

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

VILLAGE OF TWIN LAKES

and

**TWIN LAKES DISPATCHERS ASSOCIATION, LOCAL 529 OF THE
LABOR ASSOCIATION OF WISCONSIN, INC.**

Case 24
No. 69205
MA-14524

(Vacation Request Grievance)

Appearances:

Luis I. Arroyo, Attorney, Michael, Best & Friedrich, LLP, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, WI 53202-4108, appeared on behalf of the Village of Twin Lakes.

Benjamin M. Barth, Labor Consultant, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, WI 53022, appeared on behalf of Twin Lakes Dispatchers Association, Local 529 of the Labor Association of Wisconsin, Inc.

ARBITRATION AWARD

The Village of Twin Lakes, herein the Village, and the Twin Lakes Dispatchers Association, Local 529 of the Labor Association of Wisconsin, Inc., herein the Association, are parties to a collective bargaining agreement which provides for the final and binding arbitration of certain disputes. The Association filed a Request to Initiate Grievance Arbitration with the Wisconsin Employment Relations Commission concerning a vacation request of one of its members that was denied by the Village. The parties jointly requested that Commissioner Paul Gordon serve as arbitrator. Hearing was held in the matter on November 20, 2009 in Twin Lakes, Wisconsin. A transcript was prepared and made available to the parties. The parties filed written briefs and the record was closed on January 26, 2010.

ISSUES

The parties stipulated to a statement of the issues as:

Did the Employer violate the terms of the collective bargaining agreement or longstanding past practice when it denied the grievant's vacation request?

If so, what is the correct remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE III – MANAGEMENT RIGHTS

Section 3.01: The Village possesses the sole right to operate the Village of Twin Lakes and all management rights repose in it. These rights include, but are not limited to, the following:

- A. To direct and maintain the efficiency of all operations of the Village of Twin Lakes;
- B. To determine the kinds and amounts of services to be performed as pertains to Village operations and the number and kind of classifications to perform such services;
- C. To determine the methods, means and personnel by which operations are to be conducted;
- D. To introduce new or improved methods of operations, work practices or facilities, and to modify existing departments, methods of operations, work practices, or facilities;
- E. To establish reasonable work rules and schedules of work and overtime when required;
- F. To determine the size and composition of the work force and the work to be performed;
- G. To hire, promote, transfer, lay off, schedule and assign employees in positions;
- H. To determine employee competence and qualifications for positions;
- I. To suspend, demote, discharge and take other disciplinary action, subject to the provisions of this agreement;
- J. To contract out for goods or services, so long as no employee suffers layoff due to subcontracting;
- K. To take whatever action is necessary to comply with state or federal law;
- L. To take whatever action is necessary to carryout the functions of the Village in situations of emergency.

ARTICLE IV – WORK SCHEDULE/OVERTIME

* * *

Section 4.03: The Chief of Police, or his designee, shall be the supervisor of dispatchers and shall be responsible for preparing the daily work and training schedules.

* * *

Section 4.08 – Compensatory Time Off (CTO): Overtime compensation as provided for in Section 4.02 may be taken in either pay or compensatory time off. The choice is determined by the employee.

* * *

C. CTO shall be taken as such times as agreed upon between the employee and the Chief of Police or his designee. Such agreement shall be in written form. Every attempt shall be made to request CTO at least seventy two (72) hours in advance of the day requested.

* * *

E. Granting of CTO will not unduly disrupt the efficient operations of the Police Department as determined by the Chief of Police.

F. CTO will be approved on a first come first serve basis.

Section 4.09 – Trades: Employees may trade shifts or workdays with other employees. The employee must notify the Chief or his designee in writing of the requested change and get approval for the trade. Requests for trades shall normally be made at least seventy-two (72) hours prior to the date involved. Under extenuating circumstances, the Chief or Chief's designee may waive the above time constraint.

