

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**WISCONSIN FEDERATION OF NURSES AND HEALTH  
PROFESSIONALS, LOCAL 5011, AFT, AFL-CIO**

and

**SHEBOYGAN COUNTY**

Case 377  
No. 65590  
MA-13261

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**Appearances:**

**Jeffrey Sweetland**, Attorney at Law, Hawks Quindel Ehlke & Perry, S.C., appearing on behalf of the Union.

**Michael Collard**, Human Resources Director, Sheboygan County, appearing on behalf of the County.

**ARBITRATION AWARD**

The Union and Employer named above are parties to a 2005-2006 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties asked the Wisconsin Employment Relations Commission to appoint the undersigned to hear and resolve a grievance regarding denial of vacation requests. A hearing was held on June 8, 2006, in Plymouth, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs on July 25, 2006.

**ISSUE**

The parties ask:

Did the County violate Article 12, Section E of the collective bargaining agreement when it denied the following vacation requests: Connie Anhalt for November 26-27, 2005; Gladys Tienor, August 6-7, 2005; and Barb Hansen, July 2-3, 2005 and August 27-28, 2005? If so, what is the appropriate remedy?

The Union raises the following two sub-issues:

Did the County violate the contract by merging the seniority lists of Local 5011 and AFSCME when determining vacations in 2005?

Did the County violate the contract by designating or blacking out particular weekends during the year in which no vacations would be granted?

### **BACKGROUND**

The County operates two nursing homes called Rocky Knoll and Sunny Ridge. The grievances in this case arose at Rocky Knoll. There are professional nurses in two separate bargaining units – LPN's are represented by AFSCME and RN's are represented by Local 5011, herein called the Union. In this case, RN's are grieving denials of vacation requests.

Jorja Doherty is the Union President and has been an RN for 30 years at Rocky Knoll. She recalled that in the past, RN's put in requests for vacation time by March 1<sup>st</sup> and got approval back by April 1<sup>st</sup>. At least two people – one RN and one LPN – were allowed to be off on a weekend, and if a third person could be off, the most senior person from both bargaining units would get time off. If a vacation request was denied, a note was made to see the scheduler at a later date. Doherty knew that some requests were probably denied every year. Doherty was involved in negotiations for the A/B holiday schedules. One half of the nurses are on the A schedule, the other half on the B schedule, and they are assigned to certain holidays. They do not request vacations on those holidays which they are assigned to work. In negotiations for the A/B schedule, there was no discussion about vacation requests for time adjacent to the holiday.

Doherty said she believed that the County was contractually obligated to mandate an RN to come in and work an extra weekend to accommodate a vacation request. Doherty was involved in labor-management meetings whereby a problem was discussed regarding vacations. She stated that an agreement to revert to the prior practice was reached, and it applied to both nursing homes.

On April 21, 2003, Jeanne Stark, the Administrator at Sunny Ridge, sent a memo regarding vacation requests. The memo was intended to address a problem at Sunny Ridge whereby LPN's had seniority that resulted in denying RN's their vacation requests. The groups worked out a plan to grant vacation requests in an equitable manner – granting one RN and one LPN off and then the next most senior licensed staff member off during the week. The memo does not state weekdays, but Stark said that it was her intent to apply to weekdays and that it was discussed with the licensed staff at Sunny Ridge. The memo states:

This is to clarify vacation requests for RN's and LPN's effective June 1, 2003. (Note: This affects vacation requests that are submitted prior to May 8, 2003 but **not** those that have been granted prior to that date.) For day shift, 3 nurses may be off. This will be 1 RN and 2 LPN's or it may be 2 RN's and 1 LPN depending on requests and staffing needs. Granting will be done by seniority based on both Union contracts. On PM's 1 RN and 1 LPN will be granted if requested again based on seniority per each Union contract. Based on staffing needs for nights, one professional nurse will be granted vacation time. Prior to this professional nurses for all shifts were lumped into one pool. This did not provide equity.

Next year when vacation requests are submitted for the year by March 1, the same system will be utilized. **If** there is a need to change there will be a meeting scheduled to discuss and inform you.

I apologize for the frustration that many of you experienced regarding granting of vacations this year. As we proceed, Pat Green will make every effort to grant requests that were previously denied. If staffing allows, we will grant additional people off. Your support and dedication are appreciated.

