

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**IOWA COUNTY HIGHWAY EMPLOYEES' UNION,
LOCAL 1266, AFSCME, AFL-CIO**

and

IOWA COUNTY (HIGHWAY DEPARTMENT)

Case 131
No. 67627
MA-13963

(Vacation Grievance)

Appearances:

Mr. Thor Backus, Staff Representative, AFSCME Council 40, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717, appearing on behalf of the Union.

Mr. Kirk Strang, Attorney, Davis & Kuelthau, S.C., Ten East Doty Street, Suite 600, Madison, Wisconsin 53703, appearing on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, hereinafter referred to as the Union and the County, are parties to a collective bargaining agreement that provides for final and binding arbitration of grievances. Pursuant to the Union's request that the Commission appoint a Commission staff member as Arbitrator to hear and decide the vacation grievance, the Wisconsin Employment Relations Commission appointed the undersigned as Arbitrator. Pursuant to the agreement of the parties, the grievance hearing was held on July 22, 2008 in Dodgeville, Wisconsin. Following the hearing, the parties filed written argument; the last of which was received on January 28, 2009.

ISSUE

The parties were unable to stipulate to a statement of the issues. At hearing, the Union framed the issues as follows:

Did the Employer violate the collective bargaining agreement and/or past practice when it refused to allow the Grievant to use vacation?

If so, what is the appropriate remedy?

The County framed the issue as follows:

Is the County mandated by the collective bargaining agreement to approve vacation requests that an employee makes at the end of his/her employment?

If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS¹

ARTICLE 3- MANAGEMENT RIGHTS

3.01 The County possesses the sole right to operate the County and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to the following:

- A) To direct all operations of the County;
- B) To establish reasonable work rules and schedules of work;
- C) To suspend, demote, discharge and take other disciplinary action against employees for just cause;
- D) To layoff employees;
- E) To maintain efficiency of County operations;
- F) To take whatever action is necessary to comply with State or Federal law;
- G) To introduce new or improved methods or facilities;
- H) To change existing methods or facilities;

¹ At the time that the grievance was filed, the parties were negotiating an agreement to succeed their 2005-2006 collective bargaining agreement. The successor 2007-2008 collective bargaining agreement was executed on June 25, 2007. A comparison of the 2007-2008 agreement to the 2005-2006 agreement reveals language changes; none of which are relevant to the disposition of this grievance. For purposes of this Award, the undersigned cites the language of the 2005-2006 agreement.

- I) To determine the kinds and amounts of services to be performed as pertains to County operations; and the number and kind of classifications to perform such services;
- J) To contract out for goods and services subject to the following conditions: The County agrees that no work will be transferred out of the bargaining unit while any unit employees are on layoff, nor shall any unit employees be laid off as a result of a decision to transfer work out of the bargaining unit, provided the decision to transfer work out of the bargaining unit is a mandatory subject of bargaining.
- K) To determine the methods, means and personnel by which County operations are to be conducted;
- L) To take whatever action is necessary to carry out the functions of the County in situations of emergency.

3.02 The above rights shall not be used for the purpose of discriminating against any employee or for the purpose of discrediting or weakening the Union, and provided further, that the above rights shall be used fairly and reasonably.

...

ARTICLE 9- VACATIONS

9.01 Entitlement Schedule: Each regular employee shall receive vacation with pay at their current hourly rate each year as follows:

- a) After one (1) year - two (2) weeks;
- b) After eight (8) years - three (3) weeks;
- c) After sixteen (16) years - four (4) weeks;
- d) After twenty-five (25) years - five (5) weeks.

9.02 Notice: Employees shall give the Highway Commissioner, or his/her designee, at least ten (10) working days advance notice of the desired vacation time except in cases of emergency. This notice requirement may be waived at the Commissioner's discretion. Choice of vacation time within a given classification shall be by seniority.

9.03 The number of employees on vacation within a given classification at any given period shall be determined by the Highway Commissioner.

9.04 Payout at Termination: Employees who give at least two (2) weeks prior notice to quitting and employees whose service being terminated due to discharge or death or retirement, shall receive all earned vacation based upon actual months of service. If an employee's service is terminated before the sixteenth (16th) of the month, he/she shall not receive credit for such month; however, if the termination occurs on or after the sixteenth (16th) of the month, credit for a full month shall be credited toward the prorated vacation allowance.