ARTICLE XI – VACATIONS

* * *

Section 11.02 – Vacation Scheduled: Years of service can be completed at any time within the calendar year to be eligible for vacation, except that an employee who shall be granted the scheduled vacation appropriate for years of service shall not be paid the additional vacation pay for that service year until after the anniversary date of the employee's employment. For the purpose of this section, time off due to sick leave shall be considered as time worked. Vacation requests shall be submitted to the Chief of Police by April 1st, and vacation preference shall be granted on the basis of seniority, except that a dispatcher may change the vacation period with another qualified dispatcher, provided that such change is approved by the Chief of Police, with no overtime granted as a result of vacation switches. Any vacation day remaining unscheduled may be scheduled by the Chief of Police as scheduling permits, or as described in Section 11.03 below.

* * *

ARTICLE XIV – SENIORITY

Section 14.01 – Seniority Defined: The term “seniority” as used in this Agreement shall refer to the dispatcher’s years of continuous uninterrupted full-time service with the Police Department. Seniority shall be defined as that period of service commencing from the last date on which the dispatcher was hired and continuing thereafter until termination. Part-time employees shall gain seniority within rank based upon the number of hours worked (i.e. 40 hours = 1 week). Part time seniority shall apply for calling in available part-time employees for a vacant shift. Any part-time employee who becomes a full-time employee shall have an adjusted starting date given consideration for all hours worked part-time since the last date of hire. The adjusted date of seniority shall only be used to determine the number of vacation days the employee is entitled to and the amount of Longevity compensation. Seniority for any other purpose including the selection of Vacation shall accrue from the date of hire as a full-time employee.

* * *

Section 14.03: The practice of following seniority in promotions, transfers, shift preference, layoffs, recall from layoffs, and vacations shall be continued. Ability and efficiency shall be taken into consideration only when they substantially outweigh considerations of length of service or in cases where the dispatcher who otherwise might be retained or promoted on the basis of such continuous service is unable to do the required work.

* * *

ARTICLE XVII – GRIEVANCE PROCEDURE

Section 17.01: The Village Board and the dispatchers agree that the prompt and just settlement of a grievance is of mutual interest and concern and only those matters involving interpretation, application or enforcement of the terms of this agreement shall be subject to the grievance procedure as set forth.

* * *

BACKGROUND AND FACTS

Tammy DeKeyser, herein DeKeyser or Grievant, is a Dispatcher in the Village Police Department, and has been employed by the Police Department for approximately 16 years, some of that being part-time. She had previously worked for the Village Fire Department. She is a member of the Association.

There are normally four full-time Dispatchers, one being known as the supervisor, and three part-time Dispatchers in the Department. The supervisor is actually in the bargaining unit. Since January 2007 and before April 2006 there were three shifts working a rotating schedule with a fourth dispatcher covering off days. The part-time Dispatchers are scheduled into the vacation days, sick days and comp days of the full-time Dispatchers. The Village budgets 15 shifts per month for the part-time Dispatchers. Ten of these 15 shifts are usually prescheduled each month to cover for the first shift. There are often more than 15 shifts per month that are actually worked by part-time dispatchers throughout the year, with the numbers varying month to month. The budget for part-time Dispatchers is determined by assuming a certain amount of work they will do and they are scheduled according to that budget assumption, subject to the actual needs of the Department.

From April 2006 through January 2007 there were five full-time Dispatchers, one being the supervisor.

On January 10, 2009 Grievant put in a written Time Off Request with her supervisor requesting vacation for March 21 and 22, 2009. The request was not approved and returned to her with notes from her supervisor written on it as to the reason for the denial. Those notations stated:

Only on dispatcher can use extra day off per day
Bridget requested off both of these days 1st, in October.
Let me know if you'd like to trade. Do what I can.

In October of 2008 Association member Bridget Krupp had put in a written request for vacation for the same two days as those requested by Grievant. On the same day that the supervisor denied Grievant's request he approved Krupp's request. Krupp has more seniority than Grievant. The supervisor, Perry Gregory, is also in the bargaining unit and testified at the hearing in this matter. According to Gregory, his use of the words "extra day off per day" was meant to refer to vacation days because both Grievant and Krupp had requested vacation for those days. Gregory has had the scheduling responsibility since February 2008. He has been in the Department since 2001, and testified to the effect that since 2001 for scheduling vacation only one person gets their vacation pick on any one day.