Doherty said that the memo reflected what had been done in the past and the Union was happy with it. The minutes from a labor-management meeting held on April 30, 2003, show that the parties discussed vacation requests at Sunny Ridge after Stark sent out the above memo. The parties disagree about whether the Stark memo also applies at Rocky Knoll. Stark did not believe that the memo applied to Rocky Knoll or that it was ever implemented there.

Connie Anhalt, one of the Grievants in this case, is an RN with 32 years at Rocky Knoll. On February 21, 2005, she submitted a vacation request for the dates of November 26 and 27, 2005. Those dates were the Saturday and Sunday following Thanksgiving. She asked for November 26 through December 2 as vacation. The dates of November 26<sup>th</sup> and 27<sup>th</sup> were denied, and the rest of the dates were approved. No one was given vacation that weekend. Anhalt had received the weekend after Thanksgiving as vacation the previous year. She also has had vacation requests denied in the past.

The schedulers consider the needs of the facility in making their schedules and have to look at the census of the facility. They talk to the Director of Nursing about how many nurses are needed on a shift. The DON makes the ultimate determination of how many nurses are needed. The process of scheduling and determining how many vacations may be granted has not changed.

Patty Walsdorf usually handles Anhalt's schedule, and Anhalt spoke with her several times. According to Anhalt, Walsdorf told her that her weekend dates were denied because it would be harder to staff the weekend following the holiday. Both Thanksgiving and the day after it are holidays, with the A shift working one and the B shift working the other.

Walsdorf and Judy Meerdink are both scheduling coordinators at Rocky Knoll. Both of them schedule RN's. Both of them will look to see if they can grant requested time off, and decisions are made collectively. Anhalt's request would be looked at later in the year to see if things had changed. The scheduling coordinators looked to see if there were people who had not had vacation around that particular time, and they tried to look at ways to accommodate the requests. There was only one casual RN available in 2005 that worked at Rocky Knoll. The County was trying to hire RN's for weekends during 2005.

A review of weekends in 2005 from July on through December shows that the number of RN's and LPN's varies, as does the number of people on vacation. Meerdink gave the following number of those scheduled and those off:

Weekends:	Scheduled:	Vacations:
Sat, July 2	3 RN's & 5 LPN's	none
Sun, July 3	3 RN's & 5 LPN's	none
Sat, July 9	4 RN's & 4 LPN's	1 RN & 1 LPN
Sun, July 10	4 RN's & 4 LPN's	1 RN & 1 LPN
Sat, July 16	3 RN's & 4 LPN's	1 LPN
Sun, July 17	3 RN's & 4 LPN's	1 LPN
Sat, July 23	5 RN's & 3 LPN's	1 LPN
Sun, July 24	5 RN's & 4 LPN's	1 LPN
Sat, July 30	3 RN's & 4 LPN's	1 LPN
Sun, July 31	3 RN's & 4 LPN's	1 LPN
Sat, Aug 6	4 RN's & 4 LPN's	1 RN & 1 LPN
Sun, Aug 7	4 RN's & 4 LPN's	1 RN & 1 LPN
Sat, Aug 13	2 RN's & 7 LPN's	1 RN
Sun, Aug 14	2 RN's & 7 LPN's	1 RN
Sat, Aug 20	5 RN's & 4 LPN's	1 LPN
Sun, Aug 21	5 RN's & 4 LPN's	1 LPN
Sat, Aug 27	3 RN's & 5 LPN's	1 LPN
Sun, Aug 28	3 RN's & 5 LPN's	1 LPN
Sat, Sept 3	4 RN's & 5 LPN's	none
Sun, Sept 4	4 RN's & 5 LPN's	none
Sat, Sept 10	2 RN's & 6 LPN's	1 LPN
Sun, Sept 11	2 RN's & 6 LPN's	1 LPN
Sat, Sept 17	5 RN's & 4 LPN's	1 LPN

