirement of Captain Wojcik, another bargaining unit employee. Insofar as the record shows, Wojcik was the only employee whose retirement date was the day his last regularly-scheduled shift ended. He selected December 31, 2002 as his retirement date. His last regularly-scheduled shift started at 7:30 a.m. December 30, 2002 and finished at 7:30 a.m. December 31, 2002. After his shift ended though on December 31, he worked overtime that day at the Employer's request. Since he worked overtime on December 31, 2002, that day was a workday for him even though it was not one of his regularly-scheduled workdays. The date which Wojcik selected for his retirement (i.e. December 31, 2002) was not changed by management.

FACTS

In a letter dated June 20, 2002, Feldkamp informed Fire Chief Mark Barnes that he (Feldkamp) was going to retire from the department for medical reasons. This letter indicated that his retirement would become effective " . . .at the end of my regularly scheduled shift at 0730 hours on June 29, 2002."

Chief Barnes responded to Feldkamp on June 26, 2002 with the following letter:

Dear FF/PM Feldkamp:

> On Monday, June 24, 2002, I received your letter dated June 20, 2002 which indicates that you will retire from employment with the City of Stevens Point just eight days later at the end of your June 28th shift. The day that you have arbitrarily selected has lead to an issue of overpayment. Please allow me to explain.
>
> According to City Administrative Policy 2.12(1)(D) our last day of work is to be a regularly scheduled day. An employee cannot schedule the last day to be a holiday or a regularly scheduled day off. The determination of your last day of employment is also recognized as a past practice. Everything from log books to vacation schedules note only the day that a shift starts on and therefore works the preponderance thereof. Your last day must be considered to be June 28,

> 2002 even though you are scheduled to department from work at 0730 Hrs June 29th.
>
> Here is the problem we are facing. On June 7, 2002, I approved your request to be paid for Holiday #5. This allowance was made prior to your retirement announcement. Past practice has been that holidays may be paid any time throughout the year with the understanding that the employee works until that holiday has been earned. This holiday is scheduled to be earned for those who work on, or after, June 29th.
>
> In light of your letter of resignation, we are now unable to pay you for Holiday #5. We are therefore forced to direct payroll to deduct this previously early payment of $407.28 from your last check.
>
> Please feel free to contact me if you have any questions.
>
> Signed,
>
> Mark L. Barnes

Feldkamp did not work the shift he was scheduled to work from 7:30 a.m. Friday, June 28 to 7:30 a.m. Saturday, June 29, 2002. Instead, he took sick leave.

Feldkamp's last paycheck contained his termination pay. Feldkamp was paid $9,322.08 as termination pay. One of the deductions on that paycheck was a deduction for Holiday #5 (which had previously been paid). This deduction was the one that Chief Barnes referenced in his June 26, 2002 letter. Specifically, the City deducted $407.28 from the amount Feldkamp would have otherwise received. This amount equals the pay for one holiday.

Firefighters are paid for their holidays as follows. They are compensated for ten 24 hour periods off. They can be compensated for their holidays by pay at the normal hourly rate, or by time off.

The holiday provision in the collective bargaining agreement provides that if an employee leaves the Fire Department during the year, any unearned time or pay taken will be deducted from the employee's final pay pursuant to the following formula: 1 holiday for every 36 calendar days. The Fire Department has compiled a chart which annualizes this formula. That chart provides thus:

To calculate Holidays for Retirement/Resignation

Holiday #	From:	Through:
1	January 1	February 5
2	February 6	March 13
3	March 14	April 18
4	April 19	May 24
5	May 25	June 29
6	June 30	August 4
7	August 5	September 9
8	September 10	October 15
9	October 16	November 20
10	November 21	December 26

This chart is not included in the collective bargaining agreement.

Deputy Chief Koback testified that the holiday provision in the collective bargaining agreement has historically been administered as follows: in order to earn and be paid for a holiday, the employee has to work through the 36th day. The employee does not qualify for the holiday if they simply work a part of the 36th day. Insofar as the record shows, holiday pay has never been prorated.

If Feldkamp had not retired when he did, his next regularly scheduled shift would have been the 24-hour period running from 7:30 a.m. July 3 to 7:30 a.m. July 4, 2002. Had Feldkamp retired then, or at any subsequent date, the 5th holiday would not be at issue because management acknowledged he would have qualified for the 5th holiday since he would have worked past the qualifying date (i.e. June 29, 2002).