According to the dispatcher's written work schedule, there were three part-time Dispatches who were available to work for the days Grievant requested vacation. Grievant had talked to one of them about working her shifts. The actual availability of the other two was not specifically known by Grievant at the time. The supervisor and Chief of Police were under the understanding that two of the part-time dispatchers actually might not have been available at that time. None of the part-time Dispatchers were asked by the Supervisor or Chief of Police to work or allowed to work the shifts for which Grievant had requested vacation.

Grievant then traded shifts with her supervisor and another Dispatcher to be able to attend the event for which she had requested vacation, which trade was approved by the supervisor. The supervisor worked one of Grievant's shifts and the other Dispatcher worked the other shift. As of the date of the hearing, Grievant still needed to work eight additional hours whenever the supervisor needed her to in order to complete her part of that shift trade. She still needed to work two and one-half hours for the other Dispatcher to complete her part of that shift trade.

While Grievant has been a Dispatcher in the Department there have been other days when more than one Dispatcher otherwise previously scheduled to work has been off work on the same day. She had never been denied a day off in which another Dispatcher was also off. For example, for February 14, 2009 Krupp had a vacation day scheduled and Grievant later wanted the same day off. Grievant requested a comp day for the same day and the Chief granted that request. Thus, both Krupp and Grievant were off work that day. Comp days do not count as vacation days and do not reduce available vacation days. The Village has consistently over the years allowed a vacation day and a comp day to be taken on the same day by two Dispatchers.

The written work schedules of the Dispatchers show the vacation, comp and other days off taken by the members over several years. In addition to February 14, 2009, on each of May 2, 2008, June 22 and June 10, 2007, August 31, 2007 and February 5, 2007, one Dispatcher was on vacation and another was on comp time. However, on May 26, 2007 and December 31, 2006 two Dispatchers were on vacation. Two Dispatches were allowed to schedule vacation days on the same day for January 2, 2005, May 24, 27 and 28, 2005, June 12, 2005, October 21, 2005 and December 30, 2005.

With one exception, since January 2007 only one Dispatcher has been scheduled by the Department for vacation on any one day. That exception was May 26, 2007. The previous dispatch supervisor who approved the two vacation days for that day was issued a reprimand for doing so. During the period of April 2006 through January 2007 when the Department had a 5th full time dispatcher there was one day, December 31, 2006, when two Dispatchers had vacation on the same day. Prior to April 2006, no disciplinary actions were taken against the supervisor for approving two vacation days on the same day for the days in 2005. The record does not disclose if the Chief of Police then, or only the supervisor, was aware of the vacation days in 2005.

The Current Chief of Police has been with the Village in that capacity for the three years prior to the hearing in this matter. He has an annual meeting with the Dispatchers near the beginning of each year. In 2007, 2008 and 2009 at this meeting he reviewed, among other things, his policy and interpretation of vacation requests before April 1st as being only one vacation day per day determined by seniority.

A grievance was filed by the Association over the denial of Grievant's vacation request, alleging a violation of Article III – Management Rights, Article XI – Vacations, and any other Article. The grievance alleged that the Village had exercised its management rights in an unreasonable manner when it denied the vacation request. The grievance further alleged a violation of a long standing past practice that more than one Dispatcher has been allowed off on the same day, and that there were part-time Dispatchers available to cover Grievant's shifts without overtime compensation. The grievance was denied by the City, leading to this arbitration.

Further facts appear as are in the discussion.