Sun, Sept 18	5 RN's & 4 LPN's	1 LPN
Sat, Sept 24	2 RN's & 6 LPN's	1 RN
Sun, Sept 25	2 RN's & 6 LPN's	1 RN
Sat, Oct 1	5 RN's & 5 LPN's	none
Sun, Oct 2	5 RN's & 5 LPN's	none
Sat, Oct 8	5 RN's & 6 LPN's	1RN & 1 LPN
Sun, Oct 9	5 RN's & 5 LPN's	1 RN & 2 LPN's
Sat, Oct 15	7 RN's & 4 LPN's	1 LPN
Sun, Oct 16	5 RN's & 3 LPN's	2 LPN
Sat, Oct 22	4 RN's & 7 LPN's	none
Sun, Oct 23	4 RN's & 7 LPN's	none
Sat, Oct 29	6 RN's & 4 LPN's	1 RN & 1 LPN
Sun, Oct 30	6 RN's & 4 LPN's	1 RN & 1 LPN
Sat, Nov 5	5 RN's & 7 LPN's	none
Sun, Nov 6	5 RN's & 7 LPN's	none
Sat, Nov 12	6 RN's & 5 LPN's	1 RN
Sun, Nov 13	6 RN's & 5 LPN's	1 RN
Sat, Nov 19	4 RN's & 6 LPN's	1 LPN
Sun, Nov 20	4 RN's & 6 LPN's	1 LPN
Sat, Nov 26	5 RN's & 5 LPN's	none
Sun, Nov 27	5 RN's & 5 LPN's	none
Sat, Dec 3	5 RN's & 5 LPN's	none
Sun, Dec 4	5 RN's & 5 LPN's	none
Sat, Dec 10	6 RN's & 4 LPN's	1 LPN
Sun, Dec 11	6 RN's & 5 LPN's	none
Sat, Dec 17	2 RN's & 6 LPN's	1 RN & 1 LPN
Sun, Dec 18	1 RN & 7 LPN's	2 RN's
Sat, Dec 24	4 RN's & 5 LPN's	none
Sun, Dec 25	6 RN's & 5 LPN's	none
Sat, Dec 31	6 RN's & 6 LPN's	
Sun, Jan 1	4 RN's & 5 LPN's	

The numbers shown above are based on what was scheduled but not necessarily what was actually worked. For example, where there were only one or two RN's scheduled, it is not necessarily what happened.

Meerdink said that no vacations were scheduled on July 2<sup>nd</sup> and 3<sup>rd</sup> because there were already six RN's off as their regular weekend off. That left only 3 RN's scheduled to work, one of which was Hansen, who asked for the weekend off but was denied. The Director of Nursing had told them to try to schedule a minimum of three RN's that weekend. The goal is to always have three RN's on the schedule. If there are a number of LPN's available, the schedule may fall below three RN's but it is not desirable.

Hansen was trying to get the weekend off to go along with several days of vacation or days off and a holiday. She had a vacation day on July 1<sup>st</sup>, then asked for July 2<sup>nd</sup> and 3<sup>rd</sup> as vacation but was denied. She was off on July 4<sup>th</sup> for the holiday, was off on the 5<sup>th</sup>, was on vacation on the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and then off on the 9<sup>th</sup>, 10<sup>th</sup>, and vacation on the 11<sup>th</sup> and 12<sup>th</sup>. She started a new job on the 13<sup>th</sup>.

Gladys Tienor did not work on August 6<sup>th</sup> and 7<sup>th</sup> of 2005. Although her vacation request had been denied for those dates, she found someone to trade with her.

Meerdink thought that Hansen was denied vacation for August 27<sup>th</sup> and 28<sup>th</sup> because a more senior LPN was on vacation. There were also six RN's off on September 24<sup>th</sup> and 25<sup>th</sup> and only two RN's were scheduled to work. On September 3<sup>rd</sup> and 4<sup>th</sup>, there were people who had holiday time off around their weekend off and the schedulers felt they would not be able to find people to work. The time off around a weekend is one of the things the schedulers look at. If there are people working around the time that a vacation is being requested, the schedulers feel that they can grant more vacation.

On November 26<sup>th</sup> and 27<sup>th</sup>, no vacations were scheduled because the schedulers felt they could not get help in to work. If someone says to the schedulers that she has the weekend off but would be available to work, the schedulers then go back to vacations that have been denied and offer the dates to those wanting vacations. The decision to not grant vacations after Thanksgiving was based on the needs of the facility, which is the driving force, according to Meerdink. These were for vacation requests approved or denied in March when some people would not want to commit themselves that far in advance.

Meerdink noted that at the time the vacation requests were denied, management was talking about a weekend RN program which would have made a difference on vacation denials. However, it was not in place in March. By November, the weekend RN was there but also by that time, Anhalt was out on a medical leave. Anhalt had told Walsdorf that she was going to be on leave before the November schedule went out. Maggie Winkel, the weekend RN, went on the schedule sometime in October. If Anhalt had not been on leave, Meerdink said her vacation could have been granted once they knew how many people were available in October. However, in March, they did not know how many RN's would be available in November.