9.05 Minimum Increment of Use: Employees shall be permitted to use earned vacation in increments of no less than one (1) hour, with prior Employer approval.

9.06 Carryover: Employees will be permitted to carry unused vacation for up to ninety (90) days beyond January 1st of each year.

BACKGROUND

The Union and the County are parties to a collective bargaining agreement. This collective bargaining agreement covers certain employees of the County's Highway Department, including Ronald U'Ren, hereafter referred to as the Grievant.

On January 4, 2007, the Grievant provided Highway Commissioner Leo Klosterman with the following written notification:

I, Ron U'Ren plan to Retire.
My last work day will be 3-20-07.
Therefore, please consider this my notification of termination with the Iowa County Highway Commission.

On or about February 1, 2007, a Union grievance was filed which alleged "The County is denying employees the right to use vacation to reach their retirement or severance date." In this grievance, the Union requested the following Settlement or corrective action: "All employees to use their earned vacation while they are County employees per the contract regardless of their intentions to retire or sever employment. To make whole all affected employees." The grievance was denied and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES

Union

The Grievant communicated his desire to use his vacation benefit to “vacation out” through the use of a Vacation Request form. Subsequently, the County Personnel Department informed the Grievant that he would not be allowed to “vacation out”, but instead, was required to report to work on his last day of service to the County. The Grievant felt compelled to report to work on his last day to avoid losing earned benefits.

The e-mail communication between the County Administrator and Union Representative McCulley clearly points to the fact that the Grievant expressed a concern to representatives within the Union about his original vacation-out request. The County Administrator’s email conveys knowledge of this original request by not asking for clarification from McCulley.

Contrary to the argument of the County, the Union does recognize that the collective bargaining agreement provides the County with certain rights to deny vacation. Sec. 9.02 and 9.03 of the collective bargaining agreement provides authority for the County to deny vacation requests if an employee neglects to provide a 10 work-day notice or if competing vacation requests will disrupt the County’s operational needs.

The Grievant has met the 10 work-day notice requirement. The County has never claimed that it denied the Grievant’s preferred vacation request because the requested time off would interfere with operations due to a concurrent vacation request.

The Union has established a past practice of “vacationing out” at retirement that meets the criteria of clarity and consistency; longevity; repetition and acceptability by the employees and the supervisor. The County has not demonstrated that it has effectively repudiated this past practice. If, as the County argues, the vacation use language is ambiguous, then this ambiguity is clarified by the evidence of past practice.

If the County cannot demonstrate that a vacation request will disrupt the orderly operation of the Department, then that request should be granted per Article 9. The County is unable to point to any contractual restriction enabling the County to prevent the Grievant from using vacation at a time that is meaningful to the Grievant.

Under arbitral case law, an employee is entitled to use paid leave benefits at times in which such use is meaningful to the employee. Arbitrators have rejected employer attempts to place unreasonable restrictions on the scheduling of vacation. Sec. 3.02 of the collective bargaining agreement recognizes that the above stated management rights “shall be used fairly and reasonably.” The County’s claim of business hardship is unsubstantiated.

Sec. 9:04 of the contract defines the end of employment with the County as “service is terminated.” The critical statement from Sec. 7.03 “All time paid shall considered time worked” also applies to other sections of the agreement. There is no mention in the contract of having to be physically present on the last day of employment to accrue a benefit. The County is unilaterally restricting employees from using their earned vacation time as they see fit in an

attempt to prevent the employee from receiving vacation and sick-pay benefits for the month in which they retire.

To be reasonable, a work rule change must be clearly and timely communicated before implementation. The Grievant was neither notified, nor made aware through memo or posting of the rule change, until after his original vacation request to “vacation out.”

The County has unilaterally established a new vacation policy requiring an employee to physically work for a period of time between his or her vacation period and retirement date. This new vacation policy is in direct violation of the collective bargaining agreement.

As the County argues, a party to the contract should not gain through arbitration that which the party could not gain through negotiation. The grievance should be sustained.