POSITIONS OF THE PARTIES

Association

In summary, the Association argues that the language in the collective bargaining agreement is clear and unambiguous. Its clear meaning must be enforced, citing arbitral authorities. Section 11.02 – vacation scheduled is pretty clear on how vacations are picked, and the Association is convinced that the language leaves little to the imagination on when and how vacations are picked. The Chief's interpretation that the section only allows one employee off per day because the contract requires vacations to be picked and approved by seniority is flawed because the section does not limit the number of employees who can be off per day on vacation. If the parties intended that limit there would be clear language in the section. More than one employee has been off on a single day a number of times in the past. Grievant testified that requesting time off for a day when another employee has already approved time off has never been an issue since she has been an employee. Based on the clear and unambiguous language in the collective bargaining agreement the Association requests that Grievant be paid at the rate of time and one-half for the hours she worked on March 12, 2009 and March 22, 2009.

The Association argues that there is a bona fide past practice. The past practice is not the same one the Village tried to establish at the hearing. A past practice does exist on allowing more than one Dispatcher off on vacation per day, citing arbitral authorities. The evidence was that the practice was unequivocal, clearly announced and acted upon, regularly ascertainable over a reasonably period of time and is a fixed and established practice. There were a number of examples when the Village allowed more than one Dispatcher off per day. This practice has been in existence for the past 16 plus years. The Chief also testified to the 2005 year times that more than one Dispatcher was on vacation on a single day. The practice was accepted by both parties. If the Employer wants to change the number of employees that can be off per day, it must put the Association on notice that the longstanding past practice is being terminated at the end of the current agreement.

The Association argues that the language in Section 11.02 is clear and unequivocal and not subject to any other interpretation. The longstanding past practice supports finding the grievance has merit. The Village violated the agreement when it denied the Grievant's vacation request of March 21, 2009 and March 22, 2009 for the sole reason that one Dispatcher was already off on vacation on those days.

Village

In summary, the Village argues that it did not violate Article XI-Vacations when it denied Grievant's request to use vacation time on March 21 and 22, the same day a more senior Association member requested vacation time. Where contract language is clear and unambiguous, the contract language governs over a past practice, citing arbitral authorities. In this case the clear and unambiguous status quo contract language in Section 11.02 clearly contemplates only one vacation request will be granted to a Dispatcher on any one day. The section notes a vacation preference shall be granted on the basis of seniority. Preference is singular, noting only one preference, versus preferences, will be granted on any one day. It has a seniority system for vacation selection. If the agreement contemplated more than one vacation request could be granted for any one day there would be no need for the seniority system. The Agreement does not allow all dispatchers to submit and get vacation requests regardless of the number of requests. Yet, that is the result the Union's argument requires. Under the Union argument seniority in 11.02 means nothing. Following that, four dispatchers could choose to take the same week of vacation, leaving the Dispatcher function unmanned for weeks, which the seniority provision does not allow. This would be an absurd result. Here, the seniority language confirms that only one vacation pick, by seniority, will be granted on any one day for all vacation requests. Members of the bargaining unit are actively involved in scheduling vacations. Dispatchers who cannot use a vacation day may trade time off with others, as Grievant did, to get the requested day off. They may use comp days and there is no dispute by the Union that the Village has been unreasonable in the use of comp days. Employees are able to trade days off, as the Grievant did. The existence of these practices in keeping with the plain language of the agreement only serves to bolster the Village's position as to the interpretation of 11.02.

The Village argues that Article III Management Rights allows the Village to determine the number of employees on vacation. Subsections A, B, C, E, and F allow it. No contract language prohibits the Police Chief from implementing the reasonable procedure and requirement utilized for scheduling vacations prior to April 1. This procedure was followed over 99.9 % of the instances since 2006 and treats vacation time equally among all employees. And unless the contract states otherwise, employees do not have a contractual right to certain specific vacation dates. The contract must be read as a whole and the management rights provision will govern, citing arbitral authorities. The provision here is that vacation scheduling prior to April 1 is awarded by seniority, thereafter as scheduling permits. This is then limited by business considerations, citing arbitral authorities. A major factor in accordance with operational and cost needs is how many employees take vacation at the same time. In this case the Village has reasonably exercised the work rule consistent with reading the contract as a whole, requiring only one dispatcher may use a vacation day on any one day, minimum staffing needs, and the need to restrict overtime costs to the greatest extent possible.