There was only one casual nurse in the summer of 2005 available to work. A casual nurse cannot be scheduled until all RN's have been offered work, pursuant to the collective bargaining agreement. The schedulers cannot put a casual nurse on the schedule in advance unless all RN's have been solicited. Casual nurses have to work only one eight hour shift per month. The schedulers cannot force casual nurses to work, and they usually will not work on a weekend before a holiday. The County has not actively tried to recruit casual nurses.

The open hours are posted. There is also a voluntary sign up sheet and the schedulers look at it to fill open slots. The open hours and volunteer list is posted at the same time the schedule is posted. The RN's are required to work either two out of five or two out of four weekends. They cannot be scheduled to work more weekends than that. Some will volunteer to work open hours to pick up weekends. There is an incentive of \$5.00 per hour to work an extra weekend. Meerdink said no vacations were denied because the County did not want to pay the weekend incentive. The County is willing to pay overtime to accommodate a vacation request.

If an RN calls in sick, the schedulers first look to fill the hours with another RN. Then they look for an LPN to fill the hours. If no one agrees to come in, they have to mandate someone to come in. The schedulers consider the possibility of sick leave in making their schedules. It is harder to find someone to fill in on a weekend, especially weekends preceding or following holidays. The schedulers also have experience and knowledge of the staff they are attempting to schedule. They know that certain employees are often willing to pick up hours while others are not. They take this factor into account when looking to grant vacation requests.

Meerdink has never blacked out any dates where vacations are always denied. She believed that they had done everything possible to grant as much time off as possible. They did not solicit volunteers from staff RN's in March or ask a casual nurse to work in order to be able to grant vacations later in the year. The schedulers do not like to deny vacations. Nor do they like to mandate someone to come in. Meerdink has not mandated RN's to work since the consolidation of facilities.

A yearly total for 2005 shows that vacations were denied 12 times on the weekend, grouped around holidays and summertime. Vacation requests were denied the weekends before July 4<sup>th</sup> and Labor Day, and the weekend after Thanksgiving and the weekend of Christmas. Only two were denied after Labor Day, and those would have been eventually granted. None were denied before July 1, 2005. In 2004, only 2 RN's were denied vacations on weekend days, and nine were denied weekends in 2003.

Patti Walsdorf, the other scheduling coordinator, agreed with Meerdink that they look at who is on or off at the time for which a vacation is being requested, who might be able or willing to come in around that time, and what the needs of the facility are. They base their decisions in March for December requests on the needs as seen in March, and if they can grant vacations later in the year, they do so. Walsdorf noted that while they were able to grant vacations surrounding holidays in 2004, the staffing levels in 2004 were different than in 2005. In 2004, they had 11 RN's on the day shift, while in 2005, there were 9 RN's on the day shift.

Charlene Baumgartner is the Director of Nursing at Rocky Knoll. She noted that in the beginning and the summer of 2005, the facility was down on the number of RN's. They had positions they could not fill. They had the ability to hire RN's and even weekend RN's, but they were not getting applications. The County advertised in several newspapers and got only one RN application. Overall, the facility was down four RN positions and three LPN positions for all three shifts. The staffing patterns had to be altered throughout the year. Baumgartner said it is not good to have only two RN's on duty for 200 residents. They had figured out a way to work with only three RN's on the weekends, but Baumgartner said that four should be on duty.

During a labor-management meeting in April of 2005, the Union wondered why the nursing home could not use agency help at Rocky Knoll as Sunny Ridge did. Stark said that there may be a day when she would be given a directive to not use agency help at Sunny Ridge. Baumgartner stated in that meeting that bringing in pool nurses at Rocky Knoll for the sole purpose of approving vacations for RN's cannot be justified, that they had sufficient staff to cover. The Union responded that it was a control issue, and that they should be able to take the vacation benefit when they want to take it.

### **THE PARTIES' POSITIONS**

#### **The Union:**

The Union asserts that the burden is on the County to prove the reasonableness of any vacation denied. The collective bargaining agreement gives management the discretion to schedule vacations according to its operational needs. The employer's operational needs are recognized as an exception to the general employee preference clause, such as the language here that the County shall respect the wishes of the eligible employees. Thus the burden is on the employer to substantiate denial of vacation requests as being reasonable in light of business needs. The availability of other qualified employees to cover the absence may negate the denial's reasonableness.