The Union subsequently grieved the Chief's actions (i.e. changing Feldkamp's retirement date from June 29 to June 28, and withholding the pay for Holiday #5). The grievance was processed through the contractual grievance procedure and was ultimately appealed to arbitration.

POSITIONS OF THE PARTIES

Union

The Union contends that the City violated the collective bargaining agreement by its actions herein. According to the Union, the City violated the agreement in three respects: first, when the Fire Chief unilaterally changed Feldkamp's retirement date; second, when the

City incorrectly calculated Feldkamp's final paycheck; and third, when it determined that Feldkamp was not eligible for Holiday #5 and deducted the money for that holiday from his final paycheck. It elaborates on these contentions as follows.

With regard to the first matter (i.e. the retirement date), the Union notes for background purposes that Feldkamp was scheduled to work from 7:30 a.m. June 28 to 7:30 a.m. June 29, 2002. The Union maintains that since Feldkamp was scheduled to work on June 29 (specifically, the 7.5 hours between midnight and 7:30 a.m.), that should be his last day for purposes of retirement – not June 28 when his shift started. As the Union sees it, this is a very simple case - all the arbitrator needs to do is find that the date that Feldkamp selected as his retirement date should stand. The Union contends that the Chief should not be allowed to unilaterally change an employee's retirement date.

Building on the premise that the date Feldkamp selected as his retirement date should stand, the Union argues that the arbitrator need not look at any alleged past practice to decide this matter. However, if the arbitrator disagrees and does look at past practice for guidance, the Union's position is that there is no past practice that an employee's retirement date is the calendar day that starts their last shift. To support that contention, it relies on the testimony of Union witnesses Aldridge and Feldkamp who testified that they knew of no practice that retirement dates were set as the calendar day at the beginning of a shift rather than the calendar day at the end of a shift. The Union asserts that since they did not know of such a practice, there cannot be a binding past practice.

The Union argues in the alternative that even if there is a binding past practice, it conflicts with Article 7 (the provision which provides that firefighters work a 24-hour workday). It implies that when a practice conflicts with clear contract language, the practice cannot be applied.

The Union's final argument on the retirement date matter concerns City Administrative Policy 2.12(1)(D) which the Chief referenced in his letter of June 26, 2002. According to the Union, that policy is irrelevant to this matter and simply does not apply to this bargaining unit.

With regard to the second matter (i.e. the calculation of Feldkamp's final paycheck), the Union maintains that paycheck was calculated incorrectly by the City and the grievant was shorted $274.46 in regular pay and $3.66 in longevity pay. The Union's underlying premise is that since the grievant was employed for 13 full pay periods in 2002, he should have been paid for 13 full pay periods. The Union maintains he was not. In the Union's view, an employee's last check should be prorated based on the number of days worked in the pay period instead of the number of days worked in a month.

With regard to the third matter (i.e. holiday pay), the Union contends that since Feldkamp was employed by the City on the 36th day of the 5th paid holiday period, he should have been paid for that holiday. As the Union sees it, the contract does not require the employee to work "through" the 36th day or until midnight on the 36th day in order to be eligible to receive full credit for the paid holiday.

The Union argues in the alternative that even if an employee has to work the entire day to qualify for holiday pay, it was unreasonable for the City to not prorate the 5th holiday for Feldkamp. To support this notion, it notes that there is no language in the collective bargaining agreement which prevents the City from prorating holiday pay. According to the Union, this means that holiday pay must be prorated.

In order to remedy these contract violations, the Union asks the arbitrator to award the following relief: first, Feldkamp's official retirement date should be changed back to June 29, 2002 (the date he selected); second, Feldkamp's last paycheck should be recalculated to include an extra $3.66 in longevity pay and $274.46 in regular pay; and third, Feldkamp should be paid $407.28 in holiday pay for Holiday #5. The three dollar figures total $685.40. The Union asks that Feldkamp be awarded that amount.

City

The City's position is that it did not violate the collective bargaining agreement by any of its actions herein. According to the City, it did not violate the collective bargaining agreement when the Fire Chief unilaterally changed Feldkamp's retirement date, when it calculated Feldkamp's final paycheck, or when it determined that Feldkamp was not eligible for Holiday #5 and deducted money for that holiday from his final paycheck. It elaborates on these contentions as follows.