The Union requests the Arbitrator to find the County’s requirement that employees work their last day before retirement to be unreasonable and in violation of the contract. The Union further requests that the Arbitrator order the County to rescind this policy and make all employees that have been harmed by the unilateral change whole for any losses from the date of the grievance to the date the decision is implemented.

County

Sec. 9.04 governs the payout of unused vacation and applies to all separations from employment, whether for quit, discharge, death or retirement. Separation from employment is defined in terms of when an employee’s “service” to the County terminates and the provision is intended to calculate final vacation entitlements “based upon actual months of service.” Under Sec. 9.04, an employee does not receive vacation credit for a particular month if their “service is terminated” before the 16th of the month.

The Union cannot support its assumption that the parties specifically negotiated the phrase “whose service is being terminated” and chose it over alternatives, such as the phrase “last day of work.” Termination of services and a final day of work can refer to the same thing.

The “Payout at Termination” provision covers all forms of separation and contemplates that a calculation has to be done for each employee at the end of their service to the County; which necessarily means that the end of an employee’s service cannot be through exhaustion of remaining vacation benefits. Under well-established arbitral principles, a contract interpretation that tends to nullify or render meaningless any part of the contract is to be avoided.

The County has permitted a few employees to “vacation out” by mutual consent. Permitting someone to “vacation out” is giving consent to the vacation request. Arbitrators warn against amplifying alleged practices beyond what the contract and the parties intended.

There is no binding past practice mandating that the County permit employees to “vacation out.” If there was such a practice, the County terminated or modified any previous practice allowing employees to vacation out without approval and past practice does not override contract language.

With respect to a 2002 Arbitration Award involving the same parties, the Union argued that there was a binding past practice of an employee receiving a payout for accrued vacation when the employee leaves the service of the County. The Union wavers on its own understanding of what is past practice and fragments it into several different, inconsistent practices that defeat the notion of a practice in the first instance.

If there is any “practice,” it is one that involves mutuality. Good faith efforts are made by employees and the employer to schedule vacations, but the formal process is that employees submit requests for vacation and this vacation cannot be taken until management approves. Management has always worked with employees; with the effect that outright denials of vacation requests seem virtually non-existent.

The fact that management has approved most vacation requests does not justify a determination that the County has waived its right to deny other vacation requests. A denial of the right to “vacation out” does not mean that the employee loses the ability to vacation in a manner that is meaningful to the employee.

The Grievant did not testify at hearing. Much of what the Union asserts as fact is not a matter of record, including that the Grievant felt compelled to work his final date of employment and that he feared the consequences of proceeding in any other manner.

The Union maintains that it is a violation of the collective bargaining agreement for the County to decline a “vacation out” request and to work out a different arrangement with the requesting employee. Such a grievance is not joined by this record.

Arbitral authority establishes that an employer can modify the manner in which employees take vacation on the grounds of hardship to the employer. Hardship may include financial considerations and staffing concerns. Personnel Director Trader testified as to the problems caused by “vacationing out.”

The Union’s position would require that the arbitrator fundamentally change what is, at its core, a discretionary vacation approval process to one where management is required to approve certain vacation requests. The grievance should be denied.

DISCUSSION

Issue

The parties were unable to agree upon a statement of the issue. Based upon the grievance allegations, the undersigned concludes that the issue is most appropriately stated as:

Has the County denied employees the right to use vacation to reach their retirement or severance date in violation of the collective bargaining agreement?

If so, what is the appropriate remedy?

Merits

Based upon the Union's arguments, the Union is maintaining that the County violated the collective bargaining agreement and past practice when it denied the Grievant the right to use vacation to end his County employment at the time of his retirement. For the purposes of this discussion, this process will be referred to as "vacationing out." The Union further maintains that the County's denial results from a unilaterally implemented policy that violates the parties' collective bargaining agreement.

Union President Scott Reddell states that he understood that the Grievant had put in for vacation and was later told that he would have to work his last day. Reddell recalls a conversation with the Grievant in which the Grievant told Reddell that he had talked to Highway Commissioner Leo Klosterman about "vacationing out;" that the Grievant was told that he had to work his last day; and that "management" had told the Grievant that this directive had come from the "Courthouse."