There is nothing in the contract that permits the County to impose blanket prohibitions on holiday weekend vacations. While the County insisted it did not set aside "black-out" days on which no vacations would be granted, this is a matter of mere semantics since it also admitted adopting a policy that vacations would not be granted on any weekend days adjacent to a holiday, in case a last minute sick call created an unexpected staff shortage. Consequently, the County denied all requests for vacation the weekends adjacent to July 4th, Labor Day and Thanksgiving.

The Union submits that if the County wanted to apply a blanket rule to holiday weekends, it could easily have bargained for one, just as it did for the holidays themselves. It said nothing about such a rule in any of its contract negotiations. Since the contract makes no allowance for such a blanket rule, the County violated the command that it respect the wishes of the eligible employees as to the time of taking their vacation.



The denials of Hansen's and Anhalt's requests for vacation on the weekends adjacent to July 4<sup>th</sup> and Thanksgiving depend on the reasonableness of the County's assertion that its operational needs required those denials of vacation. The County asserts that Rocky Knoll had to have at least three RN's present on any weekend day shift, and because of the possibility of last minute sick calls, it had to schedule at least four on any holiday weekend. The evidence shows that on at least three other weekends, only two RN's were scheduled when vacations or benefit holidays were allowed. On one occasion, December 18, 2005, only one RN was scheduled when an RN's request for a benefit holiday was approved. Those discrepancies are the most glaring indicia that the County's insistence that no vacations would be granted on any of these weekends was completely arbitrary. The Union also notes that while the County asserts that it was experiencing staffing shortages in early 2005, Baumgartner said there was no need to bring in pool nurses because they had sufficient staff to cover.

The Union contends that management eschewed its other options for ensuring adequate coverage in the event of an unexpected staff shortage. It could have contacted casual RN's to fill in once other RN's were offered the available hours but it did not. It did not recruit casual RN's. It could seek volunteers to work overtime, and failing that, mandate RN's to work overtime. That is what the contract provides for when unplanned overtime is necessary. The contract does not allow the County to cover unexpected staff shortages with blanket denials of vacation requests.

Nor does the contract permit the County to deny RN vacation requests based on LPN seniority. The Union states that Tienor's requests for August 6<sup>th</sup> and 7<sup>th</sup> and Hansen's request for August 27<sup>th</sup> and 28<sup>th</sup> were denied because LPN's with higher County seniority had also requested those dates. No other RN's had requested vacation on those dates. Nothing in the past history of vacation scheduling at Rocky Knoll permitted the County to combine RN's and LPN's into a single vacation pool using County seniority. Whatever the intent of the Stark memo, no one countered Doherty's testimony that the memo's underlying principle reflected what had always been the practice at Rocky Knoll. Vacations were granted by seniority within the RN bargaining unit. The fact that an LPN with greater seniority requested vacation on the same weekend date was irrelevant to an RN's vacation request. An RN's request could be denied only on the basis of a more senior RN's conflicting request. Only once in two years, in 2003 and 2004, does it appear that Rocky Knoll denied an RN's vacation request on the basis of an LPN's request. That single isolated instance does not amount to a past practice.

### **The County:**

The County submits that it has followed the standard expressed in the collective bargaining agreement for granting vacation requests. It has granted requested vacation insofar as the needs of the County have permitted. The County has always applied the

contractual standard on a case by case basis. Meerdink and Walsdorf testified that they looked at every way they could to try to accommodate the employees' wishes. The needs of the County are the needs of the residents of Rocky Knoll. Those residents have the same needs in a holiday or weekend as they do on a weekday. The County notes that the staffing level in recent years has made scheduling the number of nurses needed on each shift a difficult task. There is a lot of uncertainty, especially when vacation requests must be first considered in April for the rest of the year. Additional vacation requests may be granted later in the year. Both Meerdink and Walsdorf denied that there were any predetermined black out dates for vacations. There was no evidence of such black out dates, and Meerdink and Walsdorf's testimony was corroborated by the Director of Nursing Services and the Director of Health Care Centers.

While the monthly schedules show considerable variation in the number of RN's on the schedule, part of that is caused by the variation in the number of LPN's on the schedule, since LPN's can be used to a certain extent in place of RN's. However, the monthly schedules are only part of the story, and they often come out with open shifts still unfilled. The scheduling coordinators then have to find a way to fill those open shifts. Baumgartner testified that the number of RN's who actually worked was not always reflected in the monthly schedules, and that they never would have worked a shift with only two RN's.