With regard to the first matter (i.e. the retirement date), the City argues that a past practice exists in the department which determines an employee's retirement date. The City contends that the practice is this: when an employee retires, their retirement date is the calendar day they start their last shift – not the calendar day they end their last shift. The City notes that this practice is identical to how a regular workday is identified in the department (i.e. that a workday is identified as the day the shift starts, not the day the shift ends). The City asserts that since the Union leadership knows how a regular workday is identified in the department, they must have known that a retirement date is identified using the same principle (i.e. it is the day the shift starts, not ends).

With regard to the second matter (i.e. the calculation of Feldkamp's final paycheck), the City avers that his final paycheck was calculated correctly and Feldkamp was not shorted any money. To support that notion, it maintains that the record evidence shows that the

method of calculation which the City's payroll clerk used to determine Feldkamp's final paycheck was consistent with the method that has long been used to determine the final wages of other employees who retired from the Fire Department. Building on that premise, the City asserts that the record evidence does not establish that Feldkamp's final paycheck was calculated incorrectly.

With regard to the third matter (i.e. holiday pay), the City contends that Feldkamp did not qualify for Holiday #5 because he did not work through the 36th day of the 5th paid holiday period (i.e. June 29, 2002). Instead, he was only scheduled to work 7.5 hours that day. According to the City, working through the 36th day is a prerequisite to getting holiday pay. The City asserts that did not happen here, so Feldkamp was not contractually entitled to Holiday #5. Since Feldkamp had previously been paid for Holiday #5, the City's position is that it could correct that mistaken overpayment by deducting that holiday pay from Feldkamp's final paycheck.

In response to the Union's contention that the City should have prorated the holiday pay for Feldkamp, the City views that proposed action as violating the collective bargaining agreement. As the City sees it, the holiday provision does not allow for prorating holiday pay. Additionally, the City avers that there is no past practice in the department of prorating holiday pay for employees who terminate their employment.

In sum, the City believes no contract violations have been established. It asks that the grievance be denied in all respects.

DISCUSSION

The stipulated issue contains two parts. The first concerns the grievant's date of retirement. Specifically, is his retirement date the day the grievant selected (June 29, 2002) or the day the Chief changed it to (June 28, 2002)? The second part concerns the wages and benefits the grievant was entitled to receive as of his retirement date. The Union contends the grievant was shortchanged $274.46 in regular pay and $3.66 in longevity pay. The City disagrees. Additionally, the Union contends the grievant was eligible for Holiday #5 and should be paid for same. The City disagrees. These matters will be addressed in the order just listed.

My analysis on the retirement date begins with the initial presumption that Feldkamp's selection of June 29 as his retirement date should stand. I made this initial presumption for the following reasons. First, while the contract language has yet to be reviewed, it suffices to say here that the contract does not address the topic of an employee's retirement date. Specifically, there is no language that says that when an employee retires, they have to retire on a certain date. That being so, my presumption is that an employee gets to make that call

and decide what date is their retirement date. Second, the date which Feldkamp selected for his retirement date (i.e. June 29, 2002) was not an off day for him. Instead, June 29 was the day his last shift ended. Specifically, he was scheduled to work part of that date, namely the 7.5 hours between midnight and 7:30 a.m. on June 29, 2002.

However, the presumption just noted conflicts with how the contract has historically been interpreted. The following shows this.

It is noted at the outset that firefighters in the department work a 24 hour workday. Specifically, they work from 7:30 a.m. to 7:30 a.m. on the following day. This workday schedule is contained in Article 7 of the collective bargaining agreement wherein it provides thus: "A workday shall begin at 7:30 o'clock a.m. and shall end at 7:30 o'clock a.m. the following day."