The Village further argues that it has exercised its management rights in a reasonable manner. The dispatch service is manned in an efficient manner. Three of the full-time employees cover First, Second and Third shift on a /2/5/3 basis. The fourth full-time dispatcher covers days off. The Chief budgets for 15 part-time shifts a month covered by three part-time dispatchers. Ten of these shifts cover days off for First shift. The goal to avoid payment of these other shifts is not always realistic, with some shifts covered up to 21 times. Here, granting Grievant's vacation request would have required the Village to cover two more shifts for a total of 18 with part-time employees. Budgetary concerns are relevant and the Village properly denied the vacation request pursuant to the agreement and its reasonable exercise of management rights. Moreover, Grievant did not work on March 21 and 22. Pursuant to the agreement she traded to have those days off and got them following the contract. Her cry of foul is disappointing.

The Village argues that the Village practice has been in compliance with the plain language of the contract. Since at least 2006 and certainly in the three years the Chief came to the Department the practice has been that no two Dispatchers can schedule vacation for the same day. Association member Gregory confirmed the one-a-day vacation practice since at least 2001. The only exception was when staffing temporarily increased to five full-time Dispatchers. On May 26, 2009 when the Chief discovered two Dispatchers scheduled for vacation on the same day, he verbally reprimanded the Association member who scheduled it. The Union did not file a grievance over the reprimand or any other time Dispatchers were denied vacation selection based on the practice that no two be allowed to take the same day of vacation.

The Village also argues that the Association fails to prove the existence of an alternate practice. The evidence at the hearing fails to satisfy the burden of proof to support the arbitral requirements necessary to demonstrate a past practice, citing arbitral authorities. Exhibits 1 and 3 to 6 only demonstrate that the Department allowed two employees to take the same day off if one is using compensatory time. The Village does not deny allowing Dispatchers to take the same day off if one of the Dispatchers is using a comp day. This practice is consistent with Article IX and federal law. Exhibit 7 fails to establish a practice. This was during the period when there were five full-time dispatchers. The May 26, 2007 scheduling bolsters the Village position because when the Chief found out about it he disciplined the Association member for it. Such Disciplinary action is the antithesis of an unequivocal acceptance of the purported practice. Exhibits 11 to 15 do not support a past practice. These seven instances in 2005 do not support an unequivocal practice because the Association supervisor recalled the Chief in January 2007 stating they were going back to the one a day vacation schedule requirement, and the current Chief unequivocally communicated in January of 2007, 2008 and 2009 that Dispatchers are not allowed to schedule vacations for the same day. The Union provided no evidence of its purported practice before 2005, or at any time took the position that there was a practice of allowing two or more Dispatchers to schedule vacation for the same day. There was no proof that the Chief was aware of the 2005 scheduling, so there was no proof of an acceptance by both parties. A handful of incidents are not proof of a practice, citing arbitral authorities. And the Association dispatch supervisor testified that since 2001 it was known that no two Dispatchers could use a vacation day on the same day.

The Village argues that even if the Village had a practice of allowing multiple Dispatchers to select the same vacation day, the practice was specifically terminated at the expiration of the 2008 agreement. The parties were bargaining a new agreement. The Chief told the Dispatchers at the annual January 2007, 2008, 2009 meetings that only one person is allowed to take vacation on any one day. The Union's insistence that a practice to the contrary exists during the existence of a contract hiatus is contrary to arbitral authority, citing arbitral authority.

The Village requests the grievance be denied.

DISCUSSION

The issues concern whether the Village violated the collective bargaining agreement or a past practice when it denied Grievant's request for vacation days for the same days a more senior Dispatcher had requested for vacation. The more senior Dispatcher was granted vacation for those same days. Grievant was allowed to trade shifts so that she did get the two days off that she had requested vacation.