The County points out that the scheduling coordinators denied the vacation requests because the needs of the County did not permit them to be granted at that time. For instance, on July 2<sup>nd</sup> and 3<sup>rd</sup>, six out of nine RN's were scheduled off that weekend, leaving only three RN's available to work. Because of the holiday weekend, it was not likely that other nurses would volunteer to work. Therefore, Hansen's vacation request could not be approved. Hansen's shifts on July 2<sup>nd</sup> and 3<sup>rd</sup> were the only dates at issue in this grievance which were actually worked by one of the Grievants. Tienor found a replacement on August 6<sup>th</sup> and 7<sup>th</sup>. By August 27<sup>th</sup> and 28<sup>th</sup>, Hansen had left Rocky Knoll. Anhalt's request for vacation on November 26<sup>th</sup> and 27<sup>th</sup> was originally denied in April but would have been granted later in the year after a weekend nurse was hired, but Anhalt was on a medical leave at that time.

The County asserts that 2005 was not the first year in which there were dates on which no requests for vacation by an RN were granted. There were several dates and shifts in 2003 and 2004 for which at least one RN had requested vacation but no RN vacation request was granted. No grievances were submitted on this issue in 2003 and 2004. Denials were more common in 2005 due to a tighter staffing situation. Even then, 75 percent of the vacation requests by RN's were granted. The agreement between the parties does not require that any nurse or all nurses shall always get their first choice of vacation.

The County submits that upholding this grievance would subject it to inconsistent arbitration decisions, because earlier this year, Arbitrator Sharon Gallagher denied a grievance regarding vacation requests by LPN's. Although the LPN's are in a different bargaining unit, the issue, the contract language, and the practice followed by the County were identical to the present case with the RN's.

### **In Reply, the Union**

The Union objects to the County's advancement of another union's contract that is not in evidence. Arbitrator Gallagher noted at least one significant difference between the AFSCME contract and Local 5011's. Local 5011's contract provides for an A/B holiday shift schedule among RN's, which AFSCME rejected. Nothing in the Gallagher decision indicates that there is either a casual employee or a mandatory overtime provision in the AFSCME contract. Those provisions form part of the basis for the argument that the denials of the three RN's weekend vacation request violated the contract.

Furthermore, the Union points out that the County claimed that the scheduling practices at Sunny Ridge and Rocky Knoll are different, and that the Stark memo applied only to Sunny Ridge and not to Rocky Knoll. That is hardly consistent with its present assertion that the practice followed by the County at Sunny Ridge was virtually identical to the present case with the RN's.

The RN's would be unfairly prejudiced by holding them to the AFSCME arbitration in which they did not participate. The Gallagher decision and Local 5011's grievance here are apples and oranges. The Union is entitled to have its grievance about vacation denials at Rocky Knoll considered without any reference to the AFSCME's arbitration about Sunny Ridge. If the County has different obligations as a result of an award in the Union's favor, it will be because there are different contracts covering different employees at a different location that follows different practices.

### **In Reply, the County**

Contrary to the Union, the County believes that the Union bears the burden of proof in this matter. The County also says that the Union is incorrect when it states that the County's witnesses admitted adopting a policy that vacations would not be granted on any weekend days adjacent to a holiday. The scheduling coordinators and the DON testified that they took a wide variety of factors into account in considering each and every vacation request on a case by case basis. They looked at who requested time off, who was working, who had requested time off on other dates, the other nurses who would be off but who might be available to fill in, the number of LPN's who might be available, as well as the probability that one or more nurses would be sick or on a leave of absence.

Despite no evidence of a blanket prohibition, the Union insists that there must have been one because the County consistently denied all such request. But then the Union also says the County has been inconsistent by granting some vacations on other weekends when there were few RN's available to work, and thus the policy about black out dates was arbitrary. However, the County says that this proves there was no policy about black out dates. It proves that the number of nurses on the schedules was not the only factor relied upon, and it proves that there were other factors at play. The schedulers used good faith and made the best judgment calls they could. This grievance is nothing more than a difference of opinion as to whether the schedulers' judgment was correct.