Since this particular 24 hour period covers two calendar days, the question arose long ago in the department how a "workday" was going to be identified. For example, if an employee was scheduled to start work at 7:30 a.m. on say, the 1st, and end work 24 hours later at 7:30 a.m. on the 2nd, which calendar day was going to be identified as the "workday"? Was it the former (i.e. the 1st) or the latter (i.e. the 2nd)? Management decided long ago that it was the former. Thus, a workday is identified as the day the employee reports to work and starts their 24 hour shift. One example which shows this is the monthly work schedule. Another example is the daily log book. Both refer to the calendar day that starts the employee's 24 hour shift – not the calendar day that ends the employee's 24 hour shift. Additionally, when an employee is off work due to vacation, funeral leave or sick leave, the time off request is for the day they start their 24 hour shift – not the day they end their 24 hour shift.

Having just noted how workdays are identified, the focus turns to how an employee's retirement date is identified. Assuming for the sake of discussion that an employee retires on a workday (as opposed to a non-workday), is the employee's retirement date the day their last shift starts or the day the shift ends? The City argues it is the former, while the Union argues it is the latter.

A review of the contract reveals it does not address the topic of an employee's retirement date. Assuming the employee retires on a workday as opposed to a non-workday, it does not say whether an employee's official retirement date is the day their shift starts or the day their shift ends. Thus, it is silent on that point.

When a contract is silent on a given point, arbitrators often look to extrinsic evidence for guidance. One type of such evidence is past practice. Past practice is a form of evidence which arbitrators commonly use to help them fill in gaps in a collective bargaining agreement. The rationale underlying its use is that the manner in which the parties have carried out the

terms of their agreement in the past provides reliable evidence of what the parties intended it to mean.

The focus now turns to the alleged past practice. It is generally accepted by arbitrators that for a practice to be considered indicative of the parties' mutual intent and be binding, the conduct must be clear and consistent, of long duration and accepted by both sides. The City, contrary to the Association, asserts that the record evidence meets all of these criteria and, thus, is entitled to be given effect herein.

While the Union contends there is no applicable practice, I find that there is. The record indicates that in dozens of previous retirements from the department, the employee selected a workday for their retirement date as opposed to a non-workday. Also, in every instance but one, the employee's retirement date was the day their 24 hour shift started – not the day their 24 hour shift ended. This is the way retirement dates have been handled in the department for many years.

The retirement of Captain Dorn is illustrative of how this worked. The record indicates that June 29, 2002 was the start of a regularly-scheduled shift for him. His shift started at 7:30 a.m. Saturday, June 29 and finished at 7:30 a.m. Sunday, June 30. Consistent with the pattern noted above, his official retirement date was June 29, 2002 – the date his last shift started. The fact that his retirement date was June 29 did not mean though that he was off the City's payroll as of midnight on June 29. He was paid for the 7.5 hours that he worked for the City on June 30 (i.e. the time between midnight and 7:30 a.m.). Thus, his pay for his final shift was not adversely affected by his retirement date being June 29.

The only instance documented in the record which does not fit into the pattern just noted (i.e. where an employee's official retirement date was the day their last shift started – not ended) can be distinguished on its facts. I am referring to the retirement of Captain Wojcik. The record indicates that his last shift started at 7:30 a.m. December 30 and ended at 7:30 a.m. December 31, 2002. If the pattern noted above had been applied to Captain Wojcik, his retirement date would have been December 30 – the date his shift started. It was not. His official retirement date was December 31. However, this departure from the pattern noted above can be attributed to the fact that Wojcik worked overtime that day at the Employer's request. Since he worked overtime that day, December 31 was a workday for him.

The foregoing shows that with just one exception (the exception being Captain Wojcik whose retirement date was distinguished for the reason just noted), the employee's retirement date was the day they started their last shift – not the day they ended their last shift. Given the number of times this had occurred over the years without the Union's objection, it is held that a practice exists that when an employee retires, their retirement date is the day their last shift starts – not the day their last shift ends.

Having found that practice to exist, the next question is whether that practice conflicts with any language in the collective bargaining agreement. Notwithstanding the Union's contention to the contrary, the practice does not conflict with Article 7 (the provision which provides that firefighters work a 24 hour workday). The reason is this: there is nothing in that provision about retirement dates and how they are set. The same is true of the remainder of the contract. As previously noted, the entire contract is silent on retirement dates and how they are set. That being so, the practice does not conflict with any express or implied contract language.

Additionally, the practice is consistent with how workdays are identified in the department. As previously noted, a workday is the day an employee reports to work. A retirement day follows the same principle – it is the day an employee reports to work for their last shift.