The first part of the issue involves the collective bargaining agreement. The Association contends that the Village was unreasonable in the exercise of its management rights, contained in Article III, when it determined that only one Dispatcher could be off on vacation on any one day. It points out that Article XI - Vacations, and specifically Section 11.02 - Vacation Scheduled, does not contain any limit to only one Dispatcher being on vacation on any one day, and that if the parties intended there be only one vacation day per day they would have put that into the contract language. The Village points out that Section 11.02 contains a seniority provision in selecting and granting vacation preferences prior to April 1st and the requested days were in March, and argues that the Village's one vacation day per day application of Section 11.02 is reasonable.

Both parties contend that the language of Article XI, Section 11.02 is clear and unambiguous and should be read in their favor. The operative language of Section 11.02 states in pertinent part:

. . . Vacation requests shall be submitted to the Chief of Police by April 1st and vacation preference shall be granted on the basis of seniority, except that a dispatcher may change the vacation period with another qualified dispatcher, provided that such change is approved by the Chief of Police, with no overtime granted as a result of vacation switches. Any vacation day remaining unscheduled may be scheduled by the Chief of Police as scheduling permits, . . .

The Association is correct; there is no language that limits a vacation request to only one vacation day per same day. However, the Village is also correct that there is a seniority provision for requests before April 1st. This seniority provision does act as a limit on the number of Dispatchers that can, reasonably, be granted a vacation request for the same day. The vacation preference shall be granted on the basis of seniority. The use of the word “shall” makes using seniority mandatory. With vacation preferences granted on the basis of seniority the most senior Dispatcher requesting the vacation day must be given it. This does not mean that more than one Dispatcher can request and must be granted the same day. Were that so, then the requirement of using seniority would be meaningless. Contract interpretation cannot render any provisions meaningless. Collective bargaining agreements cannot be construed to render any part meaningless. The Association actually does not make an argument addressing the inclusion of the seniority provision other than there is no limitation on the number of Dispatches who can be granted the vacation request for the day. The Association attempts to answer the Chief’s seniority interpretation, but what the Association does is to argue that nowhere in Section 11.02 does it limit the number of employees who can be “off” on any given day. But there is a difference in a Dispatcher being on vacation and otherwise being “off”. The collective bargaining agreement allows Dispatchers to have comp time and to make trades of shifts. In both those instances the Dispatcher is off work on the day that might also be a vacation day for a different Dispatcher. Two may be “off” on the day, but only one is on vacation. Thus, the Association argument does not address seniority nor resolve the seniority provision for vacations in its favor. In this case both Grievant and the more senior Dispatcher did have the same day “off”. One had vacation days and the other effectuated trades to get off those days, with the seniority provision being respected. The Association does not argue or explain how the seniority provision would otherwise retain meaning under its interpretation. Further, as the Village points out, if all four full-time Dispatchers requested the same vacation day and had to be granted it, there would only be three part-time Dispatchers to cover, and even then overtime would most likely be required.

Another part of Section 11.02 would be rendered meaningless if more than one Dispatcher had a right to a vacation day on the same day. The provision provides that “a dispatcher may change the vacation period with another qualified dispatcher.” If more than one Dispatcher had a right to the same vacation day under Section 11.02, then there would be no need to change the vacation period with another Dispatcher.

The Association’s interpretation of Section 11.01 would render two parts of it meaningless. The inclusion of seniority provisions works to limit the number of vacations requests that can be granted for any given day, and the Village applied the provision adoringly in compliance with the section. Section 11.02 does not provide a right to a less senior Dispatcher to be granted the same vacation day as a more senior Dispatcher so that the Village management right to schedule, control expenditures, levels of service and efficiency of operations is otherwise limited. In denying Grievant’s request the Village did not violate Section 11.02. The Village also allowed Grievant to trade shifts, something that is provided for under Section 4.08 and Section 4.09 of the collective bargaining agreement. In its application of Section 11.01 and Sections 4.08 and 4.09 the Village also reasonably exercised its management rights and did not violate Article III.