The County asserts that the Union's alternatives are not reasonable. The Union says the County could have contacted casual nurses, but there was only one casual RN working during that time period and casuals cannot work until all RN's have been offered the hours. Since initial vacation requests for the year must be approved or denied in March, there is no mechanism to offer those hours nine months in advance. Any such procedure would violate another section of the contract that says that schedules are to be posted two weeks prior to the start of the month. Once the schedule is prepared, then additional hours must be offered to other nurses in the procedure spelled out in Article 7, B2. Casual nurses cannot be required to work. And the labor contract does not impose any requirement that the County hire additional nurses to accommodate a few individual vacation requests. While the Union argues that the County could have offered overtime to cover vacations, the procedure for offering overtime cannot be used until monthly schedules have been posted. The County disagrees that it should mandate nurses to come in, and mandation is supported only by the testimony of the most senior RN who would be first in line for vacations but last in line to be mandated.

Finally, the County submits that it has not denied RN vacations based on LPN's seniority. The standard is that RN's vacations may be denied based on the County's needs, and those needs are sometimes dependent on the number of LPN's available for work.

### DISCUSSION

The relevant contract language in this case is found in Article 12, Section E:

In determining vacation schedules, the Director of Nursing Services 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 the Director of Nursing Services and approved by the Human Resources Committee to defer all or a part of their vacation for a given vacation period shall be permitted to take it within the first three (3) months of the ensuing vacation year, after which it will be lost.

On or about January 1, the employer will distribute employee request forms for vacation. Requests submitted prior to March 1 will be approved on the basis of seniority by April 1. Vacation requests submitted after these dates will be granted on a first-come first serve basis. Vacation requests for January, February and March shall be submitted by October 15 and approved by November 15 on the basis of seniority.

Any employee whose first anniversary is in the last quarter of the year may take until March 31 of the following year to use that vacation, after which it will be lost.

The first sentence creates a balance between the wishes of employees and the needs of the County, with the scales shifting in favor of the needs of the County. The clause "insofar as the needs of the County will permit" limits the wishes of the employees as to their vacation time.

The County needs RN's to work all shifts, and it has determined that it needs at least four RN's to work the day shift. It found a way to work with only three RN's but prefers to have at least four scheduled in case someone calls in sick. While there were three weekends when the schedule showed only one or two RN's scheduled, it is not likely that the County was working with that few, as Baumgartner noted in her testimony. She was certain that they never worked with fewer than three RN's and that the schedule reflected only what was originally scheduled but not what actually happened.

There is nothing in the record to show that the County's need for three or four RN's on a day shift would be unreasonable. Thus, the question becomes whether the County had sufficient nurses to allow the vacation requests.

In March of 2005, when vacation requests were being approved or denied for the rest of the year, the facility had only nine RN's. The RN's are guaranteed by Article 7, Section C (4) a certain number of weekends off duty, either two out of five or two out of four, depending on their date of hire. Employees hired before December 31, 1981, are required to work an average of two out of five weekends, and those hired after December 31, 1981, are required to work every two out of four weekends.

Also at that time, the facility had only one casual nurse. Under Article 6, Section A (2c), casual nurses can only be used when all regular staff RN's have been given the opportunity or offered the available hours. One of the reasons for availability of hours includes vacations. However, casual nurses do not have to work more than one eight hour shift per month. The scheduling coordinators found that a casual nurse was not likely to work on a weekend adjacent to a holiday.

Therefore, for scheduling purposes, the scheduling coordinators were left with nine RN's. For the weekend of July 2<sup>nd</sup> and 3<sup>rd</sup>, preceding the holiday on Monday the 4<sup>th</sup>, six RN's were already off due to their normal weekend rotation. That left three RN's available to work – the minimum needed by the facility. So when Barb Hansen asked to have vacation on July 2<sup>nd</sup> and 3<sup>rd</sup>, it was reasonable for the County to deny it under those circumstances.

Hansen's vacation request for August 27<sup>th</sup> and 28<sup>th</sup> became moot because she left for another job on July 13<sup>th</sup>. While Meerdink initially testified that she thought Hansen's request for the August dates was denied because of an LPN on vacation, she later said that there were too many people off in late August and early September around the Labor Day holiday, and the number of people on vacation during the week is a factor in deciding whether vacations can be granted. The list showed that only LPN's were scheduled on August 27<sup>th</sup> and 28<sup>th</sup>. Even though this is somewhat of a moot point, the denial in March of the request for August 27<sup>th</sup> and 28<sup>th</sup> appears to be reasonable.

Tienor's request for vacation on August 6<sup>th</sup> and 7<sup>th</sup> also suffers from some mootness at this point, since Tienor was able to trade with someone and get the time off. The schedule shows four RN's scheduled to work, and the denial itself made in March appears to be reasonable.