Finally, it is noteworthy that the practice just noted is consistent with Policy No. 2.12, Section 1, D, in the City's Administrative Policy Manual. That section provides in pertinent part that the employee "must select a resignation/retirement date that coincides with one of their regularly scheduled duty days of their shift." Feldkamp's last "regularly scheduled duty" date was June 28 (the day his last shift started) – not June 29 (the day his last shift ended).

This part of the discussion can be summarized thus: the collective bargaining agreement does not say whether an employee's retirement date is the day their last shift starts or ends; that a practice exists concerning same; and that the practice is that the employee's retirement date is the day their last shift starts. This past practice, which does not conflict with any contract language, establishes how the collective bargaining agreement has come to be interpreted on this point by the parties themselves. Application of that practice here means that Feldkamp's retirement date had to be the day a regularly scheduled shift started. However, Feldkamp picked a day that his regularly scheduled shift ended. If the Chief had honored Feldkamp's retirement date request, it would have conflicted with the practice. The Employer did not have to make an exception for Feldkamp and treat him differently than the other bargaining unit employees. It was therefore permissible for the Chief to change Feldkamp's retirement date so that it (i.e. Feldkamp's retirement date) was the day his last regularly scheduled shift started. The fact that the Chief had not previously changed an employee's retirement date does not mean he was precluded from doing so here. Accordingly, Feldkamp's retirement date with the department was June 28, 2002.

The focus now turns to whether Feldkamp received the wages and benefits he was entitled to receive at retirement. I find that he did. My rationale follows.

I begin with the pay matter. As the Union sees it, Feldkamp's last paycheck was calculated incorrectly and he was shorted $274.46 in regular pay and $3.66 in longevity pay.

The City's payroll clerk is responsible for calculating termination pay for employees who leave the department. She testified that she calculated Feldkamp's termination pay the same way as the termination pay was calculated for other department retirees. The record evidence does not show otherwise. Additionally, insofar as the record shows, none of those employees filed grievances contending that their termination pay was calculated incorrectly. Given these circumstances, it was incumbent upon the Union to conclusively establish that Feldkamp's last paycheck was calculated incorrectly. It failed to do so. The record evidence on this point was simply insufficient to prove a contract violation.

The focus now turns to the benefits matter. Although the stipulated issue referenced "benefits" in the plural, there is just one benefit matter involved herein – it is holiday pay. As was previously noted, Feldkamp had been paid for Holiday #5, but the pay for that holiday was deducted from his last paycheck because the City believed he was not entitled to that holiday. The Union disagrees.

The holiday provision indicates that employees are to be paid one holiday for every 36 calendar days. The record indicates that in 2002, the 36th day for Holiday #5 was June 29. That day, of course, was the day that Feldkmap was scheduled to work from midnight to 7:30 a.m. (i.e. the tail end of the shift that started the previous day).

The question to be answered here is how much an employee has to work on the 36th day in order to qualify for holiday pay. Specifically, does the employee have to work the entire day, or will working just part of the day suffice? In my view, it is implicit in the holiday provision that the employee has to work through the entire 36th day to qualify; working just some of the day is insufficient to qualify. Feldkamp, of course, was not scheduled to work that entire day (i.e. June 29, 2002), so he did not qualify for Holiday #5.

The Union argues in the alternative that even if an employee does have to work the entire day to qualify for holiday pay, the City should have nonetheless prorated the holiday pay for Feldkamp. The problem with this contention is that the contract language does not say that. As was just noted, under this holiday provision, eligibility for holiday pay is all or nothing: if the employee works through the 36th day, they qualify for holiday pay; if they do not, they do not qualify for holiday pay. Additionally, insofar as the record shows, there is no practice in the department of prorating holiday pay for employees who terminate their employment with the City. That being the case, the City was not contractually obligated to pay Feldkamp a prorata share of Holiday #5.

Given the foregoing, it is concluded that the City was within its contractual rights to deduct $407.28 from Feldkamp's final paycheck because that amount had previously been paid him for Holiday #5, and he did not qualify for that holiday pay.

In light of the above, it is my

AWARD

1. That the grievant's date of retirement is June 28, 2002; and

2. That concurrent with that date of retirement, the grievant is not entitled to receive any additional wages and benefits. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 25th day of June, 2003.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
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