Highway Department Clerk Lisa Borne states that the Grievant told the "Union" that the "Personnel Department" told him that he had to work his last day. Borne further states that she thought this directive was from Personnel Director Bud Trader. According to Borne, the Grievant understood that if he did not work his last day, then he would not be credited for March benefits. Borne identifies these benefits as vacation, sick leave, health and dental insurance. Borne states that she understood that the Grievant had a vacation planned and had to change this vacation because he needed to return to work.

Reddell and Borne do not claim, and the record does not establish, that either was present during any conversation in which the Grievant requested to "vacation out" or Klosterman, or any other management representative, denied a Grievant request to "vacation out." Reddell and Borne do not claim, and the record does not establish, that either was present during any conversation in which the Grievant was told by Klosterman, or any other management representative, that the Grievant had to work his last day or that, if the Grievant did not work his last day, then the Grievant would not be credited for March benefits, or any other benefits.

The Grievant and Klosterman were not present at hearing. Reddell and Borne's testimony regarding statements attributed to the Grievant, Klosterman or unidentified "management" personnel are uncorroborated hearsay. As such, they do not provide a

reasonable basis to conclude that the Grievant made a request to management to “vacation out;” that management denied such a request; that management told the Grievant that he had to work his last day; or that management told the Grievant that, if he did not work his last day, then the Grievant would not be credited for March benefits, or any other benefits. Nor does this testimony provide a reasonable basis to conclude that the County has implemented any policy with respect to “vacationing out.”

The Grievant submitted a form dated January 4, 2007 that is signed by Klosterman and the Grievant; and states:

I, Ron U'Ren plan to Retire. My last work day will be 3-20-07. Therefore, please consider this my notification of termination with the Iowa County Highway Commission.” (U. Ex. #1)

This form is silent with respect to the use of vacation days and confirms that the Grievant’s “last work day” will be March 20, 2007.

The second form referenced by Borne, entitled “Vacation/Floating Holiday Form,” is dated February 8, 2007; signed by the Grievant; and approved by Klosterman on February 9, 2007. (U. Ex. #2) On this form, the Grievant requests to take vacation on March 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, and 16. The Grievant’s 2007 work record shows that the Grievant was on vacation on March 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, and 16. (U Ex. #8)

The Grievant’s 2007 work record indicates that March 19th was the last day that the Grievant worked. According to Borne, that information was incorrectly placed on the record due to lack of room. Borne confirms that the Grievant worked March 19 and 20, 2007. County Finance Director Roxanne Hamilton states that it is her understanding that the Grievant’s last day of work was March 20, 2007.

The two forms submitted by the Grievant do not indicate that the Grievant wanted to “vacation out.” Rather, they indicate that the Grievant did not request to “vacation out” and that the Grievant was given the vacation days requested by the Grievant.

Reddell recalls that, after his conversation with the Grievant, he contacted Union Representative Jennifer McCulley. In an email dated January 10, 2007 and addressed to County Personnel Director Bud Trader, McCulley states, *inter alia*, the following:

Also, I have a question regarding the highway. A member Ronnie Rehn is planning on retiring on March 20, and wanted to use vacation on his last day of work, but has been told that he has to work the last day of his employment. Can you tell me is this a County policy? Where does this come from? I guess I don’t understand if he has the vacation coming, why he can’t take vacation and has to work.

The record reasonably indicates that McCulley is referencing the Grievant; but has mistaken his name.

McCulley did not testify at hearing. Reddell's testimony suggests that he was the source of McCulley's information. McCulley's email, however, does not identify the basis for her assertion that the Grievant had wanted to use vacation on his last day of work, but had been told that he had to work his last day.

The record does not establish what, if any, response Trader made to this email. The lack of evident response from Trader does not provide a reasonable basis to conclude that Trader knew that the Grievant had wanted to use vacation on his last day of work, but had been told that he had to work his last day of employment.

McCulley sent Trader an email dated January 29, 2007 that includes the following:

Subject: FW: Retirement payout

Bud,

Did you receive the email noted below from me? I didn't hear back so I wanted to resend it in case you didn't receive it.

Thanks,

...

From: Jennifer McCulley
Sent; Thursday, January 18, 2007 1:29 PM

...