The denial of Anhalt's request for vacation on November 26<sup>th</sup> and 27<sup>th</sup> is a little more difficult to understand, given the fact that the schedule shows that five RN's were scheduled to work that weekend. However, that number would have been reduced in March when this request was being reviewed and denied, because the facility still had only nine RN's. A weekend RN was eventually hired and started working in October. The facility could have offered Anhalt the weekend of November 26<sup>th</sup> and 27<sup>th</sup> as vacation later in the year, and it would have done so, but for the fact that Anhalt was going to be on a medical leave during that time. All in all, the denial of the vacation request for November 26<sup>th</sup> and 27<sup>th</sup> appears to be reasonable under the circumstances where it was made in March when less staff was available.

The scheduling coordinators have taken the wishes of the employees into account, and they credibly testified that they disliked denying vacations and worked hard at trying to grant them. However, their primary focus was on the needs of the facility, and this is in line with the contract language which limits the wishes of the employees. The schedulers look at a number of factors, such as how many people are on vacation during the week and might not be available to work a weekend, who might be willing to come in to work on a weekend, whether they can fill it with overtime hours, whether they would have the ability to cover for someone calling in sick, etc. They consider how many LPN's are working and how many might be available, because LPN's can be used to some extent to augment licensed personnel on duty,

although RN's perform some jobs that LPN's cannot do. Moreover, even though vacation requests may be denied in March, those requests are reviewed again later and granted if circumstances allow them to be granted at a time when there is more staff or more certainty of who will be available to work. The County has been willing to grant overtime and pay the contractual incentive pay rate to cover vacations. This is not a process in which vacation requests are being arbitrarily or unreasonably denied. This is a process which tries to account for all the factors that make scheduling three shifts seven days a week a difficult job.

The Union sees other options – using overtime, casuals, and mandating RN's to work. The practicality of using those options may be debated, but the fact is that whether or not the County uses those options does not violate the collective bargaining agreement. The bargaining agreement requires the County to respect the wishes of the employees as to the time of taking their vacation *insofar* as the needs of the County will permit. If the County were required to hire more casual nurses or to mandate nurses to cover vacations, it would have virtually no discretion to deny anyone's request for a particular vacation time. The parties did not agree to a provision that always gives the RN's what they want. They agreed to try to do that so long as the needs of the County were being met. That provision leaves the County with some discretion, which it has exercised in a reasonable manner.

The Union would be correct in stating that the contract does not permit the County to impose blanket prohibitions on holiday weekend vacations. However, the testimony was consistent that there were no black out dates. The record does not show what happened for the weekends surrounding the Easter and Memorial Day holidays. It does show that no one was on vacation for the weekends around Labor Day and Thanksgiving. In 2005, Christmas and New Years fell on the weekends, and people would have been scheduled to work in accordance with the A/B holiday schedule. Thus, the record shows no one was given vacation during two weekends around the holidays. The record does not show whether anyone requested vacation before the Labor Day holiday, and Anhalt would have been given the weekend after Thanksgiving as vacation but for her medical leave of absence. Those facts negate the theory that the County put a blanket prohibition on weekends around holidays.

Finally, there is nothing in the record to show that the County merged the seniority lists of Local 5011 and AFSCME when determining vacations in 2005. The Union states that Tienor's request for August 6<sup>th</sup> and 7<sup>th</sup> and Hansen's request for August 27<sup>th</sup> and 28<sup>th</sup> were denied because LPN's with higher County seniority had also requested those dates. No one testified as to why Tienor's request had been denied, and she was able to trade with someone anyway. Meerdink initially testified that she thought that Hansen's request for late August was denied because of an LPN on vacation, but Meerdink went on to explain that there were other people scheduled for vacation around Labor Day and they did not think they would be able to get people to

work when making this decision in March of 2005. The record shows that there were only four RN's scheduled on August 6<sup>th</sup> and 7<sup>th</sup> and three RN's scheduled on August 27<sup>th</sup> and 28<sup>th</sup>. The County had advertised for RN's and was still trying to get more nursing staff, and it was not successful in getting more staff until the fall.

**AWARD**

The grievance is denied.

Dated at Elkhorn, Wisconsin this 15<sup>th</sup> day of September, 2006.

Karen J. Mawhinney /s/

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Karen J. Mawhinney, Arbitrator