The Association also argues that the Village violated a longstanding, clearly enunciated, mutually agreed upon and binding past practice when it denied Grievant's request. It argues that for over 16 years more than one Dispatcher has been allowed to be off on the same day, and points to several instances where two Dispatchers have been on vacation on the same day.

Normally, in contract interpretation where the controlling language is clear and unambiguous, there is not need or reason to resort to past practice to determine the intent of the parties or the meaning of the language. That is the case here. Section 11.02 is not ambiguous. Both parties argue it is clear and unambiguous – in their respective favors. The language is not ambiguous. It is sufficiently clear as interpreted above, and needs no further resort to past practice to ascertain meaning or intent. Yet, the Association's past practice argument must still be considered. Sometimes an otherwise clear and unambiguous contract provision may have been applied by the parties in such a manner so as to give particular meaning to words, phrases, or operational meaning. In such cases past practice may be of some value in ascertaining meaning or intent in contract language. But that is not the case here.

There has not been established any past practice which would provide a different meaning or interpretation to the Section 11.02 other than the one above. At best there is a very varied history and pattern as to granting more than one vacation request for the same day. Many of the instances pointed out by the Association are not two vacation days on the same day, but are one vacation day and one comp day on the same day. That has been happening for over 16 years. But, as alluded to above, that is not a practice of more than one vacation day on the same day. That is the predominant fact since at least January 2007. On the May 26, 2007 instance of two vacation days on the same day, the bargaining unit member who granted the requests was reprimanded for doing so. That was not grieved by the Association. This shows that the Village did not agree to the practice. The fact that this reprimand was not grieved does not in and of itself demonstrate that the Association also agreed with that interpretation. But the current Chief of Police at three annual meetings with the Dispatchers in 2007, 2008, and 2009 explained his policy of only one vacation day per day. That was not challenged by the Association by grievance or otherwise. These acquiesces by the Association make it very difficult to see the Association as having mutually agreed to a mutually binding practice of there being more than one vacation day per day. There is an instance of two vacation days on the same day on December 31, 2006. But, as the Village points out, that was during a period when there were five, not four, full-time Dispatchers working in the Department. This is a material change or difference in circumstances. The credible testimony of the current supervisor is that after that time the Department indicated to the Dispatchers that it was returning to the former policy, that of only one vacation day per day. The evidence of the seven incidents in 2005 of two vacations on the same day does not show if the Chief or Village management was aware of it so as to be part of a mutual understanding. There is the further evidence that the one vacation day per day policy has been in effect since supervisor Gregory has been an employee and Association member, which is back to 2001. What the evidence shows is a variety of situations, not an unequivocal and clearly enunciated manner of granting vacation days. Sometimes there were two vacation days on the same day allowed, and

sometimes there were not allowed. This does not demonstrate a mutual understanding and agreement. Thus, there is no unequivocal, clearly enunciated and acted upon practice over a reasonable period of time as a fixed and established practice which has been accepted by both parties whereby two or more Dispatchers have a right to be granted a vacation request for the same day. The practice that the parties do not argue about, and which the Village appears to acknowledge, is that of allowing more than one Dispatcher to be off on the same day, provided that only one of those Dispatchers is off on a vacation day while the other is off on a comp day. These are two different things, as also explained above. Whether standing alone as a past practice or as an aide in interpreting Section 11.02, there is no binding past practice of allowing more than one Dispatcher to be on vacation on the same day established on this record. The denial of Grievant's vacation request did not violate a past practice.

The Village followed the seniority provisions in Section 11.01 and did not violate Section 11.02 or otherwise unreasonably exercise its management rights under Article III. Similarly, the Village did not violate a past practice of granting more than one vacation day request for the same day because such a practice has not been established.

Accordingly, based upon the evidence and arguments in this case I issue the following

AWARD

The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 26th day of April, 2010.

Paul Gordon /s/

Paul Gordon, Arbitrator