Subject: Retirement payout

Bud,

I understand where the County is coming from. However it is my understanding that both Jocelyn and John were quits, whereas we are talking about a retirement. The local mention that Shirley Quincy and dick Conway were both able to vacation out regarding their retirement. Can you send me the documentation showing me how they were paid out? Did they take vacation and then retire or did the County make them retire and then payout their Vacation?

Thanks.

The record does not establish what McCulley meant by the statement "I understand where the County is coming from." It suggests, however, that McCulley is responding to unidentified information that she had received from the "County."

The record indicates that Trader responded to McCulley's email of January 29, 2007 with the following email dated February 5, 2007:

Subject: RE: Retirement payout

Jennifer:

Records I received last week from the Highway Department does show that both former Highway Department employees Shirley Quincy and Dick Conway were allowed to use paid vacation during their last weeks of employment before their official retirement dates.

I will provide a Letter to you advising you of the County's interpretation of these cases as they relate to the applicable collective bargaining agreement.

Thanks for your patience.

The record indicates that McCulley responded in an email dated February 6, 2007 as follows:

Subject: RE: Retirement payout

Bud,

Thanks for getting back to me. I await your letter.

McCulley and Trader also had the following email exchange:

From: Jennifer McCulley
Sent: Wednesday, January 31, 2007 11:08 AM
To: Bud Trader
Subject: Ronnie Rehn

Bud,

Will you please confirm for me what date the County is viewing as Ronnie's last day of employment?

Thanks,

Trader responded as follows:

From: Bud Trader
Sent: Wednesday, January 31, 2007 11:20 AM
To: Jennifer McCulley
Subject: RE: Ronnie Rehn

Jennifer:

His last name is actually **U'Ren**, unique with the apostrophe.

I'm not certain what that date is but his last day of employment will be his last day of work.

Bud

McCulley responded:

From: Jennifer McCulley
Sent: Wednesday, January 31, 2007 11:27 AM
To: Bud Trader
Subject: RE: Ronnie Rehn

Bud,

Thanks for the name correction. I assume the "last day of work" means the last day he actually physically works at the department?

Thanks.

Trader responded as follows:

Sent: Wednesday, January 31, 2007 11:38 AM
To: Jennifer McCulley
Subject: RE: Ronnie Rehn

Jennifer:

Correct.

Bud

By letter dated February 5, 2007, Trader advised McCulley as follows:

In addition to your recent email correspondence with me related to Highway Department employees' vacation pay, Leo Klosterman advised me that you

included the subject in a recently issued grievance. Leo will respond directly to you regarding the grievance.

I appreciate your correspondence on this issue, but the County simply does not agree that there is a binding practice to pay benefits in a manner that is inconsistent with the collective bargaining agreement.

To the extent that you believe such a practice exists, and in any event, the County is not prepared to follow such an approach under the successor collective bargaining agreement and therefore, we believe the union should negotiate for such a benefit in our current negotiations if it wishes.

The referenced grievance was filed on February 1, 2007.

Trader's letter of February 5, 2007 does not identify the referenced "binding practice" or "approach" that he understood was advocated by McCulley. Nor does Trader, who testified at hearing, relate statements from McCulley that describe what she viewed to be the "vacationing out" practice.

By letter dated February 6, 2007, Klosterman advised McCulley of the following:

I am denying grievance #1-07 filed on February 1, 2007 stating that the County is denying employees the right to use vacation to reach their retirement or severance date. The grievance has no merit.

Neither Klosterman's letter, nor the correspondence between McCulley and Trader, provides a reasonable basis to conclude that Klosterman, Trader, or any other management representative, told the Grievant that he had to work his last day; denied a Grievant request to "vacation out;" or stated, by policy or otherwise, that the Grievant would not be credited for March benefits, or any other benefits, if he did not work his last day.

Trader states that he holds regular meetings with management and Department Heads; that, during these meetings, he has encouraged management to get vacation requests in writing and work with employees to schedule the vacation as best as they can. Trader states that management approval is required of all vacation requests and that it is rare for management to deny employee vacation requests. Trader maintains that management has the right to approve employee vacation requests and that, during his seven years of County employment; there had not been a prior employee claim to use vacation without the approval of management.

Trader states that he was probably aware that Klosterman had the Grievant work his last day, but does not state why Klosterman had the Grievant work his last day. Trader states that he does not recall any discussion with the Highway Commissioner on the point of the Grievant's last day; that the Highway Commissioner met with the Grievant to determine what was acceptable to both parties; that the two of them worked out the Grievant's vacation

schedule and last day at work; that Trader did not decide nor agree to it; that Trader does not know what discussions were had between the Highway Commissioner and the Grievant; and that Trader does not know what the Highway Commissioner required of the Grievant. When asked if management could require an employee to work the last day or month, Trader responded that he does not know what management is doing. Trader does not corroborate Borne's hearsay testimony that the Grievant was told by the "Personnel Department" that the Grievant had to work his last day.

Borne states that she is not aware of a circumstance in which an employee received vacation that has not been approved by management. According to Borne, Klosterman worked with employees on vacation requests and management usually approves a vacation request if management can fit it in. Reddell states that he could not say if the Grievant and Klosterman had reached any agreement.

According to Trader, Klosterman understood that the County was working on a resignation policy, but that a resignation policy was not in place when the Grievant retired from the Highway Department. Roxanne Hamilton, the County's Finance Director, states that, if a manager denies a vacation out request, then she calculates "pay-outs" on the last day that the employee worked and if the manager approves a "vacation out" request, then she uses vacation as time served for the purpose of calculating "pay-outs."

Trader recalls that, at or about the time of the grievance, the Union and the County were negotiating the 2007-2008 agreement; that he spoke to McCulley regarding "vacationing out;" and proposed that the parties bargain on this issue. According to Trader, McCulley did not accept his proposal; but rather, filed the instant grievance and the Union did not make any proposal regarding "vacationing out" when the parties bargained their 2007-2008 agreement.

Trader defines "vacationing out" as using paid vacation after the last day of employment to extend employment past the last day of work. According to Trader, the "Union" said that the County did not have discretion to deny "vacationing out" to retirees. Trader does not identify who in the "Union" made such a statement. Trader's testimony indicates that the "past practice" that was in contention between the parties involved the issue of whether or not management had discretion to deny "vacationing out" requests.

Conclusion

In the present case, the undersigned is functioning as a grievance arbitrator and not as an Examiner in a prohibited practices complaint. Accordingly, cited cases involving the determination of mandatory subjects of bargaining and/or claims of unilateral change under MERA or the NLRB do not control the disposition of this case.

The Union argues that the County refused to allow the Grievant to "vacation out" in violation of past practice and the collective bargaining agreement. This record, however, fails to establish that the County refused to allow the Grievant to "vacation out." Nor does this

record establish that, at the time of the Grievant's retirement, the County had implemented any policy regarding "vacationing out" other than that vacation requests are subject to the approval of the Department Head. A policy that vacation requests are subject to the approval of the Department Head is consistent with the language of Sec. 9.03; which expressly states that the number of employees on vacation within a given classification at any given period shall be determined by the Highway Commissioner.

The evidence does not establish that Highway Department employees who have "vacationed out" have done so without the approval of the Highway Commissioner. Rather, the evidence establishes that all vacation requests are submitted to the Highway Commissioner for approval.

Assuming *arguendo* that all employees who requested to "vacation out" have been allowed to "vacation out, such evidence would not provide a reasonable basis to conclude that there is a practice that "binds" management to approve "vacation out" requests. When management is exercising discretion, the evidence of a "prior practice" is, in fact, evidence of management's unilateral choice.

A County policy in which "vacation out" requests are subject to the approval of the Department Head (in this case, the Highway Commissioner) is not a *per se* violation of the Union's collective bargaining agreement. However, under Article 3, management's right to approve or deny a vacation request must be used "fairly and reasonably."

This record does not establish that the County used its management's right to approve or deny a Grievant vacation request in a manner that is "unfair and unreasonable." This arbitrator is not in a position to make any determination on the "fairness and reasonableness" of the County's response to future employee requests to "vacation out."

Based upon this record, which involves the circumstances of the Grievant's retirement, there is no merit to the grievance assertion that the County has violated the collective bargaining agreement by denying employees the right to use vacation to reach their retirement or severance date. The grievance is denied and dismissed.

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

AWARD

The County has not denied employees the right to use vacation to reach their retirement or severance date in violation of the collective bargaining agreement.

The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 30th day of April, 2009.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator